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Chair

Mr. Anthony Housefather

Standing Committee on Justice and Human Rights

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• (1405)

[English]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Okay, folks. I'd ask the cameras to leave please.

[Translation]

Pursuant to Standing Order 108(2), we are continuing our meetings on remediation agreements, the Shawcross doctrine and the discussions between the Office of the Attorney General and government colleagues.

[English]

I would like to welcome today, from the Privy Council Office, Mr. Michael Wernick, the Clerk of the Privy Council and Secretary to the Cabinet.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Mr. Chair, I have a point of order.

I would request once again that the witnesses be sworn in. Clearly the testimony of Mr. Wernick, the last time he appeared before our committee, is, in many areas, inconsistent with the testimony that Ms. Wilson-Raybould gave. Given the gravity of the allegations and the very detailed testimony of Ms. Wilson-Raybould, I think that in the circumstances it is appropriate that both of the witnesses be sworn in.

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

I'll repeat what I said this morning, that no witness has been sworn in at this committee for the last 25 years, at least; that witnesses are required—and I'm reminding the witnesses, of course—to tell the truth before committee. You can be charged with contempt of Parliament if you mislead the committee.

Since Confederation, nobody has ever waived parliamentary immunity to charge somebody with contempt for misleading a committee, so that's why, out of practice, the committee has not done that.

We will have a vote on Mr. Cooper's—

Mr. Michael Cooper: May I have a recorded vote, please?

The Chair: Certainly.

And this would apply to both witnesses?

Mr. Michael Cooper: Both, yes.

The Chair: Mr. Clerk, we have a request for a recorded vote.

By the way, those voting “yea” are voting to swear in the witnesses; those voting “nay” are saying it's not necessary.

(Motion negated: nays 5; yeas 4 [See Minutes of Proceedings])

The Chair: Thank you very much.

I'm going to return to welcoming, again, Mr. Michael Wernick, who's the Clerk of the Privy Council and Secretary to the Cabinet. Thank you very much for coming back before us, Mr. Wernick.

[Translation]

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

Thank you very much for coming to meet with us today, Ms. Drouin.

[English]

We have allocated 15 minutes to each witness for opening statements. We will start with Mr. Wernick.

Before we start, we have Mr. Wernick's and Madame Drouin's opening statements, which we have distributed to committee members. We also had the undertaking from Mr. Wernick, from his last appearance before us, to provide certain notes and correspondence that he had agreed to provide. We have those here. Much of it is bilingual; some of it is in English only. I'm requesting the committee's permission to distribute it despite the fact that some parts of it are not translated.

Some hon. members: Agreed.

The Chair: Is everyone okay?

[Translation]

Mr. Plamondon, you have the floor.

Mr. Louis Plamondon (Bécancour—Nicolet—Saurel, BQ): I know I can't legally oppose the motion, but I'm very disappointed that one of the two official languages hasn't been entirely respected.

I'm not opposing the motion because I don't have the power to do so as I'm not a member of a recognized party.

The Chair: All right. Understood.

Mr. Berthold, you have the floor.

Mr. Luc Berthold (Mégantic—L'Érable, CPC): This is the second time this committee has shirked its responsibility to provide documents in both official languages. We don't object to the document being submitted, but I would like you to inform all witnesses and persons who appear before this committee that it is important to submit their documents in both official languages so we can have access to the information in the official language of our choice, as we are entitled to do in the committees.

The Chair: That's generally not the witnesses' duty. Instead it's the duty of the clerk and the committee to have documents translated. We generally don't distribute untranslated documents to everyone, but this causes a delay. That's why we've requested permission to distribute them before they are translated.

Mr. Luc Berthold: Considering the subject, I'm not objecting to that.

What I'm asking is that the committee remind witnesses, if possible, to submit their documents in both official languages before they appear. This is the second time the committee has done this. I think it's important that we don't get into a habit of unanimously agreeing to receive and distribute documents in only one language.

The Chair: That's quite clear. We simply want to ensure that members have the documents on a timely basis today. Having said that, I entirely agree that we want all documents to be in both official languages. That's the practice of our committee.

Mr. Colin Fraser (West Nova, Lib.): I hope the documents will be translated into both languages in future, for our committee and for all members.

The Chair: Yes. So that everyone knows, I would note that, when we receive documents, it is our responsibility as a committee to have them translated and then to distribute them. There are times, and today is one of them, when we want members to have the documents in hand. The committee will definitely have them translated and they will then be distributed in Canada's two official languages.

Mr. Plamondon, I understand your objection, I entirely agree with you. I nevertheless think it's important today that everyone have in hand all the documents in our possession before we hear the witnesses.

[English]

If that's okay, we will distribute this, and we will move to Mr. Wernick's testimony.

Mr. Wernick, the floor is now yours. Thank you, sir.

[Translation]

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

[English]

There are two new facts since I last appeared at the committee some two weeks ago. One is the waiver that was offered to witnesses. That will allow different lines of questioning by the committee members. The other is the kind of traffic that I have received on social media, and I would like to present these to the committee, if somebody could please transmit them to the clerk. I would ask the committee—

• (1410)

Mr. Murray Rankin (Victoria, NDP): On a point of order, what is the relevance of social media to what we're doing? The terms of reference are—

Mr. Michael Wernick: If I could explain—

Mr. Murray Rankin: —whether a line was crossed, Mr. Chair.

Mr. Michael Wernick: If I could explain—

The Chair: Yes, of course, Mr. Wernick. Go ahead. I've stopped the timer.

Mr. Michael Wernick: I believe that you will want to discuss this as the intimidation of a witness before your committee and a breach of the committee's privileges. You can take that up in camera if you wish. I will be distributing these to the media.

The Chair: Thank you very much.

Since I haven't seen them, I'm not going to say anything right now. I just ask you to move back to your opening statement, and the committee will consider that at a future date, when we're ready.

Thank you very much, Mr. Wernick. The timer is now back on.

Mr. Michael Wernick: Thank you.

Mr. Chair, it has been suggested that my testimony to the Justice committee on February 21 was partisan, presumably in content or motivation. I would like to respond.

I would also like to provide the committee with my recollection of conversations I had with the former attorney general.

I want to first clarify my role within the Government of Canada as Clerk of the Privy Council. I am the deputy minister to the Prime Minister and secretary to the cabinet. In the first role, I'm charged with delivering advice to the Prime Minister and assisting him in delivering his agenda. I've had a close working relationship with the Prime Minister for more than three years, sitting in on countless meetings and discussions covering the entire range of governmental activity.

I work at the intersection of the public service and the elected officials, and I am present for many discussions that touch on matters that some would see as political. It is my role to be aware of this context, but I do not ever give advice that is partisan in content or motivation.

[Translation]

As Clerk it is part of my job to give the Prime Minister impartial advice and feedback on how his Ministers are exercising their roles, their relationships with colleagues and with the public service. The Prime Minister and his staff seek my advice before Cabinet shuffles and I have been the main advisor on appointments and deployments of Deputy Ministers.

[English]

As secretary to cabinet, my job is to ensure the smooth flow of decision-making through the cabinet system. The most scarce resource in Ottawa is time at cabinet. I work hard to ensure that discussions are well prepared, that due diligence has been exercised and that options are crystallized, so that ministers in the cabinet room can focus on the key aspects of decisions before them. Part of my job is to keep the government's agenda moving.

[Translation]

As the 23rd Clerk I have tried to be open with Canadians about my role and my perspectives. I communicate with them through a website and presence on Facebook, Twitter and LinkedIn. All of my speeches are posted. I have given media interviews and I have appeared before Parliamentary Committees. As head of the public service, I submit a report to Parliament and Canadians every year on the state of their public service. I have always tried to be direct in my language.

[English]

I am profoundly disappointed to be accused of partisanship by people who have never met me. My career is on the public record. I have held the highest security clearances that this country can offer for many years. I was named to deputy minister-level positions by Prime Ministers Chrétien, Martin, Harper and Trudeau. I participated in the transition exercises, the swearing-in and the first cabinet meetings of Prime Ministers Martin, Harper and Trudeau. I've attended more than 200 meetings of cabinet and its committees since 1987. I've attended first ministers meetings with four prime ministers in the chair.

I set this out because it's been suggested that I'm part of someone's political agenda. I serve the government of the day.

Regarding the discussion at the standing committee on February 21, my comments about the ethical conduct of the government—and previous governments, for that matter—were not motivated by a desire to burnish its image. I have spent thousands of hours with politicians and political staff from all stripes, and from personal experience, I am in a unique position to attest to Canadians, through you, that they are well served by the women and men who work in the offices of the people they elect.

Since I was last here, there have been a few developments. One is that several people have suggested I am more political than a public servant should be. I hope I've clarified that I understand my role in government. The other development is the waiver, and that the former attorney general has testified. I will not respond to all of her evidence, but I do want to make a few points before we begin questions.

My understanding is that one purpose of deferred prosecution agreements is that corporate criminality does not devastate workers, pensioners, suppliers and others who did nothing wrong. This is in the Criminal Code and it is part of public interest considerations. In speaking to the Attorney General in December, I was giving her contextual information about the SNC-Lavalin matter directly relevant to a decision she had to make.

In dealing with the public interest, the Attorney General's decision is never final. The public interest can evolve and change, and the impact of a decision to prosecute or not prosecute was evolving in this case. When I mentioned to the Attorney General on September 17 that there was an election in Quebec, I did not do so out of any partisan consideration. That is an unfair inference. It is a long-standing convention for the federal government to try to stay out of the fray of provincial election campaigns, and that the people of each province decide for themselves who they want to govern. In mid-September, based on the company's public-disclosure obligations, I was concerned that a purely federal issue could surface in the last two weeks of that rather heated campaign. It is my job to remind elected officials about those conventions.

• (1415)

[Translation]

The Prime Minister assured the Attorney General in my presence in September and in writing in December that the decision about prosecution was always hers to take.

[English]

On January 10 the cabinet shuffle was finalized, and the next day, in the context of calling five deputy ministers who were affected and would have to be ready by Monday, I called Madam Drouin and asked her to make sure that the new Minister of Justice and Attorney General would be brought up to speed on a number of prominent files that he would likely face questions about in the near future, perhaps as soon as the cabinet retreat in Sherbrooke, which would begin on Wednesday afternoon, two days after the swearing-in. I mentioned carbon pricing litigation, the Norman trial, TMX and SNC-Lavalin. I don't know if the deputy attorney general will agree with my recollection, but I never singled out SNC as the only issue, and it would be a misreading of my conversation with her to suggest it was.

[Translation]

I stand by my testimony of February 21.

I note that, after the former Minister's testimony on February 27, the following facts are not contested. She was always the decision maker. She was assured multiple times that she was the final decision maker. The former Minister agreed that entering into a Deferred Prosecution Agreement would have been entirely lawful.

[English]

The former minister maintains that her decision, a decision to take no action, was final in September. But she had the ability, as new public interest considerations emerged, to reassess the context and re-examine her reasoning. That is the most she was ever asked to do.

I repeat my contention that the minister experienced lawful advocacy to consider doing something lawful in the public interest. I made no threats, veiled or otherwise, that the minister's decision would lead to consequences for her, and my position could be captured at all times by the well-known phrase

• (1420)

[Translation]

"non-ingercence, non-indifference".

It is my contention that the Minister was doing her job and I was doing mine.

[English]

As has the former minister, I have sought legal advice about what I can and cannot say today, and I've been advised not to opine on the minister's reasoning or state of mind, because some of the issues are or will be before the courts.

My recommendation to the committee would be to develop an all-party report proposing improvements to the law around deferred prosecution agreements. Your recommendations could be adopted by the House in a single sitting day and become law before the end of this Parliament.

This committee may also want to further explore the potential separation of the Attorney General function with a view to informing Canadians. Doing so would permit each party to take a clear position on this matter during the imminent election campaign. This is a profound change that could have consequences, intended and unintended, for decades to come, and it should not be rushed.

Finally, this is the Justice committee, and the committee may wish to hold hearings on the Attorney General of Canada's directive on civil litigation involving indigenous peoples, which she issued on January 11, 2019, effectively her last day on the job. This directive to all Government of Canada litigators could mark a profound change in Canada's legal landscape. However, it could be repealed or gutted at the stroke of a pen, and all that work turned to ashes, so I think now that all political parties need to be clear with Canadians on the future of that directive.

That is my opening statement. I'd be happy to take questions from the committee.

The Chair: Thank you very much.

Mr. Michael Wernick: Thank you for your patience.

The Chair: We're going to turn now to Madame Drouin.

[Translation]

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

I would like to thank the members of the committee for allowing me to make this opening statement.

My opening remarks will address my role and responsibilities as Deputy Minister of Justice and Deputy Attorney General of Canada, my professional relationship with the Hon. Jody Wilson-Raybould and my chronology of events.

As Deputy Minister of Justice and Deputy Attorney General of Canada, I support the Minister of Justice and Attorney General and the government in the development of their policy objectives. In the exercise of my duties, my vision has always been the provision of high-value legal services.

I encourage Justice Canada legal staff to build on the traditional role of legal professionals so that the role is one where legal professionals and clients form a strategic alliance, working as partners focused on finding solutions and delivering results.

[English]

In my role, I have the privilege of working with highly competent and impressive individuals. The former minister and attorney general and I had a very positive working relationship. I commend her for what she brought and brings to Canada in her role in public office. I can tell you that I learned a lot working with her, especially in terms of indigenous issues and law-making. In fact, we continue the work she began at Justice Canada by taking a new approach to indigenous litigation.

I hold myself and my staff to the highest standards of providing non-partisan advice. My role in supporting the Minister of Justice and Attorney General demands that I uphold the values and ethics expected of me, both as a public servant and as a lawyer.

I would like to begin by describing my dual role as the deputy minister of justice and deputy attorney general. I have been in this position since June 2017. In both of these roles, I support the Minister of Justice in fulfilling his or her responsibilities. My functions include giving legal advice and coordinating the legal advice given by the Department of Justice, supporting the development of legislation and policy that fall within the Justice portfolio, as well as acting as the formal representative of the Crown in all civil litigations involving the Government of Canada.

In addition to my support, the Attorney General of Canada is also supported by the director of public prosecutions, who is also a deputy attorney general of Canada. The DPP and I do not report to each other. It is not my role to discuss specific prosecutions with her and I have not discussed the substance of the SNC-Lavalin prosecution with her. However, I do provide advice to the Attorney General of Canada in her or his decision-making as to whether or not to issue directives to the director of public prosecutions or to assume the conduct of a federal criminal prosecution. In such situations, I approach giving legal advice in the same way I would when giving advice on any other statute, but with careful attention to the distinction between my job and the job of the DPP.

● (1425)

[Translation]

Mr. Chair, I would now like to provide the Committee with a detailed account of my interactions on this file, as is permitted by the scope of the Order in Council that was enacted by the Governor General in Council on February 25, 2019.

In order to provide you with this account, to the best of my ability, I have reviewed my emails, files, and agenda. I have not consulted with Ms. Wilson-Raybould, the Hon. David Lametti or their staff or anyone outside of the Department on facts that are my own.

My account will include details of the discussions that I had with the former Attorney General respecting the exercise of her authority pursuant to the Director of Public Prosecutions Act.

On September 4, the Department became aware of the Director's position to continue with the prosecution of SNC-Lavalin. I would like to clarify that I do not know how or when the Director's position was shared with SNC-Lavalin.

As I mentioned, I have reviewed my calendar to my best ability. My calendar indicates that on September 5th I had a phone conversation with Paul Rochon, Deputy Minister of Finance; however, I cannot recall whether we talked about this file, another file, or both.

In addition, from what I can recall, the first discussion that I had with Ms. Wilson-Raybould on this file was late in the afternoon on September 5th. The purpose of the call was to discuss another file, but from what I recall, SNC was also discussed on the margins. The former Attorney General was in Fiji and there was a 17-hour time difference.

Two of her staff members, Jessica Prince, Chief of Staff, and Emma Carver, Policy Advisor, joined the call. We agreed that the department would provide advice on the role of the Attorney General, for her consideration. I told them that the department had begun working on the advice the evening before.

[English]

For the next two days, September 6 and 7, my officials and I developed the written advice. I also provided verbal advice to the AG's staff, Emma Carver and François Giroux, on the Attorney General's powers under the Director of Public Prosecutions Act.

I advised that it would be very important for the Attorney General to be comfortable with the director's position to not pursue a remediation agreement. I emphasized that the Attorney General was entitled to receive as much information as she considered necessary from the director.

It was during the course of these conversations with Emma Carver and François Giroux that they read to me the extracts of the section 13 letter from the DPP.

For clarity, a section 13 letter from a DPP to the Attorney General is to "inform the Attorney General in a timely manner of any prosecution, or intervention that the Director intends to make, that raises important questions of general interest."

As I have explained to the committee, in fulfilling my role as deputy AG, I am very careful to separate my role and responsibilities from that of my counterpart, the director of public prosecutions. As I have mentioned, I have no role in specific criminal prosecutions. I am not privy to any of the evidence. This is why I refused to review and receive the section 13 letter.

It was during the same conversation that Emma Carver informed me that she was drafting a document that she intended to provide to her counterparts in the Prime Minister's Office. I was also told that the Attorney General was not keen on the idea of exercising her authorities under the DPP Act.

In her testimony, the former minister mentioned that I had conveyed information from the Department of Finance. To clarify, on September 7, I spoke with the deputy minister of finance, Paul Rochon. He had questions regarding the decision-making process and the roles and relationship of the AG and the director of public prosecutions.

Also on September 7, I spoke to the former attorney general's chief of staff and provided her with a verbal outline of what we were drafting for the AG's consideration.

On September 8, I provided a draft opinion to the former AG's office. The opinion is entitled "The power of the Attorney General to issue directives and to assume conduct of proceedings". The opinion begins with a discussion of the Attorney General's independence and her ultimate responsibility for criminal prosecutions. It describes the role of the DPP in much the same way I have explained to this committee. It also describes the power to assume conduct of a prosecution and the power to issue directives.

The opinion also provides advice to the AG on the role of the DPP, and that the AG is entitled to receive information from the DPP in order to understand a decision.

Various options are set out for a situation in which the AG either disagrees with the director's position or wishes to further assess the decision. These options include the issuance of directives that direct reconsideration or appoint a specific prosecutor to reassess.

Another option covered is for the AG to decide to assume conduct of a prosecution, consider whether statutory conditions for remediation agreements are met, and, if so, to appoint an agent to negotiate such an agreement.

The legal opinion also canvasses the possibility of seeking outside advice with respect to the AG's powers under the act and the Criminal Code in order to assess whether the conditions for a remediation agreement are met.

The legal opinion advises that the relevant constitutional and statutory framework prioritize independence and transparency, and that any decision by the AG is hers to make, independent of the political considerations or processes.

● (1430)

There is also a short discussion of the deference by courts to prosecutorial discretion, which can be reviewed only for abuse of process.

[Translation]

I would like to bring some context to this part of my remarks. While I have been at Justice Canada for almost three years, as you know, I also worked in Quebec in similar roles. During that time, I gained expertise in this area and I have faced similar situations where decisions of a DPCP were publicly challenged and where an AG was called upon to act. I appropriately brought this professional experience and expertise to bear on the advice my department provided to the AG in this matter.

On September 10th, the Department responded to two follow-up questions that we had received from the Attorney General's office as a result of the draft advice.

On September 11th, the Attorney General's acting Chief of Staff, François Giroux, informed me by email that the AG was not intending to intervene in the case and that she would be pleased to discuss it.

On September 12th, the Department of Finance indicated to me that SNC-Lavalin was still in discussions with the DPP. I therefore understood that the DPP's position on whether to invite SNC to negotiate a remediation agreement was not final.

[English]

On September 12 or September 19—I would like to be more precise, but I don't have any evidence of that—a discussion occurred with the Clerk on the margins of a weekly meeting that we call the “DM breakfast”.

I recall that I had a discussion with the Clerk in which we discussed the role of the AG and the options that the AG had available to her, as well as the DPP's role and my role.

On September 16, I had a call with PCO in which we would also have discussed the advice on the AG's role and options.

To the best of my recollection, my first face-to-face meeting with the former attorney general on this file was September 17, and I believe we may have only briefly discussed it on the margins of another meeting.

I also saw the minister on September 18 and 19. On September 18, the only purpose of the meeting was for the minister to debrief on her meeting the day before with the Prime Minister. I do not recall her specific words, but I remember her telling me that the Clerk was present. She also expressed to me that she was not comfortable with the content of this conversation.

On September 19, during my bilateral meeting in the afternoon with the former AG, she told me that she had just had a discussion with the Clerk. During the same meeting, I clearly recall that the former AG said to me that this would be the last time we discussed the SNC-Lavalin matter, and she also instructed me not to have any discussion with the DPP.

To the best of my knowledge and to be clear, after September 19 I did not have any further involvement in this file with the minister or her staff, with two exceptions.

• (1435)

[Translation]

The first of the two exceptions occurred on October 19th when the application for judicial review of the DPP's decision was filed with the Federal Court. As would be regular process where there is an application for judicial review, officials in my department discussed with the DPP who should appear on behalf of the Crown.

The second exception occurred near the end of October. I do not have the exact date. The Privy Council office asked my department for an opinion on the potential impacts on SNC-Lavalin if the prosecution were to result in a criminal conviction. My department developed the draft legal advice. It was not provided to PCO at the request of the Minister's Office.

[English]

Finally, before completing my chronology, I would like to return briefly to the time I first became aware of the January 14 shuffle. Again, I would like for the report to say that I haven't discussed this testimony with the Clerk.

On Friday, January 11, the Clerk of the Privy Council called to inform me of the upcoming shuffle. I was not told who the new minister would be. I proactively asked the Clerk what areas or files I should be preparing to brief the new minister on. The Clerk identified briefing the new minister and Attorney General on roles and responsibilities as the primary need. This indicated to me that we were going to be receiving a first-time minister.

The Clerk also recommended that I brief the new minister on indigenous files because the Prime Minister could ask the new minister to attend a meeting with indigenous organizations early the next week. He also recommended briefing the minister on current issues, including remediation agreements and SNC.

As you are aware, SNC-Lavalin had sought a judicial review of the DPP's decision, so it was a live issue for the new minister to be made aware of. To brief the new minister, I developed, with the assistance of my immediate team, a briefing handbook, which I am tabling here today.

[Translation]

I think you have the documents, in English and French, to distribute to the members of the committee.

[English]

You will notice in the handbook that the remediation agreement is also included.

It was in this context that on the afternoon of January 11, I informed Jessica Prince, who I thought was remaining as the chief of staff, what we would need to brief the new minister on.

[Translation]

Thank you for your consideration. I know I have slightly exceeded my speaking time.

I am now prepared to answer your questions.

The Chair: Thank you for your testimony.

Thanks to both witnesses.

[English]

We will go to questions. We will do two rounds. We will see where the time is and ask people if they wish to continue for a third round.

Round one is six minutes to the Conservatives, six to the Liberals, six to the NDP and six to the Liberals.

Mr. Cooper is first.

• (1440)

Mr. Michael Cooper: Thank you, Chair. I will split my time with Monsieur Berthold.

The Chair: You will each take three minutes?

Mr. Michael Cooper: Yes, thank you.

Madame Drouin, when you briefed the current Attorney General, did you advise him that the former attorney general had made a decision not to overturn the decision of the DPP?

Ms. Nathalie Drouin: As you will know, there are a lot of things in the transition book. Whether or not I brief the new minister on specific subjects is not covered by the waiver, but I think you can have a flavour of it in the first briefings I had with him.

Mr. Michael Cooper: Thank you for that.

Mr. Butts, in his testimony, made reference to a legal memo from the Department of Justice that recommended seeking outside legal opinion. Is that memorandum the opinion that you made reference to on September 8?

Ms. Nathalie Drouin: This is my understanding, yes.

Mr. Michael Cooper: Who would that have been sent to, aside from the former attorney general?

[Translation]

Ms. Nathalie Drouin: As I told you, the opinion was first sent to the minister's office on September 8. I know my teams forwarded it to the Privy Council Office and to Public Services and Procurement Canada around October 10 or 12.

[English]

Mr. Michael Cooper: Was it sent to anyone in the Department of Finance, in Minister Morneau's office?

[Translation]

Ms. Nathalie Drouin: Not that I know of.

[English]

Nevertheless, as I said in my opening remarks, I have discussed roles and responsibilities and authorities that an AG has under the DPP Act with my colleague at Finance.

Mr. Michael Cooper: Was it sent to anyone in the PMO?

Ms. Nathalie Drouin: I don't have direct contact with the PMO, but as I said, my office sent it to the PCO.

Mr. Michael Cooper: In terms of the decision of the DPP, there was some suggestion that Ms. Wilson-Raybould could have put something in writing if she decided that she did not wish to overturn that decision, but in her not doing anything, would you agree that the decision of the DPP would stand?

Ms. Nathalie Drouin: When an AG takes a decision on whether or not to exercise his or her authorities under the DPP Act, there is no obligation to have reasons and to have written documents for that.

Mr. Michael Cooper: Then in her not acting, the DPP decision would stand, right?

Ms. Nathalie Drouin: That's the conclusion. If they don't exercise...the DPP decision stays.

Mr. Michael Cooper: Exactly.

[Translation]

The Chair: Mr. Berthold, you have the floor.

Mr. Luc Berthold: Thank you, Mr. Chair.

Ms. Drouin, I'm going to repeat a few questions in French.

First, I'd like to know whether you informed the new Attorney General of the former Attorney General's position on the remediation agreement with SNC-Lavalin and the fact that she did not want to use her power to change matters.

Ms. Nathalie Drouin: I distributed the content of the subjects of the initial briefings that my team and I had given the Hon. David Lametti. Now, as regards the details of those briefings, they are not covered by the waiver of solicitor-client privilege.

Mr. Luc Berthold: It's the normal role of a deputy minister to inform her minister on all matters so that he is up to date and to ensure a smooth transition. Without discussing any specific cases, it's your role to inform the minister properly on all issues concerning his or her department.

Ms. Nathalie Drouin: Thank you for your question.

Yes, it is definitely part of the role of deputy ministers to prepare and welcome new ministers and to present all essential elements to them so they can take up their duties as soon as possible.

Mr. Luc Berthold: That includes important decisions made by their predecessors.

Ms. Nathalie Drouin: In fact, the idea is to provide briefings on hot topics, the issues of the moment. That does not necessarily include a review of previous positions. It's more about the status of each of the files.

Mr. Luc Berthold: I understand that you can't tell us whether you spoke to Mr. Lametti about the position of the former attorney general since you haven't been authorized to do so. However, it's normally part of a deputy minister's role to inform an incoming minister on all major issues concerning his or her department.

• (1445)

Ms. Nathalie Drouin: It's important to note that, when we conduct a briefing with ministers, particularly when there has been a change of government, deputy ministers do not discuss positions adopted by the previous government except as regards public policy. That's not the practice.

Mr. Luc Berthold: I'm not talking about a previous government, but rather of the same government. This is still the same government.

Just to change...

Ms. Nathalie Drouin: As Mr. Cooper said, as the director of public prosecutions had decided that the trial would continue, that implied that no decision had been made by the previous attorney general.

Mr. Luc Berthold: Madam...

The Chair: This is your last question.

Mr. Luc Berthold: All right.

You had two memos: the first circulated generally, and the second concerned potential consequences. Who in the Privy Council Office asked you to draft that second memo?

Ms. Nathalie Drouin: I could give you that information, but the request didn't come directly to me.

Mr. Michael Wernick: I can clarify that question, if it helps.

The Chair: All right, that's perfect.

Thank you very much.

[English]

We're going to go to Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): Mr. Wernick and Ms. Drouin, thank you for being here again.

My question is for Ms. Drouin.

I want to carry on talking about the memo of September 8 that you spoke of earlier. From your testimony, I understand there was a bit of general context as well as some specific options. Can you tell us what those options were?

Ms. Nathalie Drouin: As I said, there were a couple of options.

The first thing the memo said was that an AG is entitled to receive information from the DPP concerning a specific case.

The other option for an AG is to issue a directive. The content of the directive can be very broad. As a concrete example, in that case it could have been to give a directive to the DPP to enter into a remediation agreement, or there could have been a directive to ask the DPP to revisit the decision or to reassess the decision. That was one of the options.

Another option was for an AG to decide to assume the conduct of the prosecution. Another option was also to ask for legal advice to the AG to decide whether or not she should exercise her authorities under the act.

Mr. Ron McKinnon: Was there a recommendation as to one or more options to pursue?

Ms. Nathalie Drouin: I should have said that at the beginning. No.

Mr. Ron McKinnon: Do you have any concept of what would have been a preferred option?

Ms. Nathalie Drouin: I cannot have an opinion on that. I would like to explain.

To have an opinion on whether or not a deferred prosecution should be offered in a specific case, you have to have in hand the evidence of the case. As I explained to the committee, I'm not privy to the evidence, so I cannot develop an opinion on whether a remediation agreement was appropriate in that case.

I can explain to the committee that the offences that SNC is facing are covered under the regime of remediation agreements. Whether or not a remediation agreement would be appropriate in that case was a decision made by the DPP based on the evidence.

Mr. Ron McKinnon: You also mentioned in your testimony that you incorporate legal opinion in canvassing the possibility of seeking outside advice.

Do you believe that's a reasonable course of action, in particular in a case like this, where it's a brand new law, there are no regulations yet published and this is the first opportunity to actually make use of those—

Ms. Nathalie Drouin: There are maybe two things. The remediation agreement regime is new, but the Director of Public Prosecutions Act is also kind of new.

We've been working with that system in Quebec for almost 10 years now, but at the federal level I think it's eight years, so we don't have any precedent. We don't have any cases in which an AG has used his or her power to issue a directive.

• (1450)

Mr. Ron McKinnon: Did you think that despite the decision of the PPSC to not pursue a remediation agreement, it was still reasonable for that option to be considered by the justice department and the Attorney General?

Ms. Nathalie Drouin: As I said, I cannot have an opinion, because to form an opinion on whether or not a DPA or a remediation agreement is an option on a specific case, you have to be aware of the evidence. I have never been aware of the evidence.

Mr. Ron McKinnon: I guess I'm wondering if the fact that the DPP has made a decision would in any way preclude the AG from taking action.

Ms. Nathalie Drouin: Thank you for making your question a little bit clearer for me.

No. The AG, as I said, has authorities under the DPP Act to intervene, to issue directives or to decide to assume the conduct of specific prosecutions, but it's her decision, as I said at the beginning, to decide whether or not to use those authorities under the act.

Mr. Ron McKinnon: Would such an action on behalf of the AG in any way constitute interference?

Ms. Nathalie Drouin: The fact that an AG decides to exercise her authorities under the act is not an interference, because they are powers provided under the act, especially if we respect the parameters. The first one is to have a consultation with the DPP before exercising any authority, and the second one is to publish the directive or the decision in the Canada Gazette.

Mr. Ron McKinnon: To go back to the memo—

The Chair: That's the last question, Mr. McKinnon.

Mr. Ron McKinnon: Thank you, Chair.

In that memo, was there any recommendation to undertake consultation with other government departments that might be affected?

Ms. Nathalie Drouin: No. The memo didn't contain any recommendations.

The Chair: Thank you.

Mr. Rankin is next.

Mr. Murray Rankin: Mr. Wernick, when you testified here previously, I thanked you for your 37 years of public service to Canada. I reiterate that today.

I live in Victoria, B.C. It will be no surprise to you that there are many retired senior public servants from the federal government who have called me over the last while. I have to tell you, sir, that to a person they have expressed deep concern about the line that I suggest you've crossed.

Today you said that you never give partisan advice, you don't engage in partisan activity, you're not part of someone's partisan agenda and you're not motivated by burnishing a politician's image.

However, when you appeared before us the last time, you did the following. You started by talking about an “assassination”. You talked about fear for your country, which Professor Wes Wark characterized as the “politics of fear”, and then you turned and delivered extemporaneous praise for Minister Carolyn Bennett. Finally, today you brought in a number of social media comments that, with great respect, have nothing to do with what's before us.

Mr. Gordon Robertson, the dean of clerks, said this in a 1971 article: “The Prime Minister’s Office is partisan, politically oriented, yet operationally sensitive. The Privy Council Office is non-partisan, operationally oriented, yet politically sensitive.”

The Clerk and the PMO must keep out of each other's way.

Sir, with great respect, how could we have listened to your testimony last time and, if we believe Madam Wilson-Raybould's testimony, not do anything but conclude that you have in fact crossed the line into partisan activity?

Mr. Michael Wernick: I can only repeat that I state categorically that I have never given advice or done anything for partisan purposes that would suggest to advantage one political party versus another in the political arena.

Mr. Murray Rankin: Then we're to assume that the attempt to change the channel last time so that the headline would be about assassination and the like, and the attempt to talk about a minister who has nothing to do with this matter and how terrifically she's served Canada—these were just things you wanted to get off your chest at a discussion of the Shawcross principle?

Mr. Michael Wernick: I was aware of the punditry, media and social media traffic that had been triggered around this issue. I stand by every word I said in the opening statement. They come from a deep place of concern about this country, and I repeat them. I have had the highest security clearances of this country and I am deeply worried about foreign interference in the election. If that was seen as alarmist, so be it. I was pulling the alarm. We need a public debate about foreign interference.

I am never accepting that we would normalize the cyber-bullying of political officials. I have been exposed to it. It upsets me, and it angers me. I am upset by the trolling that took place of Minister Bennett. I stand by that. That was not to the partisan advantage of the Liberal Party. I deplore the cyber-bullying of politicians of all stripes.

• (1455)

Mr. Murray Rankin: So do we all, although what that has to do with this is a little unclear.

Mr. Michael Wernick: It may have to do with the intimidation of a witness.

Mr. Murray Rankin: On December 19, 2018...a number of comments were made about you by Madam Justice Wilson-Raybould, and I would like to give you the opportunity to refute them.

Number one, you're quoted as saying, “I think he is going to find a way”—speaking about the Prime Minister—“to get it done, one way or another....So he is in that kind of mood, and I wanted you to be aware of it.”

Did you say that, or words approximating that?

Mr. Michael Wernick: I do not have an independent recollection of the event. I did not wear a wire, record the conversation or take extemporaneous notes.

Mr. Murray Rankin: Words like that wouldn't have stuck in your mind.

Mr. Michael Wernick: That is not my recollection of the conversation.

Mr. Murray Rankin: Then she said she warned you, in this call, as follows:

[W]e were treading on dangerous ground here. I also issued a stern warning because, as the Attorney General, 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. This all screams of that.

Does that sound right?

Mr. Michael Wernick: I do not have contemporaneous notes or a recording of that conversation. I recall the sentiment, and I agree with it. Nobody was ever asking her to do anything for partisan reasons.

Mr. Murray Rankin: Earlier in her testimony, she said:

The Clerk said that the Prime Minister is quite determined, quite firm, but he wants to know why the DPA route, which Parliament provided for, isn't being used. He said, “I think he is going to find a way to get it done, one way or another....So he is in that kind of mood....”

Can you not see that she might reasonably interpret those words, if they were in fact said, as code—as a sinister effort to get her to change her mind? Couldn't a reasonable person hear that and conclude, as she did, that it was very much a veiled threat?

Mr. Michael Wernick: I am in no position to comment on what was in the mind of another person. I can only comment on what I was conveying to her, which was context and public interest considerations on a decision that was entirely hers to make.

Mr. Murray Rankin: It was entirely for her to make, but you certainly tried, it seems to her, to change her mind in a way that would cross the line we're here to explore. She took it as a veiled threat. When I read it back to you, I think a reasonable person could likewise infer that it was a veiled threat. It seems to me, sir, that you very much crossed the line in respect of an independent attorney general.

Mr. Michael Wernick: I respectfully disagree.

I never raised partisan considerations at any time. I reminded her repeatedly that she was the final decision-maker. I did not attempt to influence her decision. I was giving her relevant context about public interest considerations for a decision that was hers to take. I never suggested consequences for her.

The Chair: Thank you.

Ms. Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, Mr. Chair, and thank you to the witnesses.

Ms. Drouin, according to the former attorney general, you refused to accept the section 13 note from her. You have confirmed that as well.

The former attorney general said she had been concerned, because it's not appropriate for public servants to get involved in political discussions.

Madame, why did you refuse the section 13 note?

Ms. Nathalie Drouin: As I said in my opening remarks, it is not my role to evaluate and to have access to specific evidence on specific prosecution cases. As I said, it was during that conversation with her staff—when we discussed the importance of her being convinced that she had received all the necessary information to make the decision—that some extract of the section 13 letter was read to me. Because it is not my role, I didn't ask, and I didn't want to review the letter.

Ms. Iqra Khalid: Would receiving the section 13 note have been in violation of your role as the deputy justice minister and deputy attorney general?

Ms. Nathalie Drouin: No, I won't say it's in violation, but it's not part of my role.

• (1500)

Ms. Iqra Khalid: Was your refusing the note akin to your getting involved in political discussions, as the former attorney general has said?

Ms. Nathalie Drouin: I have trouble sometimes when we use the words “political” or “partisan” in...using the same thing. As I said, I had a conversation with some colleagues. I responded to a lot of questions about my role; the role of the DPP; the authorities of the minister under the act; what she can do; what she cannot do; why taking a decision in a prosecution is not the same thing, as an AG, as taking a decision in a civil matter, for example; and the fact that she wears a quasi-judicial or judicial hat when she takes a decision. That was the type of conversation I had with my colleagues.

Ms. Iqra Khalid: Thank you.

Do you believe that the former attorney general tried to exclude you from discussions on this specific issue because she disagreed with your views?

Ms. Nathalie Drouin: No, I didn't feel that she excluded me for that.

The former minister has a strength of character. She possesses a strength of character and integrity. She upholds her independence. She has a very solid view of her independence, and I think this is why she was not comfortable to enter into discussions that can interfere with the decision she had to take.

Ms. Iqra Khalid: Thank you.

That leads perfectly into my next question. The former attorney general had said that she raised concerns with you about the appropriateness of communication that she was receiving from outside the department, and that she raised concerns about some of the options that you had been suggesting. What does she mean by this and which options were you suggesting that she felt concerned about?

Ms. Nathalie Drouin: First, as I said in my opening remarks, she told me that she was not comfortable and she didn't appreciate her conversation, first, with the Prime Minister. Then she asked me not to talk anymore about the SNC-Lavalin case and also the authorities

under the DPP. I think this is what she means, that she talked to me several times about the fact that she didn't want to have those conversations.

What was the other part of your question? Sorry.

Ms. Iqra Khalid: We were talking about which options, what were they, that you were suggesting that she felt concerned about.

Ms. Nathalie Drouin: As I said previously, we didn't recommend any specific options. We just presented all the options she had in front of her. She didn't want to exercise any of those options, and that was her decision.

Ms. Iqra Khalid: There were a lot of options before the former attorney general. Do you think and do you believe that she had an open mind to those options that were in front of her?

Ms. Nathalie Drouin: In all my discussions on any files with the minister, she was always open to receive information, to seek advice, and then it was for her to take decisions.

Ms. Iqra Khalid: We understand that from September 4 to September 16 or 17 was when the majority of the options were put in front of her. We had those discussions. For a majority of that time period, she was not physically in the country. Do you think that is a reasonable time frame for her to have come to the final decision that she came to?

Ms. Nathalie Drouin: I think it's not for me to assess, as I said. She did say in her testimony that she did her due diligence. I was not part of that due diligence exercise. As I said, in order to make a decision, yes, she had to take into account the context, but she also had to take into account the evidence and the information she got from the DPP.

Ms. Iqra Khalid: The evidence and the information that is ever-evolving in a live case like this one?

Ms. Nathalie Drouin: 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 new evidence that can be submitted to the prosecutor.

The Chair: Last question, Ms. Khalid.

Ms. Iqra Khalid: Ms. Drouin, did the former attorney general ever share with you her view on remediation agreements in principle? If so, what was it?

• (1505)

Ms. Nathalie Drouin: The remediation agreement was developed, and it has been discussed in this country for many years. We did a consultation in the fall of 2017. We received many many submissions—I'm sorry, I don't have the specific numbers. We issued a document to summarize all the submissions we received.

The remediation agreement—I think we have said this many times—is another tool in the enforcement tool box, in particular regarding financial crimes or white-collar crimes. Again, it's not because you have a tool in the tool box that the tool is available for any task.

The Chair: Thank you very much.

We'll now move to the second round of questioning, which is six minutes to the Liberals, six to the Conservatives, six to the Liberals, five to the Conservatives and three to the NDP.

Mr. Rankin.

Mr. Murray Rankin: Just on a point of order, is this going to be the last round, or are we going to be able to ask these witnesses to continue?

The Chair: My intention at the end of the second round is to ask people whether they wish to continue.

We're at one hour and six minutes. I think we'll be able to fit in a third round before the meeting ends, which is at four o'clock.

We'll move to the Liberals now.

Mr. Fraser.

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

Thank you both for being here today.

Madame Drouin, I'd like to just go back to your opening comments with regard to what you said about September 12. I understand that you had a conversation with the Department of Finance on September 12 to the effect that SNC-Lavalin was still in discussions with the DPP and you said, "I therefore understood that the DPP's position on whether to invite SNC to negotiate a remediation agreement was not [yet] final."

Did you have any reason to believe by September 17 that those discussions had concluded?

Ms. Nathalie Drouin: I don't have that information.

Mr. Colin Fraser: Was it your understanding from that—

Ms. Nathalie Drouin: The only thing I can offer to this committee, as I said also in my opening remarks, is that I don't know how and when the DPP informed SNC-Lavalin about the final decision. The only thing I have is the public record, when SNC publicly announced—I think it was on October 10 or 12—that the remediation agreement had been turned down on them.

Mr. Colin Fraser: But by September 17, it's possible that the discussions were continuing with the DPP and the Department of Finance.

Ms. Nathalie Drouin: I don't want to consider any hypotheses. I don't have the information to confirm or deny what you're saying.

Mr. Colin Fraser: Okay, fair enough.

I understand that you basically are alluding to the fact that the former attorney general was not keen on intervening or looking at this further, as early as two days after receiving the section 13 notice, as I understand the sequence of events. I guess that would be as early as September 11. She had expressed that she was not interested, perhaps, or not keen on exploring that possibility while discussions were still ongoing between the Department of Finance and the DPP.

Is that accurate?

Ms. Nathalie Drouin: First, there are several elements in your question.

On September 11, I received an email from the acting chief of staff saying that the minister was not.... The email was in French. Let me read it, please.

[Translation]

The Attorney General had no intention of intervening in the case, but she was prepared to discuss it with me.

[English]

To your question, maybe I misunderstood, but I don't think that Finance has ever had any conversations with the DPP. Maybe I misunderstood your question, but the DPP and Finance have never discussed together.... Maybe SNC had discussions with Finance, but not....

Mr. Colin Fraser: According to the Department of Finance, the discussions between SNC-Lavalin and the DPP were continuing as of September 12.

Ms. Nathalie Drouin: This is the information I—

Mr. Colin Fraser: As for that email you received on September 11, was that the take of the Attorney General at the time? She was not keen on looking further at that matter. Is that accurate?

Ms. Nathalie Drouin: That's my understanding, yes.

[Translation]

Mr. Colin Fraser: I'd like to ask a question in French.

Were you aware of the former Attorney General's concerns about a deferred prosecution agreement from a public interest standpoint?

• (1510)

Ms. Nathalie Drouin: I don't know that it was a matter of concern.

Remediation agreements are interesting tools. I've enforced financial crimes laws for a long time, and I know it's an interesting tool. That doesn't mean it can be used in all situations. However, it can be used to make businesses responsible and accountable for their actions and to allow them to repair the harm they have caused to their victims while avoiding making innocent victims of other people, such as employees, retirees and shareholders—and here I'm mainly talking about small shareholders.

That being said, this tool is available. I think it's an asset for Canada to have an additional tool in its Criminal Code. Now, in every case, it's up to the director of public prosecutions to determine whether it's a good tool to use, having regard to several factors, such as the seriousness of the crime, the persons involved in the crime and the other investigations that an entity might face. There are several factors that the DPP must take into account.

In short, I would say it's a good tool, but it's the director of public prosecutions who must determine whether it can be used in a particular situation.

[English]

Mr. Colin Fraser: The former attorney general mentioned that by September 17 she had made up her mind and that, she said, "for those who know me, I was not going to change my mind." Do you have any view or comment with regard to a usual practice of an Attorney General not considering new information coming forward?

Ms. Nathalie Drouin: I think what I would like to say is that when the DPP Act was developed, it was clear for everyone that the authorities under the act should be used on an exceptional basis, not to put in danger the independence of any prosecutors. I think this is why we don't have any precedents at the federal level or in Quebec, where we do have a similar regime. That does not mean that it should never be used, but it should be used with a lot of care.

The Chair: Thanks.

Mr. Poilievre.

Hon. Pierre Poilievre (Carleton, CPC): Mr. Wernick, on September 17, 2018, in your presence, the Prime Minister told the Attorney General that if there were no deferred prosecution agreement, SNC would move from Montreal. Did the Prime Minister know at the time that a financing agreement with the Caisse de dépôt made it impossible for SNC to move its headquarters before the year 2024—yes or no?

Mr. Michael Wernick: That is not my recollection of what the Prime Minister said.

Hon. Pierre Poilievre: So he did not say that SNC would move from Montreal if it did not get a deferred prosecution agreement?

Mr. Michael Wernick: That's not my recollection of what he said.

Hon. Pierre Poilievre: All right. Let's turn to what you said. Hopefully your memory is a little better on that.

At the same meeting, you told the Attorney General that there would be a board meeting of SCN-Lavalin within three days and they would likely be moving to London. Who told you that SNC would likely announce a move of its headquarters to London at its September 20, 2018, board meeting?

Mr. Michael Wernick: That is not my recollection of what I said.

Hon. Pierre Poilievre: Are you certain that you did not say it?

Mr. Michael Wernick: That is not my recollection of what I said. If I could explain, if you're interested in the answer, the company was operating under disclosure obligations at all times as a publicly traded company. In mid-September, the company was approaching a requirement to divulge to markets what was going on, because it was 90 days after the DPP legislation had been passed. So an announcement by the company was imminent and an announcement by the company was imminent at regular intervals through the fall and the winter because of its obligations to markets.

Hon. Pierre Poilievre: When did that announcement come?

Mr. Michael Wernick: The record of what the company said and when is on the public record. I'm not aware of that.

Hon. Pierre Poilievre: Also, at a December 2018 meeting, Ms. Wilson-Raybould said, "He spoke about the company's board and the possibility of them selling out to someone else, moving their headquarters and job losses." Did you say that?

• (1515)

Mr. Michael Wernick: The options open to the company were a matter of public record in the business press.

Hon. Pierre Poilievre: Yes, but—

Mr. Michael Wernick: If I could finish sir—

Hon. Pierre Poilievre: It's just that here's the problem. The public record was clear that they were not moving their headquarters. That was on the public record. Anybody who could use Google could find shareholder disclosure showing that the company had to stay in Montreal for at least another six years. When you said on December 19 that the company was moving its headquarters if it didn't get a DPA, that was two days after The Toronto Star reported that the CEO said the company is "committed to remaining headquartered in Montreal".

How is it possible that you didn't know that two days earlier the company had publicly stated its plans to stay in Montreal when you told the Attorney General the opposite?

Mr. Michael Wernick: You will know, sir, that it is possible for a company to retain a shell headquarters in a city and move the guts of its operations somewhere else.

Hon. Pierre Poilievre: That's not what you said. You said that the headquarters would move.

Mr. Michael Wernick: That is not my recollection of what I said. I never said at any point in any conversation that this is what the company would do, because I would have no knowledge of that. I would know that there was potential risk of a number of outcomes from the company. I had communications with the company on September 18 in the afternoon, and I've just provided the committee with the notes that were taken of that meeting. I took a call from the chair of the board around 11 o'clock in the morning on October 18. Those were my sole communications with the company.

Hon. Pierre Poilievre: But with respect, your suggestion that the headquarters would become a shell is also impossible, because the loan agreement with the Caisse requires that the CEO, all the senior executive, all the decision-makers, and a large number of the board members would have to stay in Montreal. It was also public knowledge the company had just signed a 20-year lease in Montreal and had announced massive and costly renovations to continue to house its HQ in Montreal. The CEO had said publicly that he was staying in Montreal.

Knowing all of that public information, why did you say precisely the opposite to the Attorney General?

Mr. Michael Wernick: That is not my recollection of what I said, and—

Hon. Pierre Poilievre: Did you say anything about moving the HQ?

Mr. Michael Wernick: The Caisse, if I can—that is—

Hon. Pierre Poilievre: Did you say anything to the Attorney General about moving the HQ—yes or no?

Mr. Michael Wernick: If I could—

Mr. Chair, I would ask you for the ability to answer questions.

The Chair: Please let the witness answer the question in this case.

Hon. Pierre Poilievre: I would welcome that.

The Chair: Go ahead, Mr. Wernick.

Mr. Michael Wernick: Fact number one about the entire file is that the case is going to trial and there is a prosecution under way. One possible outcome of that is a conviction, which would bar the company from public infrastructure contracts across the country and possibly in international markets, so the company was and is at risk.

Hon. Pierre Poilievre: Yes, but once again my question is very simple. Did you or the Prime Minister ever tell the Attorney General that the headquarters would move if she did not sign a deferred prosecution agreement?

Mr. Michael Wernick: No.

Hon. Pierre Poilievre: You did not.

Mr. Michael Wernick: No, I did not.

Hon. Pierre Poilievre: Okay, thank you.

Now that I have 20 seconds—

The Chair: Yes, you do.

Hon. Pierre Poilievre: Were you aware that the government was working on a provision to allow SNC-Lavalin or companies like it that are convicted to continue to bid on federal contracts—yes or no?

Mr. Michael Wernick: These are not yes-or-no questions, sir.

It is well known that—

The Chair: I'll give you the time to finish the answer, even if the time has expired.

Mr. Michael Wernick: The law was brought into effect over the spring and summer of last year. It finally was brought into effect, I think, in mid-September. Like many pieces of legislation, it would require implementation regulations and protocols, and it is a matter of public record that there were extensive consultations, which are still under way, by the PSPC department about implementation of the law. Those were done in the public domain; the input is there; and the Minister of Public Services and Procurement has not pronounced and issued those regulations.

The purpose, as I understand it, was to make sure it wasn't a binary choice and that there would be options available to a government in terms of the consequences of a conviction, a ladder of sanctions.

The Chair: Thank you very much.

Mr. Ehsassi.

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

Thank you, Ms. Drouin and Mr. Wernick, for reappearing before this committee. It's been very helpful.

My first question is for Madame Drouin. On pages 10 and 11 of your opening remarks, it says that you were told by a policy adviser in the Attorney General's office that "the Attorney General was not keen on the idea of exercising her authorities under the DPP Act."

To me, when I look at the date, the day this would have happened and the day you were informed of this was two days after the notice had been issued. Was any reason provided to you as to why the Attorney General did not wish to exercise her authority under the DPP Act?

• (1520)

Ms. Nathalie Drouin: As I said to your colleague a little bit earlier, those authorities under the DPP have never been used, so there's a risk that for any AG to use the authorities under the act in any circumstances could be perceived as political interference.

Mr. Ali Ehsassi: Was any reason provided to you as to why they weren't?

Ms. Nathalie Drouin: I think the reason was that the former AG didn't see any room or *marge de manoeuvre* to use those authorities without being perceived as politically interfering in a case.

Mr. Ali Ehsassi: In your opinion was there any room to interfere?

Ms. Nathalie Drouin: I'm not here to provide any opinion to the committee. As I said before, the powers or authorities are under the DPP Act. It was clear when they were adopted that they should be used on an exceptional basis, and it's for the Attorney General to decide and to make a decision on that.

Mr. Ali Ehsassi: We've heard from the Clerk. In his statement he said, and I'd like to quote this passage: "In dealing with the public interest, the Attorney General's decision is never final in the sense that the public interest can evolve or change."

Putting on your legal hat, would you agree with that assessment?

Ms. Nathalie Drouin: I agree that it's the responsibility of a prosecutor—it's a continuum obligation—to assess and reassess the public interest regarding a specific prosecution in light of new facts and evidence put in front of the prosecutor.

Mr. Ali Ehsassi: Okay, so as the factual matrix evolves, you would think that there's an opportunity to revisit. That would be the obligation, essentially. That would be the obligation to actually—

Ms. Nathalie Drouin: It's a continuum assessment, if I may say, in light of new facts or evidence put in front of the prosecutor.

Mr. Ali Ehsassi: Thank you.

Now I have another question for you. Would you agree that the discretion of the DPP is decidedly distinct and different from the discretion of the Attorney General?

Ms. Nathalie Drouin: The first discretion, and that should be in 99% of the cases regarding decisions to lay charges in specific cases, belongs to the DPP. The discretion of the AG is whether to decide, again, on an exceptional basis, to overturn, change or modify the decision of the DPP, respecting the obligations and the parameters under the DPP Act.

Mr. Ali Ehsassi: Thank you.

The last time you appeared before this committee, you actually brought up the BAE decision, which has to do with discretion, and how the House of Lords, which was grappling with some of the same issues we've been grappling with, dealt with it. Did you ever have an opportunity to discuss the BAE decision with either the Attorney General or her staff?

Ms. Nathalie Drouin: I did not discuss the Corner House case with the former AG.

Mr. Ali Ehsassi: Thank you.

If I could turn to the Clerk, how unusual is it for the Clerk or the PM's deputy minister to speak to a minister on issues where there is friction between different and distinct ministries?

Mr. Michael Wernick: It doesn't come up very often in a cabinet of 30 or 35 people. As the secretary to cabinet and the Prime Minister's deputy, I try to keep the flow of business through cabinet going, and I'm very watchful for relationships among ministers, and ministers and public servants. The Prime Minister doesn't always have a line of sight to that.

There are occasions where I will speak to ministers or speak to officials to try to—I guess the word might be conciliate, or to find a way through because they tend to chew up time and energy, and my role is to keep the agenda moving forward. I don't do it very often. I have done it from time to time over the last three years, and this was a case where I could see that there was a building tension and frustration about this issue.

• (1525)

The Chair: This will be your last question.

Mr. Ali Ehsassi: Thank you.

The last time you appeared here, you testified that to the best of your knowledge there was no improper pressure applied to the former attorney general. In light of what we've heard from witnesses since your last appearance, would that still be your assessment?

Mr. Michael Wernick: Yes.

Mr. Ali Ehsassi: Thank you.

The Chair: Thank you.

Ms. Raitt, you have five minutes.

Hon. Lisa Raitt (Milton, CPC): Thank you very much.

Thank you, Mr. Clerk.

Mr. Clerk, why did Mr. Butts say this morning that he was able to get access to his own emails within days of his needing to come to this committee, but Mark Norman has had to go to court to get access to his own emails?

Mr. Michael Wernick: I'm not sure I even understand the premise of the question.

Hon. Lisa Raitt: Okay. Then let's try this one. Mr. Wernick, you have given incredibly conflicted testimony, and I am going to take you through some of it.

The crux of the issue, according to Mr. Butts this morning was what and when the former attorney general told the Prime Minister himself, or you, that she had made up her mind and she was not going to change it.

Now, I asked you that question when you were here last. You didn't give an answer specifically but we ended up settling on September 17. Would you now say your testimony is that you found out from the former attorney general that she had made up her mind on this issue by September 17?

Mr. Michael Wernick: I accept that on September 17, in her mind, she had made a final decision.

In law, the decision was never final because she could always take into consideration public interest considerations and was able to take into account new information.

Hon. Lisa Raitt: Okay.

Mr. Wernick, you have provided for us your contact with SNC-Lavalin. I find it very helpful and I want to thank you for it, but I am troubled by one thing. You went to great lengths in telling us in your last testimony about how you had only a few meetings with them and indeed that you had several email requests for a meeting on September 18, a meeting you took. You registered it.

Then you told us about running into SNC executives at the NAC gala and that you left right away.

Indeed, the clerk contact document also indicates there were further requests for more meetings until October 15, and you took a call from the former clerk of the Privy Council, Kevin Lynch.

Mr. Michael Wernick: I believe that was the 18th.

Hon. Lisa Raitt: I have October 15 here in this. Whatever the date was, the date is this.

Mr. Michael Wernick: Whatever the date was.

Hon. Lisa Raitt: Here is my concern. You rejected everybody else in terms of speaking about SNC-Lavalin, but you took the meeting from the former clerk of the Privy Council. My concern is this. Section 33 of the Conflict of Interest Act sets out exactly what a previous office-holder can and cannot do. What it says is:

No former public office holder shall act in such a manner as to take improper advantage of his or her previous public office.

You rejected all SNC.... You told us with great glee that you walked out of an important dinner that you wanted to go to because you didn't want to be seen with them, and yet you took a call from the former clerk. Do you have concerns that the former clerk breached his duties and obligations to Canada?

Mr. Michael Wernick: No.

Hon. Lisa Raitt: You don't think that you took the call from Kevin Lynch because he was the former clerk of the Privy Council.

Mr. Michael Wernick: No.

Hon. Lisa Raitt: Why did you take the call from Mr. Lynch?

Mr. Michael Wernick: Mr. Lynch was the chair of the board. I knew this was an active issue in October. I took the meeting with the company. They are not a pariah. It was not improper to have communications with the company.

The conversation was a telephone conversation and not a meeting, and it lasted less than 10 minutes.

Mr. Lynch, as the chair of the board, expressed his frustration that he did not understand why a DPA was not being considered and he knew that the board, in its trustee relationships for the shareholders in the company, was going to have to take some tough decisions in October and November.

My recollection of the conversation is that he asked, "Isn't there anything that can be done?" I told him, in the firmest, curtest possible terms, no, he would have to go through the Attorney General and the DPP through his counsel.

Hon. Lisa Raitt: Wow, so not more than two weeks ago when you gave your first testimony about having no contact with SNC, you said nothing about this phone call, and yet today you have—

Mr. Michael Wernick: I was cut off, if you recall, Ms. Raitt. I was proceeding to read the chronology and I was cut off with it incomplete, and I undertook to provide the chronology to the committee, which I have done.

• (1530)

Hon. Lisa Raitt: Well, thank you for cutting me off, Clerk, but as I was going to say, I think it's incredibly pertinent. You must have had knowledge of it because you gave us almost a verbatim right now about what the content of that telephone call was.

Can you not see how disturbing this could be for Canadians to see that former clerks who are now chairs of boards of SNC-Lavalin have easy access and immediate access into the central office of this government, into your office, when you turned down everybody else and walked out of a gala because you didn't want to see SNC anymore? Do you not see that as a problem for this country?

Mr. Michael Wernick: No.

The Chair: We have exhausted the five minutes on that one.

We will go to Mr. Rankin.

Mr. Murray Rankin: I'll let Mr. Angus go, and I'll take the next round, Chair.

Thank you.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you.

Mr. Wernick, I'm looking at your statement. I find it pretty thin gruel given the fact that five former attorneys general have asked for an RCMP investigation. Former Liberal attorney general Michael Bryant said he's never seen such "brazen" and "reckless" interference in an independent prosecution. We've had two cabinet ministers resign, and Ms. Philpott saying she had constitutional and ethical obligations in the face of political interference.

You are one of the key political actors in this, Mr. Wernick, and yet I find what's missing from here is any attempt to explain what happened in that key meeting of December 19. We asked Hon. Jody Wilson-Raybould on record if you threatened her. She said she wasn't threatened once, she was threatened three times by you. Then she said that you wanted to find a way to talk directly to the prosecutor, which would be the direct interference in the prosecution case. She warned you that you were on dangerous ground.

How come you haven't even tried to rebut her testimony?

Mr. Michael Wernick: I haven't been asked the question, Mr. Angus. I do not have an independent recollection of what I said. I did not record the conversation. I did not wear a wire. I did not take contemporaneous notes. That is not my recollection of the way the conversation flowed.

Mr. Charlie Angus: I put it to you, Mr. Wernick. You're asked about threatening the attorney general; you're asked about treading on dangerous ground, and you tell our committee, "I wasn't wearing a wire" and, "Sorry, I don't remember."

Mr. Wernick, that is not a credible answer. You are the Clerk of the Privy Council. If you come to a meeting and you can't remember

threatening the Attorney General and you tell us, "Sorry, I wasn't wearing a wire", I suggest, Mr. Wernick, that the brazen and reckless interference referred to by five former attorneys general refers directly to you. If you cannot answer that question, you have no business being in that job.

Mr. Michael Wernick: I have said at this committee before, and I will say again, I did not threaten the Attorney General in any way.

Mr. Charlie Angus: But you don't remember. You told us you don't remember; you weren't wearing a wire—

Mr. Michael Wernick: I'm telling you now, Mr. Angus, if you want the answer—

The Chair: Please let him finish the answer to the question.

Mr. Michael Wernick: I have never raised partisan considerations. I reminded her repeatedly she was the final decision-maker. I did not attempt to influence her decision. I was giving her relevant context about public interest considerations. I did not suggest any consequences for her. I made no threats to the former attorney general, period.

Mr. Charlie Angus: So now you remember.

I will end on this. She said she expected the Saturday night massacre, which is a reference to Richard Milhous Nixon and the firing of the special prosecutor. Lo and behold, she was replaced two weeks later.

I think Ms. Wilson-Raybould's testimony is very credible. I'm very sad that you get a second kick at the can and she's not been given a chance to rebut what you're saying today.

The Chair: Thank you, Mr. Angus—

Mr. Michael Wernick: Mr. Chair, if I may.

The Chair: Yes, Mr. Wernick, you may respond to that.

Mr. Michael Wernick: I note that many members at this committee have said they believe every word of the former attorney general's testimony. Part of what she testified is she does not believe that any behaviour crossed the threshold of criminal behaviour.

That was her testimony.

An hon. member: That's the bar? It's not criminal?

An hon. member: You need to commit a crime.

Mr. Michael Wernick: That was her testimony.

The Chair: No cross-talk back and forth....

Thank you very much.

That concludes—

An hon. member: I am not a crook.

The Chair: Guys, this is not now a time for debate, this is now a question of whether or not we move to a third round. I think there is sufficient time for one more round. Does everybody agree?

Some hon. members: Agreed.

The Chair: Do we agree again that at the end of this round we give three minutes to each of the three other parties here?

Perfect.

In the third round it will be the first six minutes to the Conservatives, six minutes to the Liberals, six minutes to the NDP, six minutes to the Liberals, and then three minutes to each of the other three interveners.

Ms. Raitt.

• (1535)

Hon. Lisa Raitt: Thank you, Chair.

I'm going to refer Mr. Wernick to the documents he provided to us this afternoon that we had requested last time.

I'm wondering if you can give me a bit of help with the handwritten notes. Do you have a copy of them there?

Mr. Michael Wernick: I believe so.

Hon. Lisa Raitt: In the handwritten notes of your COO, deputy secretary to the cabinet, midway down it says, "were looking forward to DPA"—this is what SNC-Lavalin says—"initial indication with" minister is to discussion.

Can you give me a bit more colour as to what's being said there?

Mr. Michael Wernick: I believe these are a transcription of the words from the company.

Hon. Lisa Raitt: Yes, do you recall what the comment was there?

Mr. Michael Wernick: Which part are you referring to?

Hon. Lisa Raitt: "Initial indication with" respect to, and I can't make out what the rest is. I'm wondering if you can help us.

Mr. Michael Wernick: What the notes allow us to confirm is that on September 18, in the afternoon, the company had not been informed by the DPP that a DPA was going to be declined.

Hon. Lisa Raitt: Okay, interestingly enough, that is not what the legal officer to the DPP said in her letter to SNC-Lavalin. I understand—

Mr. Michael Wernick: It's what the company said.

Hon. Lisa Raitt: Sure.

You also provided for us the clerk contact with SNC. Is this everything on the contacts now? Are you content that it is the entirety of your interactions with SNC-Lavalin?

Mr. Michael Wernick: It's everything that I'm aware of.

When the Ethics Commissioner began a process, which was some time ago, there was an immediate request for all documents and records remotely related to SNC-Lavalin to be secured, and they were secured and they were sequestered. That is probably, now that I think about it, why Mr. Butts' email traffic was secured and sequestered.

Hon. Lisa Raitt: I'm glad you understand the question now.

In your previous testimony, I asked you if you were informed of the September 4 decision by the director of public prosecutions. You said no, and then by midway of your testimony you indicated, "I

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

As I said before, we're on safe ground to say that you and the Prime Minister both knew on September 17 that she had made her final decision and had no intention of intervening.

Mr. Michael Wernick: And as a matter of law, the decision is never final because she could always take into consideration public interest considerations and was able to take into account new information.

Hon. Lisa Raitt: Okay, I appreciate that.

Are you a lawyer, Mr. Wernick?

Mr. Michael Wernick: No, I'm not.

Hon. Lisa Raitt: Okay, who wrote that for you?

Mr. Michael Wernick: I have retained personal counsel because of Mr. Scheer's letter to the RCMP.

Hon. Lisa Raitt: Right, so you're telling me that your lawyer wrote that for you.

Mr. Michael Wernick: My lawyer advised me on the boundaries of my testimony this afternoon.

Hon. Lisa Raitt: Yes, but what you just read there is interesting to me about making the assertion that everything was okay. I'm wondering who wrote that for you, because it sounds an awful lot like some other comments that were mentioned by Mr. Butts this morning and some people who appeared on panels on television.

Mr. Michael Wernick: What are you insinuating?

Hon. Lisa Raitt: I'm not insinuating anything. I'm just saying it flat out.

Mr. Michael Wernick: You are insinuating. What are you insinuating?

Hon. Lisa Raitt: I'm asking you who wrote that for you, Mr. Wernick.

Mr. Michael Wernick: I wrote it on my computer after conversations with my counsel.

Hon. Lisa Raitt: Okay, so that wasn't so hard to say.

I'm wondering if I could read to you, Mr. Wernick, what Jody Wilson-Raybould said in her testimony. She said:

The Clerk of the Privy Council would have known on the September 17 meeting because I specifically mentioned it to both him and the Prime Minister, and went into detail about the section 13 notice that I received. Again, I was very clear that I had already made my decision around the deferred prosecution agreement and not intervening.

There is no reason not to take that as a fact, is there?

Mr. Michael Wernick: As I testified last time, 90% of the conversation at that meeting, and the reason for my presence, was to discuss the indigenous agenda.

Hon. Lisa Raitt: I didn't ask about that. I asked you whether or not that's a fact in your mind now. Is that an agreed fact between you and me that on September 17 she went into detail about the section 13 notice, or do you not remember it now?

Mr. Michael Wernick: I do not believe that it was in detail or lengthy. She made her position clear, as she testified, that in her mind she had made a final decision.

Hon. Lisa Raitt: I'm going to ask the deputy minister of justice a question right now.

We heard in great detail from Jody Wilson-Raybould's testimony some things that I found quite disturbing, as a lawyer, and I'm just going to tell you what they are.

I understand fully that you were directed on September 19 not to have any discussions with the director of public prosecutions, and you didn't, and I accept that. But on September 16 two members of the PMO said that individual Crown prosecutors wanted a negotiated agreement but the director did not. They also said that they heard that the deputy minister—you—thought she could get the PPSC to say, "We think that we should get outside advice." On the 19th, the same two from the PMO raised the idea of an informal reach-out to the director either through the Attorney General staff or through you.

Do you believe that direct contact between staff of the Prime Minister's Office with your Crown prosecutors or the director of public prosecutions or the Public Prosecution Service is appropriate?

• (1540)

Ms. Nathalie Drouin: I don't think so, but I'm not sure this is what we should agree on, that they had conversations with the public prosecutor—

Hon. Lisa Raitt: Well, we'll treat it as a hypothetical. Do you think it's appropriate for that kind of contact to happen between the Prime Minister's Office staff and your Crown prosecutor or the PPS of Canada?

The Chair: That was the last question. We will give the witness time to answer.

Ms. Nathalie Drouin: Crown prosecutors don't have conversations about specific cases with the PMO. They can maybe answer questions, but as I said before, a section 13 letter to explain is really dedicated to the AG.

The Chair: Now we will go to Mr. Boissonnault.

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

[*Translation*]

Ms. Drouin, thank you for being here today.

As you know, I'm not a lawyer. So I'd like to clarify some aspects of your testimony so that it's clearer to me and perhaps to others as well.

[*English*]

I would like to clarify some of your testimony. At the end of October, the Privy Council Office asked your department for an opinion on the potential impacts on the SNC-Lavalin issue if the prosecution were to lead to a criminal conviction, yes or no?

Ms. Nathalie Drouin: Yes.

Mr. Randy Boissonnault: Did you develop that report, yes or no?

Ms. Nathalie Drouin: My department developed it. Yes.

Mr. Randy Boissonnault: Would that report be considered legal advice?

Ms. Nathalie Drouin: Yes.

Mr. Randy Boissonnault: Did you provide that report to the Privy Council Office?

Ms. Nathalie Drouin: No, I didn't.

Mr. Randy Boissonnault: Why did you not provide that report to the Privy Council Office?

Ms. Nathalie Drouin: Because I knew my minister was not comfortable with us continuing those conversations. I felt I should test with her office before I shared the piece with the Privy Council Office, and I was instructed not to send it.

Mr. Randy Boissonnault: So the minister of justice and former attorney general of Canada instructed you to not send your legal advice to the Privy Council Office and, by extension of that, cabinet?

Ms. Nathalie Drouin: The request I got was from the PCO. I'm accountable to the minister. I do also report to the Clerk on the management thing, but I decided that because my minister was not comfortable with us sharing with the PCO, I didn't.

Mr. Randy Boissonnault: Let me simplify the question. You did not provide the report to the PCO at the request of your minister?

Ms. Nathalie Drouin: That's right.

Mr. Randy Boissonnault: Mr. Wernick, I appreciate all you have done for this country and your contribution to the institutions of governance in Canada.

If a report such as this were shared with the Privy Council Office, is it reasonable to assume that the information would at some point be shared with cabinet in deliberation?

Mr. Michael Wernick: The matter of prosecutions would never come before cabinet.

Mr. Randy Boissonnault: Would it be something that an Attorney General might discuss with the Prime Minister or at least need to be informed about before she met with the Prime Minister?

Mr. Michael Wernick: Certainly my understanding of the law—and we've talked about the Shawcross principle—is that the Attorney General as the final decision-maker has the ability and sometimes the obligation to seek input from colleagues.

[*Translation*]

Mr. Randy Boissonnault: Ms. Drouin, once again I'm going to ask you for some clarification.

[*English*]

Is it the case that the former attorney general went into a meeting with the Prime Minister on September 17 without the benefit of your full advice on whether to pursue independent legal advice?

Ms. Nathalie Drouin: On September 17 she was in possession of the legal opinion I described in my opening remarks.

Mr. Randy Boissonnault: Okay. This is a key point, because she instructed you to not raise the matter of SNC anymore.

How do you reconcile this with her legal and professional responsibility to consider public policy interests such as the impact on jobs and other considerations we have heard here?

Ms. Nathalie Drouin: I think it's for her to answer that.

I would like to offer that she said last week that she did her due diligence when she received a section 13 letter.

In the legal opinion I described we say that the first thing for an AG is really to make sure she has all the information she needs to take her decision.

• (1545)

Mr. Randy Boissonnault: Okay. According to your testimony then, the former minister and AG instructed the Department of Justice not to discuss, consult or consider anything related to SNC-Lavalin after September 19. In your opinion, did that impede the government's ability to seek legal advice on a new policy tool, and did that obstruct the government's ability to advocate lawfully for jobs? Did that affect the government's ability to get an external opinion on a new policy tool?

[Translation]

Ms. Nathalie Drouin: The government can always seek opinions when developing a new program or...

Mr. Randy Boissonnault: It can do so only with the approval of the attorney general.

Ms. Nathalie Drouin: As to whether the government can seek a legal opinion on a criminal case in particular, the opinion I referred to states that, even though it was suggested that an outside opinion be sought, for example, it was recommended that action be taken in a transparent manner and that the action be published in the *Canada Gazette*.

Mr. Randy Boissonnault: The former minister and attorney general said she wanted no further work on that file. Did that decision prevent the government from seeking other opinions on the SNC-Lavalin matter?

Ms. Nathalie Drouin: As the attorney general is the decision-maker in this case, when she made her decision, she in fact meant that the door was closed to any further action. She alone could decide whether to exercise authorities under the Director of Public Prosecutions Act.

[English]

Mr. Randy Boissonnault: In your experience, in your role both here and provincially, is it a usual course of business, or normal, for an Attorney General to not forward legal advice to the equivalent of the Privy Council, whether it's provincially or here at the federal government?

[Translation]

Ms. Nathalie Drouin: As I said, I report to the Minister of Justice and to the other ministers, including the Prime Minister. If I receive any such instructions, I'm going to act accordingly.

Mr. Randy Boissonnault: Thank you.

[English]

Mr. Wernick, quickly, on December 19.... There was lots being said there. You mentioned, and it's been mentioned in testimony, that the Prime Minister and the former minister were at loggerheads over issues.

Were they at loggerheads over any issue other than SNC-Lavalin? Was there something else at play here?

Mr. Michael Wernick: I'm not sure that's a question I should answer, because it's not covered by the SNC question.

Mr. Randy Boissonnault: Is there an issue they were at loggerheads over other than SNC-Lavalin?

Mr. Michael Wernick: Again, I do not have contemporaneous notes of the conversation.

I would not say they were at loggerheads. I was worried, as a secretary of cabinet, that frustration was building, that colleagues and the Prime Minister had not been provided an explanation for why the DPA route, or option, was not being chosen or exercised, and why seeking outside counsel to do due diligence on the first use of a DPA was not being chosen. There was building frustration at the time, and I was concerned about that.

The smooth functioning of cabinet requires that ministers have a good working relationship with each other.

Mr. Randy Boissonnault: Thank you very much.

The Chair: Thank you very much.

Mr. Rankin.

Mr. Murray Rankin: Thank you.

Before my time starts, I want to put it on the record that I have a motion to make at the end of the proceedings, again, if I may.

The Chair: Okay.

Mr. Murray Rankin: I have a couple of questions for Mr. Wernick and a couple of questions for Ms. Drouin.

For you, Mr. Wernick, in the last round I asked you a number of questions about the call you made on December 19 to the former attorney general. You said that you didn't recall a number of the things I asked you.

Now we have, as a fact, that the Honourable Jody Wilson-Raybould and Dr. Philpott quit their jobs. They resigned from cabinet. And you're telling Canadians that you don't remember saying any of the key things that the former attorney general testified to.

My question is: How can you expect Canadians to believe that these highly competent, highly credible women got this so wrong?

Mr. Michael Wernick: I think there are a few plot holes in the question.

It is very clear from the sequence of events that whatever triggered minister Wilson-Raybould's resignation happened after she was moved and after the appearance of the Globe and Mail story.

Mr. Murray Rankin: Okay.

I have another one for you. This goes to your experience in setting up fair process. As the Clerk, and over your 37 years as a public servant, you've seen the need for fairness in public institutions.

My question is this. Do you think it's fair that the Liberals on this committee voted to invite you back to address the testimony of Jody Wilson-Raybould, but they just voted against extending her the same courtesy?

Mr. Michael Wernick: I think it's entirely for the committee to decide.

• (1550)

Mr. Murray Rankin: So you have no opinion—

Mr. Michael Wernick: I have no opinion.

Mr. Murray Rankin: —based on your vast experience with agencies, boards and commissions whether that's a fair process.

Mr. Michael Wernick: I work for the executive, and I will not opine on how Parliament should conduct its business.

Mr. Murray Rankin: I'd like to turn, then, if I could, to Ms. Drouin.

In your account, you referred to September 19. You write the following:

I clearly recall that the former AG said to me that this would be the last time we discussed the SNC-Lavalin matter and she...instructed me to not have any discussion with the DPP.

So she had decided by that day. It seems clear from your testimony that you agreed to that. Unless there was any new evidence, why would one continue to raise this matter with her over and over again?

We heard it said that the Attorney General's decision is never final. But if there's no new evidence, no new facts, which I think you replied to Mr. Ehsassi on, why would that be appropriate, to keep going at her, when she said—and you record in your testimony—that she had made up her mind on that date?

Ms. Nathalie Drouin: Maybe there's one thing. I cannot say whether new evidence, new facts, were in the government's hands at that point.

Mr. Michael Wernick: If it's helpful, Mr. Rankin, I firmly believe there were new facts that emerged between September and December.

Mr. Murray Rankin: Well that's new evidence that's not been brought to this table before.

I understood you replied, as a lawyer, to a question from Mr. Ehsassi, that it had to do with whether there were new facts or evidence. That's what you said.

Ms. Nathalie Drouin: I said that—

Mr. Murray Rankin: Are you telling us that there are new facts and evidence? I understand that Mr. Wernick believes that there are.

What would that evidence be?

Ms. Nathalie Drouin: I said that I cannot talk about that.

Mr. Murray Rankin: You can't talk about it.

Ms. Nathalie Drouin: I mean, it's not that I can't—

Mr. Murray Rankin: Can anybody talk about it?

Ms. Nathalie Drouin: —it's that I don't know. I don't know if new facts or new evidence were available at that time.

Mr. Murray Rankin: That's good to know.

The Chair: Mr. Rankin, Mr. Wernick is ready to answer that question if you want.

Mr. Murray Rankin: I asked the question of Ms. Drouin.

Am I going to be docked on my time, Chair, as a consequence of your intervening?

The Chair: If you don't him want to, please go ahead.

Mr. Murray Rankin: Well, I'm happy to have him reply if it's not costing me the very scarce seconds I have to do this.

The Chair: I'm going to stop it for a second. You should proceed with your time how you want.

He offered to answer. I was just letting you know.

Mr. Murray Rankin: I'm offering Mr. Wernick, who wishes to intervene, the opportunity to do so.

Mr. Michael Wernick: The new facts that emerged, which I believe were public interest considerations, were the tanking of the share price of the company, making it vulnerable to takeovers, and communications from the new Premier of Quebec and the Government of Quebec, which changed the risk calculus around a conviction or not conviction of the company.

The Chair: I'm restarting your time now, Mr. Rankin.

Mr. Murray Rankin: All right. Thank you very much—and I apologize. We're just under such constraints...the way that the process works.

We had the testimony of a former judge here, Ms. Drouin. Her name is Mary Ellen Turpel-Lafond. She called for an RCMP investigation into this affair if there was any evidence that Ms. Wilson-Raybould was removed as Attorney General because she refused, under pressure, to change her position in favour of a deferred prosecution agreement.

Do you agree with the former judge?

Ms. Nathalie Drouin: The thing I would have to say is what I've seen in that case...and I do have an ethical obligation. If I had seen illegal activities, it was my duty and responsibility to report them, and I have not reported anything.

Mr. Murray Rankin: Is that it for the NDP?

The Chair: No, you have another minute.

Mr. Murray Rankin: I'm going to pass it to Mr. Angus.

Mr. Charlie Angus: Finally, Mr. Butts claimed that there was new evidence, which would be reason to intervene in a public prosecution but, Mr. Wernick, you said that this new evidence consisted of SNC's share price.

When the Prime Minister's Office wrote that legislation, it specifically exempted the economic argument. Ms. Wilson-Raybould was very clear that this could not be, and yet you believe that if it's something that you think can happen, "Well, we'll just make it happen."

If “economic argument” was written by the Prime Minister's Office as not allowable, how do you get to claim that's new? That's not new evidence. That's new opinion.

Mr. Michael Wernick: The phrase “national economic interest” in the legislation is a cut and paste from the OECD code on anti-bribery.

In my understanding—and you can seek advice on this from experts—it is to distinguish national economic interest from the interest of other countries. If you're part of this group in the OECD, you cannot favour or let a company off because it helps France versus Germany, or Germany versus Italy, or Canada versus the United States.

Mr. Charlie Angus: But it could be perfectly fine if used in an election. You would use it to—

Mr. Michael Wernick: If I could finish the question—

The Chair: Let Mr. Wernick finish, and then the time has expired.

Mr. Wernick.

Mr. Michael Wernick: My view is that the economic impacts of jobs—and it's explicitly in the Criminal Code. The impact on suppliers, pensioners, customers, communities is a relevant public interest consideration.

• (1555)

The Chair: Thank you very much.

Ms. Khalid.

Ms. Iqra Khalid: Thank you, Chair.

To start off, Mr. Wernick, with regard to things that you can talk about today, is it true that you would not have been able to talk about those same things the last time that you were before the committee, and now you're able to talk about them because of the order in council?

Mr. Michael Wernick: Yes. There's one thing specifically, which is the legal opinion I sought and obtained in October, which I'm now at liberty to share with the committee.

Ms. Iqra Khalid: Thank you.

I'd like to turn to the September 19 one-on-one meeting.

The former attorney general said that you raised the fact that a board meeting was to take place on September 20 with stockholders, and she deemed this to be inappropriate. She also claimed that you raised the issue of SNC's lawyer, Frank Iacobucci, not being “a shrinking violet”, which she also felt was inappropriate.

Did you raise those issues, and do you consider raising them to be appropriate?

Mr. Michael Wernick: I don't remember the terminology.

I know Mr. Justice Iacobucci because we worked on a committee together, which was the selection committee that chose the head of the Truth and Reconciliation Commission. I was aware of him because I attended the University of Toronto when he was dean of law and so on.

If I used the phrase, I think it was intended to convey that I knew Mr. Iacobucci by reputation and somewhat personally, and he has an extremely tough legal mind.

Ms. Iqra Khalid: Why were you concerned about the September 20 meeting of the SNC board?

Mr. Michael Wernick: I think I explained this earlier. It was not so much the board meeting. The board would make decisions about divulgation to shareholders and the public. They are a publicly traded company that regularly would have obligations to markets, and what they told the market would have repercussions. So the board, obviously for a company that was headed for a criminal trial, was continually, as the stewards of the company with responsibilities to shareholders, reassessing its options.

Ms. Iqra Khalid: Why did you think that this was relevant information to share?

Mr. Michael Wernick: I think that I was of the view, and I remain of the view, that the potential impact on 9,000 people—the suppliers, the customers and the communities—is a relevant public interest consideration.

Ms. Iqra Khalid: The former attorney general wouldn't further consider anything that you raised at the September 19 meeting, indicating that should SNC draft a letter expressing their concerns, she would forward it to the DPP.

At that point, would you say that the Attorney General had made up her mind, and from your conversations, what, if anything, would have changed her mind?

Mr. Michael Wernick: September 19 was the first opportunity for me to follow up on September 17. That was the week that Parliament came back, as I'm sure all of you remember. The first chance to go and see her was after national caucus ended on Wednesday. We met in her office for about 10 to 15 minutes, in my recollection. We had a conversation, which was along the lines of what the former minister testified when she was here. She was very firm that in her mind it was final, and the only route open was for the company to make public interest arguments through its lawyers, and that's where I left the matter.

Ms. Iqra Khalid: Thank you.

Going to the September 17 meeting with the Prime Minister, you were present. Ms. Wilson-Raybould indicated in her testimony that the reason for the meeting was not SNC, and you confirmed that in your testimony as well.

Can you talk about what 90% of the meeting was about, as per your testimony?

Mr. Michael Wernick: In February—I think it may have even been Valentine's Day 2018—the Prime Minister spoke in the House and committed his government to a new approach to recognition of indigenous rights, a fundamental change in the relationship. It's something that he wanted to do and I'm sure would like to still pursue.

Through the course of the summer, we were not making progress on ironing out the public policy on legal considerations around that. I was trying to keep the agenda moving through the fall, which included NAFTA, the legalization and regulation of cannabis, and many, many, many other issues. I stepped in to try to conciliate and move that forward. My colleagues at PMO were immersed 7-24 in NAFTA negotiations.

• (1600)

Ms. Iqra Khalid: Thank you.

I have one question for both of the witnesses.

There have been comments made about the possible separation of roles of the Attorney General and the Minister of Justice.

Can you please both comment on that feasibility and whether this is a step that we should take?

Mr. Michael Wernick: I think that when you're considering a change of that magnitude, you are not talking about changing an app; you are talking about going into the deep code and the operating system of this country. It should not be done lightly. It should be studied thoroughly.

I think parties should declare themselves in the upcoming election. It might be a good topic for an expert panel, a royal commission, a Senate committee that's not running for election this summer.

I do have views, which I'd be happy to share at the time, but my view is that I wouldn't do it lightly. The U.K. analogy is not a perfect one, because the United Kingdom does not have a statutory wall around the prosecutorial function, and Canada does.

Ms. Iqra Khalid: Ms. Drouin.

Ms. Nathalie Drouin: If I could add, I have been working with that system for six years. I think it's a good system. I think it's working.

Whether or not something else can be brought into Canada is a policy question. I'm ready to support doing analysis if there's a need to do that.

The Chair: Thank you very much.

We'll now go to three minutes for each of the non-recognized parties. Then we'll excuse the witnesses, and we'll come back to Mr. Rankin for his motion.

Ms. May.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Thank you.

I identify myself to Mr. Wernick as someone who has stated publicly that he transgressed the line.

I would suggest, and maybe you can agree, that when we use the word "partisan", I would never suggest for a moment, Mr. Wernick, that you were a strong lifetime Liberal or strong lifetime Conservative. I think your evidence is consistent with being willing to interfere in partisan fashion for whoever is in power.

My question to you is: Had you ever met Frank Iacobucci in the context of anything in the four months that has been described to us by Jody Wilson-Raybould's testimony? Did you have a chance to talk to him in that four-month period about anything?

Mr. Michael Wernick: No. I do remember that he attended the Sherbrooke cabinet meeting, as I did. I crossed him in the hall. I came over and greeted him because I know him. I have never had a conversation with Mr. Justice Iacobucci about these matters.

Ms. Elizabeth May: In your previous history of public service, for a remarkably long time you were deputy minister at the Department of Indian and Northern Affairs, and our former attorney general, of course, was a prominent indigenous leader with the B.C. Assembly of First Nations.

Did you have any relationship with her prior to her time as attorney general, in that context?

Mr. Michael Wernick: Yes. I met her as early as 2006, when I started working at INAC. I attended assemblies of B.C. chiefs. I was a co-panellist with her at academic conferences. I was a co-panellist with her at a number of meetings. We've had breakfasts and lunches. We've had an ongoing conversation.

I had relationships with indigenous leaders right across the country in order to do my job, and as I said in my testimony, I considered the former minister an ally in what we were trying to accomplish, a colleague and a friend.

Ms. Elizabeth May: In the context of your evidence here today, we had a discussion about it being cut-and-paste language from the OECD agreements about how to understand the term "national economic interest", but it is clear that subsection 715.32(3) says that the public prosecution must not consider the national economic interest as a factor.

Isn't it a fair inference from that that you would not consider a jobs argument in deciding whether to bring a public prosecution or not?

Mr. Michael Wernick: That's not my reading of the law. My understanding is in this context, "national economic interest" means domestic as opposed to the interests of other countries. I repeat that I believe the impacts on jobs, suppliers, customers, pensioners and communities are a legitimate public interest consideration.

Ms. Elizabeth May: In the public interest then, Mr. Wernick, in preparing advice to cabinet, what work did you do to assess the threat to jobs? Did you look at the commitments made to the Government of Quebec not to move headquarters, as mentioned? Did you look at the current financial status of SNC-Lavalin? Did you in fact have an independent assessment of whether there would be any impact on jobs from a decision to proceed as the director of public prosecutions had decided to proceed?

Mr. Michael Wernick: No, because the file was entirely in the carriage of the then minister of justice.

• (1605)

The Chair: I'm sorry, but the time has expired.

[*Translation*]

Mr. Plamondon, it's your turn.

Mr. Louis Plamondon: Thank you, Mr. Chair.

Earlier we talked about the Privy Council Office's request for a legal opinion that you moreover prepared—you said so earlier—and that, at the minister's request, you didn't forward to the Privy Council Office.

Now that the minister is no longer here, could you send us that legal opinion so the committee can take note of it?

Ms. Nathalie Drouin: Are you talking about the legal opinion on the impact of the criminal conviction against SNC-Lavalin?

Mr. Louis Plamondon: Yes.

Ms. Nathalie Drouin: I can take note of your request, but I'll have to review it and request an opinion before providing that document to you. It's still in draft form. So I'll have to seek advice before answering you, but I promise to look into that possibility.

Mr. Louis Plamondon: Something has been bothering me since these discussions started. In eight days after returning from a trip, the minister decides to paint yourself into a corner: she decides to start a prosecution and accepts no advice.

You offer her the option of seeking an outside legal opinion and you tell her she can even discuss the case directly with the prosecutor. However, she accepts no advice and stubbornly maintains that she will go to trial.

A little later, SNC-Lebanon loses \$1.6 billion in three months, and its stock falls 35%. That doesn't prompt her either to consider whether she might perhaps reconsider the matter.

Did she give you a reason why she remained so resolute in her decision, not wanting to listen to anyone?

Ms. Nathalie Drouin: Earlier I said that respect for the independence of their office is very important for the minister and attorneys general. That's why they are so guarded in the exercise of their decision-making authority.

I also answered the question by saying that, in my opinion, based on what I understood, she felt she had no leeway in exercising her authorities under the Director of Public Prosecutions Act that would not have been perceived as political interference.

Mr. Louis Plamondon: Even though, a year earlier, she had voted for the bill that allowed it?

Ms. Nathalie Drouin: In fact, there are two elements.

The remediation agreements regime that the bill introduced into the Criminal Code is a tool that is granted to the director of public prosecutions.

The options that the Department of Justice proposed to the minister were to exercise, or not to exercise, her authorities under the Director of Public Prosecutions Act, that is to say, to intervene in a decision or overturn a decision made by the director of public prosecutions not to offer a remediation agreement.

The Chair: Thank you very much.

We will now go to the next speaker.

[English]

Mr. Weir, the floor is yours.

Mr. Erin Weir (Regina—Lewvan, CCF): Thanks very much.

Mr. Wernick, in your opening statement you indicated that the former minister agreed that entering into a deferred prosecution agreement would have been entirely lawful. My understanding of Ms. Wilson-Raybould's testimony is that she did not believe that

SNC-Lavalin was eligible for a deferred prosecution agreement under Canadian law. I wonder if either or both of you could shed any further light on whether SNC-Lavalin would have been eligible for that provision.

Mr. Michael Wernick: What I meant by lawful was that it was an option available to the minister under legislation passed by this Parliament. There was nothing illegal about a deferred prosecution agreement. It's a lawful instrument and an option that was always, and still is, available to the Minister of Justice.

Mr. Erin Weir: Fair enough.

Do either you or Ms. Drouin have any view on whether SNC-Lavalin would have qualified for the provision that is in the legislation?

Mr. Michael Wernick: I have no line of sight to the evidence and the arguments. That is a decision that is entirely, 100% in the hands of the DPP and the minister.

Ms. Nathalie Drouin: I would just add that the offences that SNC-Lavalin is facing are covered under the remediation agreement regime, but as the Clerk said, whether or not this tool is available on a specific case is the decision of the DPP.

• (1610)

Mr. Erin Weir: On the possibility of separating the Minister of Justice portfolio from the Attorney General portfolio, Mr. Wernick, you said that it's not a decision to be taken lightly, that there should be more study, and that you might have views to present as part of such a study. Given that you're in charge of the machinery of government in this country, I'm wondering if you have any views that you could present today.

Mr. Michael Wernick: I think that if you're going to go down this road—and I do think it's a productive thing to go down—then you'd have to look at Australia, New Zealand, the United Kingdom and provincial governments and ask yourself where has it been done and where has it not been done.

My general comment on machinery changes is that you trade one set of issues for another set of issues. There are consequences that are intended and there are unintended consequences. The people who make decisions on machinery—who are actually you, in passing legislation—have to decide which set of issues they'd prefer to have.

Mr. Erin Weir: It must happen on a fairly regular basis that companies come to the government seeking certain concessions and saying that there will be dire economic consequences and job losses if they don't get what they want. I'm wondering if you can speak any more to how the government assesses those kinds of claims or threats from companies.

Mr. Michael Wernick: Thank you for the question. First of all, it's an opportunity to say something I said earlier, which is that in Canada we have a very strong transparency regime. These contacts with government and this advocacy by companies is recorded; it's registered and it's regulated. That is a very good thing for Canada and Canadians. Companies, unions, university presidents, provinces and stakeholders make representations to governments all the time, and they make them to you, so each issue would be different in terms of how it's assessed.

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

So as not to confuse anyone with what's going to happen, I propose that I thank the witnesses and excuse the witnesses. We'll suspend for two minutes so that the witnesses can leave, and then we'll move to Mr. Rankin's motion.

Mr. Michael Wernick: Mr. Chair, can I just clarify one point about the availability of documents? I'm trying very hard to be helpful to the committee.

The Chair: Sure, of course.

Mr. Michael Wernick: I was never asked the question directly, but I just volunteer it to try to be helpful to the committee.

As this issue started to bubble in September and October, I, like many people, wanted to understand the decision-making framework, who had what role, what authority and what power.

I verbally asked my colleague for a backgrounder on the issue. That backgrounder was sent to me on October 12, in the afternoon, and I am now free to provide that to the committee. That opinion—which gave no opinion on what to do; it's simply a backgrounder on roles, responsibilities and authorities—has been the foundation for my participation in this file ever since.

The Chair: Thank you very much.

We'll consider it tabled with the committee.

Ms. Raitt, before I thank them, did you want to ask something or say something?

Hon. Lisa Raitt: I would like to know whether anybody would be interested in having a very short, one more round, with three minutes each.

The Chair: I'll look around.

It looks like we'll have to have a vote on that because I don't see consent.

Mr. Colin Fraser: The meeting was scheduled until four o'clock. Our witnesses have been good.

The Chair: Did you want to propose...?

Hon. Lisa Raitt: I get it, Mr. Chair. I just want to get to the bottom of stuff.

The Chair: Okay.

In any case I would like to take this opportunity to thank both witnesses, both for your service to Canada and your willingness to come forward to the committee twice at a time when you're under a national spotlight. The men and women of Canada's public service across the country do an incredible job for all of us. I know that all of us, from all parties in Parliament, appreciate our public service.

[*Translation*]

I'd really like to thank all the employees of the Canada's public service.

[*English*]

I again especially thank the two of you.

We will suspend for two minutes to let the witnesses leave.

•(1610)

_____ (Pause) _____

•(1620)

The Chair: Colleagues, just before we get to Mr. Rankin's motion, the clerk has asked me to clarify one thing again. The document the Clerk just tabled is in English only. Would we have permission to circulate it,

[*Translation*]

and the translation will then be done, or do you prefer to have it once it's translated?

[*English*]

It's the document that he provided, that he received, from the justice department on solicitor-client...

Sir?

[*Translation*]

Mr. Colin Fraser: How long will it take to have it translated?

The Chair: It's about two and a half pages long.

Mr. Clerk, how much time will that take?

[*English*]

The Clerk of the Committee (Mr. Marc-Olivier Girard): Two business days maximum.

[*Translation*]

Mr. Louis Plamondon: Mr. Chair, my answer is the same as the one I gave earlier. I'm surprised we can't table it in both languages, but I don't want to object to it being circulated.

I've been in Parliament for 35 years, and I understood a long time ago that the two official languages are English and translation.

The Chair: It depends on who the witness is, but I entirely agree that it should be translated. I'm just going to ask...

Yes, Mr. Berthold?

Mr. Luc Berthold: Mr. Chair, since it comes from the Clerk of the Privy Council, I assume he was aware of the obligations regarding what had to happen here in this committee. We're going to wait for the document to be translated before we accept it.

The Chair: All right, that's fine. If people aren't in a hurry, we'll wait for the translation. We'll distribute the document once it's translated, probably next week, on Tuesday or Wednesday.

[*English*]

Mr. Rankin.

Mr. Murray Rankin: Chair, I look to you for guidance as to the receivability of the following motion, but I'll read it and then explain why I believe it's critical. My motion is: "That the committee (a) call on the Prime Minister to amend the order in council number 2019-0105 to allow the former attorney general to speak openly about any matters salient to the SNC-Lavalin matter after January 14, and to call as witnesses as soon as possible the following four individuals: Jessica Prince, former chief of staff to Ms. Wilson-Raybould; Katie Telford, chief of staff to the Prime Minister; Elder Marques, senior adviser to the Prime Minister; and Mathieu Bouchard, senior adviser to the Prime Minister."

The reason I think this is so important is that there were two meetings that we heard a lot about today. One was on November 22, where Madam Wilson-Raybould met with Mr. Bouchard and Mr. Marques. Then there was the second meeting that her chief of staff took with Katie Telford. I think it's really important from a matter of natural justice and fairness to those individuals that we hear from them. Let me explain why.

It's hearsay what Ms. Prince recorded about her conversation. With respect, she said some very disturbing things attributed to Ms. Telford, namely, "We don't want to debate legalities anymore", a direct quote. In fairness to Ms. Telford, we need to have her here, and we need to also have Ms. Prince here so we can get to the bottom of what appears to be a very serious issue. I think it's fair to both of them to do it. I think it's grossly unfair to not have that testimony.

Last, when it comes to the November 22 meeting with Mr. Bouchard, Mr. Marques and the former attorney general, there were some very serious things said about, "Enough is enough. I keep saying 'no'. I've made up my mind", etc., and yet we know what transpired thereafter.

My point is fairness requires that we hear these witnesses. As to the first part of the motion, it seems grossly unfair, with all due respect, that we were allowing Mr. Butts to come and talk about what happened after she was removed from cabinet but she can't do so.

My plea to this committee is that in the interest of fairness, we allow this to occur.

The Chair: Thank you very much.

The motion is receivable. There's no problem. We'll get a speakers list.

I would just note, I don't believe he spoke about the period after she became the Veterans Affairs minister. He was speaking about the period—

Mr. Murray Rankin: He talked about when she was removed from cabinet today.

The Chair: We'll have to all look at the transcript. I think he was largely talking about the period during the shuffle, which is before the new appointment, but we'll have to look at that.

In any case, the motion is receivable. Could I get a speakers list? Who wants to intervene?

I have Mr. Poilievre, Mr. Fraser, Ms. Raitt and Mr. Cooper.

[*Translation*]

Then there's Mr. Berthold.

[*English*]

Mr. Poilievre.

• (1625)

Hon. Pierre Poilievre: Yes, Mr. Chair, it's necessary for Madam Jody Wilson-Raybould to return. We now have contradictions between witnesses, another good reason why we should have allowed them to swear an oath before they spoke. I still don't understand the government's objection to having people swear an oath and assert that they will be truthful.

What contradiction worries me the most is that—

The Chair: Can I just understand? Are you moving an amendment right now to Mr. Rankin's motion?

Hon. Pierre Poilievre: No, I am speaking to the motion. You said —

The Chair: But the motion doesn't involve Ms. Wilson-Raybould.

Hon. Pierre Poilievre: Sorry, I misunderstood, then. I thought the motion did involve Ms. Wilson-Raybould. I apologize.

The Chair: No.

Mr. Murray Rankin: I moved that motion this morning, and it was defeated by the Liberal majority, Mr. Poilievre.

I am now asking for four witnesses, separate from that particular witness, to come forward.

Hon. Pierre Poilievre: Okay, I move the amendment that Ms. Jody Wilson-Raybould be recalled and that the committee call on the government to release her to tell any further information that happened after she was named Veterans Affairs minister.

That is my amendment.

The Chair: Thank you. I understand.

Part (a) of the motion already deals with that issue. You're proposing to add an (e) and include Jody Wilson-Raybould, the former attorney general and minister of justice.

Hon. Pierre Poilievre: That's right.

The Chair: Was the meeting this morning separate from the meeting this afternoon?

The Clerk: Yes.

The Chair: Okay.

Mr. Poilievre's amendment is on the floor.

Ms. Raitt.

Hon. Lisa Raitt: Am I speaking to the amendment?

The Chair: Sure.

Hon. Lisa Raitt: Ms. Wilson-Raybould has sent a statement to the media this afternoon indicating she would be willing to reappear at the committee. I think she is clearly doing what Mr. Butts did last week, which is she's asking for an opportunity, and that's why we've moved the amendment. We want to make sure that we are able to consider this with the new evidence that has recently arisen.

The Chair: Mr. Fraser.

Hon. Pierre Poilievre: Can I speak to my own motion, to my own amendment?

The Chair: Well, you had the floor and then it went to Ms. Raitt. I'll come back to you.

Mr. Colin Fraser: Go ahead.

The Chair: Mr. Fraser has given you his....

We'll come back to Mr. Fraser, who was next.

Mr. Poilievre.

Hon. Pierre Poilievre: Thank you, Mr. Fraser. I appreciate that.

Ms. Wilson-Raybould testified that both the Clerk and the Prime Minister, on multiple occasions and on separate dates, told her that, if she did not immediately proceed toward a deferred prosecution agreement to shelve the charges against SNC-Lavalin, the company would move its headquarters out of Montreal.

We know that's impossible, because of a loan agreement between the company and the Caisse de dépôt that is part of a \$1.5-billion financing deal. Somebody would have been telling her a blatant falsehood in an attempt to get her to sign the deferred prosecution agreement with false information.

Now, today Mr. Wernick denied having said that. Ms. Wilson-Raybould's testimony alleges that he did say it on two separate occasions, once in September and then once again in December. So we have a major divergence of factual accounts between these two witnesses.

Mr. Wernick has been given a second chance to come back and testify, whereas Ms. Wilson-Raybould has not. She would have a stronger case for returning because, as we all know, she was prohibited from telling her entire story when she first came before the committee.

The government must release her, completely eliminate the gag order that prevents her from telling the whole truth, so that she can come back.

I will close by returning to my first point. It has been alleged—and, I argue, been proven—that members of the Prime Minister's inner circle pressured Madam Wilson-Raybould into making a decision she did not want to make.

However, it may be more serious than that. If the Prime Minister, the Clerk of the Privy Council and other senior staff deliberately told a falsehood to Canada's top law officer to trick her into shelving criminal charges, then that could let rise to a higher level of criminal conduct.

We have significant evidence that such a claim was made by those officials, including the Prime Minister, to Madam Wilson-Raybould. It is incumbent upon us to have her come back here, now that Mr. Wernick has had an opportunity to contradict her, and tell her side of the story.

Thank you.

• (1630)

The Chair: Thank you.

I'll just note again that for the purposes of the record, the amendment is going to be deemed to be made by Ms. Raitt because she put up her hand afterwards, and Mr. Poilievre is not a member of the committee so he can't put forward an amendment.

Mr. Fraser.

Mr. Colin Fraser: Thanks very much, Mr. Chair.

I have a few things here. The way the committee has functioned on these meetings up to this point is in a step-by-step fashion in order to determine the next steps and in order to determine what we've learned at the various meetings regarding the testimony, and then to have a subsequent meeting involving next steps.

I note that regarding the motion that convened today's meeting, the parameters were in order for us to hear the testimonies today, have an opportunity to reflect on them, and then, at the following meeting, determine the way forward for the committee, including whatever next steps may follow. In previous the times we've done that, we've seen further witnesses come forward.

I note a couple of things. I note, first of all, that Ms. Jody Wilson-Raybould had the order in council that allowed her to speak to a number of things that were not able to be spoken about by Ms. Drouin and Mr. Wernick the last time they were here. That was one of the main reasons to have them back. I recognize, as well, that Ms. Jody Wilson-Raybould had the opportunity to have an extensive opening statement, and that was obviously given to Mr. Butts today as well. Also, I think she testified for a period of about four hours.

It's obvious that we have a lot of information before us now as a committee. My suggestion is that we reflect on today's testimony and do what the motion convening today's meeting had anticipated, which is, at the next meeting, to determine the next steps. For all of those reasons, I think it's important for us to see that the next meeting be when we come back on March 18, and that we determine where we go from there.

For those reasons, I'm asking to put consideration of the motion over to that date.

The Chair: If that proposal is acceptable, what we would need to do is deal with the current amendment by Ms. Raitt, and then move back to another amendment from Mr. Fraser to defer it to March 18.

An hon. member: It's March 19.

The Chair: Tuesday, March 19 at 8:40.

Mr. Rankin.

Mr. Murray Rankin: I would like to respond to my friend, Mr. Fraser, but I just want to make sure I understand what we're voting on. Are we voting first on the amendment, namely that Ms. Wilson-Raybould be invited to return, or—

The Chair: Would you have considered that to be a friendly amendment to the original motion?

Mr. Murray Rankin: Yes, of course, indeed.

The Chair: Okay.

Mr. Clerk, as opposed to making it an amendment, Mr. Rankin considers it a friendly amendment to the original motion. Can we just consider it incorporated into the original motion? We're adding one other witness into the original motion.

Now Mr. Fraser is suggesting to defer that until Tuesday, the 19th.

Mr. Murray Rankin: That is what I want to respond to.

The Chair: That works perfectly because then we can deal with it that way.

I'm not sure that everybody is in agreement, but I think that at least we know what's on the floor now.

There was a motion. Ms. Wilson-Raybould is now incorporated as one of the people on the list of the motion, and Mr. Fraser is asking for it to be deferred until the 19th. That's the amendment on the floor right now, as Mr. Fraser's amendment.

Now I'm going to come back to the speakers list.

Mr. Cooper, Monsieur Berthold and Mr. Rankin are next on the speakers list.

• (1635)

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

Mr. Fraser suggests that we reflect on this behind closed doors instead of before the public. That has been a consistent way that Liberal MPs have approached these issues. At every step of the way, they have tried to block or obstruct hearing from witnesses until they really feel they have no choice.

It may very well be that we need to hear from additional witnesses, but in the face of the testimony today, it is inconceivable to think that we would not hear from Jessica Prince, Katie Telford, Elder Marques and Mathieu Bouchard.

Very conveniently, we heard from Mr. Butts who spoke to his version of events in the December 18 meeting, and so it seems perfectly appropriate, in fact, necessary, to hear from the two other participants at that meeting, Ms. Prince and Ms. Telford.

It's completely clear that Elder Marques and Mathieu Bouchard repeatedly met with or communicated with Jody Wilson-Raybould's chief of staff and Jody Wilson-Raybould herself, including on November 22, but on other dates with her chief of staff, including October 18 and October 26, to pressure or to reiterate the need for, among other things, an outside opinion. Therefore, how can we not hear from those individuals in order to understand exactly what was discussed, in order to understand the full context?

As for Ms. Wilson-Raybould, it is absolutely clear that we need to hear from her about the period after she was fired as the Attorney General. As Mr. Poilievre said, it is all the more important in light of her testimony that on two occasions the Prime Minister and the Clerk of the Privy Council raised an impossibility with her, and that is that SNC-Lavalin would be moving its headquarters.

Mr. Wernick, after being questioned by Mr. Poilievre for about five minutes, dodged his straightforward question about whether he had ever said that. Then he flat out denied that he ever said it, contradicting himself when he appeared before our committee last, when he stated that they openly discussed about the company moving or closing. That was his characterization of what took place at the meeting with Jody Wilson-Raybould, when she said that she was threatened not once, not twice, but three times by Mr. Wernick. He said two weeks ago that he talked about moving the company, and then after he was cornered, he suddenly issued a blanket denial.

We need to hear from Jody Wilson-Raybould as well.

Why delay? Why should we have to wait 13 days to make a decision? What we need is this process to continue in an expeditious fashion. There is no basis for why this decision should have to wait another almost two weeks when it is so painfully obvious that it is necessary to hear from all of these individuals—these four individuals plus Jody Wilson-Raybould—in order to understand the full truth.

[*Translation*]

The Chair: Mr. Berthold, you have the floor.

Mr. Luc Berthold: Thank you very much, Mr. Chair.

It was an honour and a pleasure to be here at this meeting today. I learned a lot, but I unfortunately feel it wasn't enough.

Today we heard from Mr. Butts. The Standing Committee on Justice and Human Rights agreed to convene during a parliamentary break week to hear Mr. Butts' testimony. However, we've just learned that an amendment will be introduced to bring us back just before the parliamentary session. In other words, we are choosing which witnesses we're going to hear before the committee and when we're going to hear them. I find that entirely unacceptable.

I remember Ms. Wilson-Raybould's testimony very clearly. She said on several occasions that she had experienced sustained pressure and veiled threats. I listened carefully to today's testimony. The witnesses said they weren't threats but merely requests for outside opinions. So there are two completely different perceptions here.

In a situation of conflict, one very rarely asks the person who made veiled threats to another person to criticize himself. Then he'll say he was making threats. In actual interpersonal relations, we should ask the person who was put under inappropriate pressure what actually happened. We should believe that person's perception of the situation and not that of the people who continually harassed her or who constantly asked her to be accountable for the way she managed something, whether it was inappropriate or not. I think we should believe the person who says she was put under inappropriate pressure.

Today we heard Mr. Butts say that Ms. Wilson-Raybould's demotion had absolutely nothing to do with the SNC-Lavalin affair. However, that's not what we understand from everything that has happened. Unfortunately, we were unable to hear Ms. Wilson-Raybould discuss that same situation because she wasn't authorized to talk about it. It's unacceptable to allow Mr. Butts tell us today that the demotion of the former Minister of Justice and the Attorney General had nothing to do with the SNC-Lavalin affair without letting Ms. Wilson-Raybould come and tell us whether she in fact perceived it as being directly related to that affair.

In her testimony, Ms. Wilson-Raybould frequently mentioned veiled threats. However, what is the biggest threat for a cabinet member if not the threat of losing her current position and being demoted? If we look solely at the facts, we can see that Ms. Wilson-Raybould lost her position. The veiled threats were acted upon.

It's important to hear Ms. Wilson-Raybould, and it's important to hear her as soon as possible instead of relying on the Liberals political program to determine the when, who, how and why. We owe it to Canadians to shed light on this matter as quickly as possible. We owe it to Canadians to learn the entire truth and to hear all the witnesses as soon as possible.

• (1640)

The Chair: Thank you very much.

Mr. Rankin, you have the floor.

[English]

Mr. Murray Rankin: I appreciate that it's time to wrap it up soon, but I just want to say to my friend, Mr. Fraser, in response to his comments, that yes indeed it has been our practice to deal in camera with the selection of witnesses. That's in the context in which we're trying to not embarrass people in public about which witness we choose and which expert we like over another. I think that's why we've done that. I don't think it's written in stone.

The Liberals' motion was that we proceed step by step all right, but I think we can agree that circumstances are a little different today. We have some serious testimony that seems to be contradictory. It's a matter of fairness to allow Ms. Katie Telford to defend herself and to be given an opportunity to confront the statement that I read into the record and our witness, Ms. Wilson-Raybould, read into the record. If it's a question of an extensive statement like she made last time, to which Mr. Fraser alluded, I'm happy to have her waive such a statement. We don't need it now. We're getting into the facts and so forth.

If the Liberals on the committee now vote down an effort to tell Canadians we're going to continue to get to the truth of this, they're doing a disservice to our committee and they're doing a disservice to the notion of getting to the truth.

I agree with Mr. Cooper. It's painfully obvious these witnesses must be heard. Let's just get on with it.

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

Does anybody on that side wish to respond?

The clerk has written out the correct procedural amendment to give effect to what Mr. Fraser suggested, which is, that all the words after "That" be replaced by the following: "the committee should consider next steps and potential additional witnesses on Tuesday, March 19, 2019."

The clerk says that is the right way to make that amendment.

• (1645)

Mr. Murray Rankin: So call the question.

Mr. Randy Boissonnault: Can we suspend for a few minutes?

The Chair: Yes, of course. We'll briefly suspend.

• (1645)

_____ (Pause) _____

• (1645)

[Translation]

The Chair: Now we'll return to the amendment.

[English]

The amendment is that all the words after "That" be replaced by the following: "the committee should consider next steps and potential additional witnesses on Tuesday, March 19, 2019."

That is the amendment to give effect to what Mr. Fraser has suggested.

The vote would be on the amendment, which essentially would replace the main motion, right?

Mr. Murray Rankin: My motion is no longer on the floor. Mr. Fraser's amended motion is what we're voting on, only.

The Chair: That would be correct.

We would vote on the amendment, and then the main motion would essentially be replaced by the amendment and we would vote on that.

Mr. Murray Rankin: Okay.

The Chair: We'd vote on it twice.

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

The Chair: A recorded vote on the amendment?

Mr. Michael Cooper: On all of it, but start with the amendment.

The Chair: The recorded vote is on the amendment by Mr. Fraser.

(Amendment agreed to: yeas 5; nays 4 [See *Minutes of Proceedings*])

The Chair: Now we will vote on the motion as amended by Mr. Fraser's amendment.

Another recorded vote was requested by Mr. Cooper, so, Mr. Clerk, now it's on the motion as amended.

Mr. Colin Fraser: Can you read that motion?

The Chair: It would read exactly like it read before.

(Motion as amended agreed to: yeas 5; nays 4 [See *Minutes of Proceedings*])

The Chair: The motion is carried.

Is there anything else? If not, colleagues, I wish you all a lovely rest of the day.

The meeting is adjourned.

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