

OPINION

Did Jody Wilson-Raybould understand her role as attorney-general?

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The reputation and integrity of the administration of criminal justice in Canada has recently been challenged by critics who betray a fundamental misunderstanding of the responsibilities of key participants in our justice system. Regrettably, these misconceptions have been fuelled by our former attorney-general, Jody Wilson-Raybould.

There is no question that the attorney-general must exercise her role objectively and independently. However, in a free and democratic society, the prosecutorial function does not operate in a vacuum, in isolation and immune from debate, discussion and, indeed, persuasion. Isolation breeds tyranny. Access to justice requires those who administer justice to be accessible, to be open to advocacy on behalf of clients and causes. Advocacy in the adversarial process does not undermine independence. In fact, the public interest is best served by ensuring that the decision-maker has meaningfully examined the conflicting positions and has been exposed to a

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Over the course of more than 15 years as defence counsel, I have often advanced controversial positions. I have repeatedly and unrepentantly attempted to persuade prosecutors and courts that they ought to exercise their discretion, in the public interest, in a manner favourable to what I have urged was a just result. Prosecutors routinely take public-interest considerations into account in the exercise of their quasi-judicial discretion. Every decision to prosecute, every application for bail and every sentence imposed on a convicted offender engages a consideration of the public interest. As well, the public interest is a vital consideration in resolution discussions which routinely take place in private settings, often in teleconferences, frequently in direct personal meetings, but never surreptitiously recorded. When I wasn't satisfied that a Crown had fairly or properly evaluated my submissions, I would, on occasion, resort to further meetings with supervising prosecutors. If I concluded that legal principles or mitigating circumstances had been ignored and that the path to resolution had not been exhausted, I might arrange a meeting with an assistant deputy attorney-general or, on rare occasions, with either the attorney-general of the province or the attorney-general of Canada. This process does not challenge independence; it ensures its vitality.

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Justin Trudeau, a Prime Minister of symbols, falls to Earth

The treatment of Jody Wilson-Raybould highlights Canada's problem with Indigenous women

If an attorney-general can receive such vigorous advocacy and remain objective, then certainly her objectivity can also withstand collegial conversations with government colleagues and bureaucrats in which they share their views and opinions on the merits of a prosecution. Thoughtful reconsideration and sober second thoughts do not threaten the independence of the attorney-general nor do they jeopardize the

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Ms. Wilson-Raybould has expressed the position that any intervention by the attorney-general with the decision of the director of public prosecutions (DPP) would have been automatically suspect and that it would risk calling into question prosecutorial independence and the rule of law. The DPP, in fact, fulfills her responsibility under and on behalf of the attorney-general, and the act which governs her authority empowers the attorney-general to assume carriage of a prosecution or to direct the director. The attorney-general's power to superintend prosecutions is an important aspect of our system. The former attorney-general treated the DPP as essentially unreviewable. Politically accountable oversight in ensuring that the public interest is properly taken into account isn't anathema to the rule of law. The attorney-general's power to superintend prosecutions is an integral part of our justice system.

The DPP is expressly mandated to notify the attorney-general if a case "raises important questions of general interest." The conviction of SNC-Lavalin would affect thousands of people, including employees, pensioners and shareholders who were innocent bystanders to the alleged wrongdoing. In fact, one of the key underlying objectives of remediation agreements is to reduce the collateral negative consequences to those not engaged in the wrongdoing. The DPP fulfilled her responsibility to notify the attorney-general, recognizing that this case raised important questions of public interest. However, rather than address, assess or weigh the competing positions, the attorney-general appears to have reflexively deferred to the DPP and abdicated her responsibility for vigorous and independent oversight.