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NEWS

Federal Court dismisses SNC-Lavalin's appeal for judicial review

By [Marco Vigiotti](https://ipolitics.ca/author/marcovigliotti/) (<https://ipolitics.ca/author/marcovigliotti/>). Published on Mar 8, 2019 12:16pm



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

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The Federal Court has ruled that it does not have the authority to review the decision of the director of the Public Prosecution Service to not pursue a remediation agreement with SNC-Lavalin, which has sparked the fiercest controversy of the Trudeau government.

In a decision **released** (<http://www.fct-cf.gc.ca/rss/T-%201843-18-%20Bulletin%20FINAL%20ENG.pdf>) Friday, Justice Catherine Kane granted PPS director Kathleen Rousell's motion to strike down an application for judicial review of the decision on the basis that prosecutorial discretion is "not subject to judicial review," except in cases of abuse of the process.

"The decision at issue — whether to invite an organization to enter into negotiations for a remediation agreement — clearly falls within the ambit of prosecutorial discretion in the same way as many other decisions that prosecutors are regularly called to make in criminal proceedings," Kane wrote in her decision.

"Courts have no supervisory role with respect to decisions made by prosecutors in the exercise of their discretion."

Kane also stated that the Federal Court could not review the decision because the PPS director derives its authority from common law, as the "delegate" of the federal attorney general. As a result, it would not fall within the scope of the Federal Court, which can only review the decisions of a federal board, commission or other tribunal, she wrote.

As the CBC reports, the ruling can be appealed to the Supreme Court.

SNC-Lavalin appealed to the court in early October seeking judicial review of Rousell's decision to not invite the firm to enter into negotiations for a remediation agreement, alternatively known as deferred prosecution agreement (DPA), which only became law in Canada last summer. The company is facing bribery charges stemming from its relationship with the former Gadhafi government in Libya.

A DPA could allow SNC-Lavalin to pay a fine in lieu of a criminal conviction, which would bar it from bidding on federal contracts.

Rousell subsequently filed an application to strike down the request on the grounds that it had no reasonable prospect of success, with the decision to not extend the offer for a DPA an exercise of prosecutorial discretion.

The refusal of the PPS to extend a deferred prosecution agreement to SNC-Lavalin has been the key subject of the month-old controversy gripping the Liberal government. It all began when the Globe and Mail reported that members of the Prime Minister's Office inappropriately pressured then-attorney general Jody Wilson-Raybould to issue a directive overriding Rousell's decision.

Wilson-Raybould repeated the allegations in shocking testimony before the House justice committee last week, though she maintained that nothing illegal took place. She speculated that she was shuffled from the attorney general position to veterans affairs minister because of her refusal to act.

Prime Minister Justin Trudeau has denied the allegations, saying he never directed her to make a decision and he and his staff were only raising legitimate concerns about the impact a guilty conviction against SNC-Lavalin would have on the company's employees. Trudeau also stated that she was only shuffled because of a cabinet vacancy prompted by veteran Liberal Scott Brison's resignation.

**This story has been updated to correctly note that the company can appeal the ruling to the Supreme Court.*

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