

Canadian Corruption and the SNC-Lavalin Affair:

What Comes Next?



What is SNC-Lavalin, and why is it at the center of a

Canadian corruption scandal?

On February 7, 2019, *The Globe and Mail* published a report alleging that Canadian Prime Minister Justin Trudeau, together with his aides and cabinet officers, had attempted to improperly influence former Attorney General Jody Wilson-Raybould in the Canadian Justice Department's prosecution of Montreal construction firm SNC-Lavalin.¹ SNC-Lavalin is a major company, which employs thousands of workers and reported 10 billion Canadian Dollars in revenue in 2018.² The charges against them centered around allegations that they had made numerous bribes to Libyan officials from 2001-2011 in order to secure contracts.³ Due to these charges, SNC-Lavalin faces a potential ban on bidding on Canadian government contracts for a period of ten years, a major part of SNC's business.⁴ Many have speculated this ban could result in the company relocating out of Canada.⁵ In order to prevent such a ban, the alleged improper pressure centered around an unsuccessful attempt by Trudeau and his aides to coerce Wilson-Raybould to intervene, overrule the Director of Public Prosecutions (who was overseeing the prosecution), and have the Justice Department grant SNC a Deferred Prosecution Agreement.⁶ Deferred Prosecution Agreements are a legal mechanism, introduced in Canada by Trudeau in 2018, designed to protect corporate shareholders and employees by allowing prosecutors to suspend charges against companies in cases when a company agrees to self report corruption or other potentially criminal acts.⁷ Wilson-Raybould's failure to grant SNC-Lavalin such an agreement allegedly led to her January 2019 removal as Attorney General and reassignment to the Minister of Veterans Affairs position.⁸

Jody Wilson-Raybould and Justin Trudeau
(Toronto Star 2019)

How did Wilson-Raybould and the Trudeau government respond to the allegations?

Following the publication of the report, Wilson-Raybould [resigned](#) from the Trudeau cabinet altogether.⁹ She later publicly testified to the Canadian Parliament on the allegations, unequivocally stating that she was improperly pressured.¹⁰ Throughout the scandal, the Trudeau government denied the allegations. They emphasized the important role that government officials must play in counseling the Attorney General on economic matters such as this,¹¹ contested some of Wilson-Raybould's specific assertions, and [argued](#) that an "erosion of trust" and a breakdown in several key relationships had caused Wilson-Raybould to falsely perceive political pressure which really wasn't there.¹²

What is the relevant context that made this accusation so serious?

While the accusations levied against the Trudeau government were serious in and of themselves, two aspects made the claims particularly explosive. The first was political, and centered around the perceived cozy relationship between SNC-Lavalin, the Liberal Party, and the Trudeau government. This perception existed since SNC and its executives had financially supported the Liberal Party in past elections,¹³ had extensively [lobbied](#) Trudeau to both introduce Deferred Prosecution Agreements and grant them one,¹⁴ and had been in

frequent contact with Trudeau's inner circle.¹⁵ Another significant detail was that Quebec is electorally important to the Liberal Party, the 2018 Quebec Elections and 2019 Federal Elections were approaching, and a large company like SNC potentially leaving the province would not have played well politically.¹⁶ Thus, the accusations were particularly explosive due to the implication that government officials pushed for a Deferred Prosecution Agreement due to corrupt political intentions.

Additionally, the claims cut to the heart of Canada's strong tradition of prosecutorial independence. A pithy summary of the Canadian Attorney General's independence is provided by the Canadian Supreme Court in *Miazga v. Kvello Estate*, which states that the "independence" of the Attorney General is "fundamental to the integrity and efficiency of the criminal justice system."¹⁷ Similar commentary is found in *Krieger v. Law Society of Alberta*.¹⁸ In light of the stated importance of the Attorney General's independence, a specific delineation of it is found in Canada's widely used norm, the "Shawcross Doctrine." The Doctrine, which allows outside government officials to advise the Attorney General about decisions to better "inform" him/her, is emphatic in stating that such advice must be kept to "specific considerations," that there may be no pressure, and that final decisions must be the Attorney General's alone.¹⁹ It is easy to see how the allegations, if true, would violate this norm.

Beyond merely violating norms, however, many commentators and officials further speculated that the implicated officials could have violated numerous laws. Chief among these was the Conflicts of Interest Act. Section 9 of the Act states that public officials may not attempt to influence decisions to "further another person's private interests," with the allegation being that government officials had pressured Wilson-Raybould to further SNC's private interests.²⁰ Such arguments were convincing enough that in February the Canadian Ethics Commissioner [opened](#) an investigation to probe a violation of the Act.²¹

What did Jody Wilson-Raybould have to say in her testimony?

Jody Wilson-Raybould testified on February 27. At the outset, she defended her decision to not overrule the Director of Public Prosecutions and grant SNC a Deferred Prosecution Agreement, which the Director of Public Prosecutions Act grants the Attorney General the power to do.²² She cited the stringent requirements in the law for such interventions, which are to be used "sparingly" and independently of political pressure.²³ In response to her decision, she alleged that from September to December she encountered a "consistent and sustained effort" to "politically interfere," which involved "the Prime Minister's Office, the Privy Council Office, and the Office of the Minister of Finance" over the course of "10 meetings and 10 calls."²⁴

In support, Wilson-Raybould recounted four different occasions when government officials cited the Quebec or Federal Elections as a reason for granting a Deferred Prosecution Agreement.²⁵ Particularly damning were her claims that the Finance Minister said "we can have the best policy in the world, but we need to be re-elected,"²⁶ and that Trudeau himself referenced Quebec's electoral weight in a September 17 meeting.²⁷

Wilson-Raybould's testimony also referenced several interactions involving potential violations of the Attorney General's independence and the Shawcross Doctrine. Among these were unheeded requests by her for the SNC matter to no longer be referenced by government officials in their meetings with her due to what she saw as political pressure, and continued discussion of the matter with her even after she had communicated that her decision was final.²⁸ During the aforementioned September 17 meeting, she said that she directly asked the Prime Minister "Are you politically interfering with my role/my decision as the Attorney General? I would strongly advise against it," to which he responded, "No, No, No—we just need to find a solution."²⁹

Wilson-Raybould claimed that tensions reached a head in December. She recalled a December 5 meeting with senior Trudeau political aide Gerald Butts, where she asserted that "inappropriate" encounters about SNC

“needed to stop,” yet he insisted that she “needed to find a solution,” even if, as he later clarified, the solution “involve[d] some interference.”³⁰ Furthermore, she spoke in detail, and later provided a secret [recording](#) of a December 19 call with Clerk of the Privy Council Michael Wernick,³¹ Canada’s highest-ranking civil servant, where Wernick ominously warned of a potential “collision” with the Prime Minister, who would get a Deferred Prosecution Agreement “one way or another.”³² This was her last communication regarding SNC before her January removal as Attorney General.³³ In her testimony, Wilson-Raybould clearly stated her belief that she was removed due to the SNC matter.³⁴

What was the Trudeau government’s defense?

Both before and after Wilson-Raybould’s testimony Trudeau government officials denied the charge that there had been improper interference in the SNC case. Their defense was multifaceted and mirrored the many allegations against them. Defending against allegations of perverse political intentions, senior Trudeau political aide Gerald Butts testified that Trudeau’s motivation for an SNC Deferred Prosecution Agreement was guided by genuine public interest concerns. Butts [argued](#) that such an agreement could have saved 9,000 jobs and protected SNC workers.³⁵ Clerk of the Privy Council Michael Wernick similarly [testified](#) to the “public interest considerations” presented to Wilson-Raybould.³⁶ In response to the talk concerning Quebec’s 2018 elections, Wernick (who himself was implicated) denied that he had done so “out of partisan considerations,” instead stating that his intention had been to preserve the election’s integrity by preventing a “purely federal issue” from arising late in a provincial election.³⁷

Beyond their intentions, Trudeau and his aides also flatly denied applying any kind of improper pressure. Factually, Butts denied ever calling for a “solution” which involved “interference” in December,³⁸ disputed Wilson-Raybould’s claim that her decision had been final (in part since she had never noted it in writing),³⁹ and said that he generally remembered their December meeting “very differently,” among other things.⁴⁰ Further, both Butts and Wernick claimed that there were many times when Wilson-Raybould had been told the decision was hers to make, one being the aforementioned September 17 meeting with Trudeau.⁴¹ As to why Wilson-Raybould saw things the way that she did, Trudeau [spoke](#) to an “erosion of trust” which had led to a misunderstanding.⁴² It is also evident that many of Trudeau’s aides had a different view of the Attorney General’s independence than Wilson-Raybould, with Butts [speaking](#) of what he viewed as a “gray area” in the Attorney General’s political independence,⁴³ and both Butts and Wernick questioning whether an Attorney General’s decision can ever be final if new information arises which is relevant to public interest.⁴⁴ Given this, it is possible that key actors in the controversy were operating on different definitions of what constituted political interference.

Finally, regarding Wilson-Raybould’s move from the Justice Department to Veterans Affairs, Trudeau and his aides insisted that it happened due to a routine cabinet shuffle precipitated by Treasury Board President Scott Brison’s resignation.⁴⁵

What effects has the SNC-Lavalin Affair already had?

Altogether, the SNC-Lavalin Affair significantly weakened Trudeau’s standing, with his approval rating and position in the polls for the upcoming 2019 election both falling after the scandal went public.⁴⁶ The affair has not yet proved to be fatal, however, as the Trudeau government has been hit with little to no legal or institutional consequences. A major victory for them on this front came on March 19, when the Liberal controlled parliament [closed](#) their probe into the SNC-Lavalin Affair, a move met with significant dissension from opposition Members of Parliament.⁴⁷

But although the SNC scandal has yet to deliver broad changes to Canada's government, significant impacts have been felt by many of the individuals connected to it. On April 2, with strong support from the Liberal caucus, Prime Minister Trudeau [expelled](#) Jody Wilson-Raybould from the Liberal Party, citing the need for party unity and a breach of trust stemming from her recording the December 19 phone call with Wernick.⁴⁸ Effects were also felt by individuals on the Prime Minister's side, as Gerald Butts resigned and Michael Wernick expedited his retirement.⁴⁹

What comes next?

Although the buzz around the SNC-Lavalin Affair has settled following the frantic months of February and March, two key dominoes have yet to fall, and it is possible that the controversy's biggest effects have yet to be felt. The first of these is the Ethics Commissioner's investigation, which in May was said to be a "few months" from completion.⁵⁰ The Commissioner's decision might hold even more sway in the public's eyes than Parliament's contentious March 19th decision due to the Commissioner's political independence. The second of these is the Affair's continuing role in the 2019 election campaign. Depending on how the election unfolds, the SNC-Lavalin Affair may either come to be regarded as a footnote in Canadian history, or the scandal which made Justin Trudeau a one-term Prime Minister.

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²SNC-Lavalin Group Inc. (2019). Annual Information Form 2018.

<https://www.snclavalin.com/~media/Files/S/SNC-Lavalin/investor-briefcase/en/2018/annual-info-form-2018.pdf>

- ³ Anne Sutherland, *RCMP Charges SNC-Lavalin with Corruption, Fraud*. Montreal Gazette (February 19, 2015), <https://montrealgazette.com/business/local-business/rmcp-charges-snc-lavalin-with-corruption>
- ⁴ *Here's What a 10-Year Ban on Federal Contracts Would Mean for SNC-Lavalin*. CBC (March 7, 2019), <https://www.cbc.ca/news/business/financial-fall-out-snc-lavalin-1.5047742>
- ⁵ *SNC-Lavalin Warned of US Move, Slashing Workforce If No Remediation Deal, Documents Show*. CBC (March 28, 2019), <https://www.cbc.ca/news/politics/snc-lavalin-warned-of-move-abroad-1.5075840>
- ⁶ Robert Fife, Stephen Chase, Sean Fine, *PMO Pressed Wilson-Raybould to Abandon Prosecution of SNC-Lavalin; Trudeau Denies His Office 'Directed' Her*. The Globe and Mail (February 7, 2019), <https://www.theglobeandmail.com/politics/article-pmo-pressed-justice-minister-to-abandon-prosecution-of-snc-lavalin/>
- ⁷ Andy Blatchford, *Federal Budget Bill Quietly Proposes Tool to Ease Penalties for Corporate Crime*. CBC (May 15, 2018), <https://www.cbc.ca/news/politics/federal-budget-corporate-wrongdoing-1.4664490>
- ⁸ Robert Fife, Stephen Chase, Sean Fine, *PMO Pressed Wilson-Raybould to Abandon Prosecution of SNC-Lavalin; Trudeau Denies His Office 'Directed' Her*. The Globe and Mail (February 7, 2019), <https://www.theglobeandmail.com/politics/article-pmo-pressed-justice-minister-to-abandon-prosecution-of-snc-lavalin/>
- ⁹ Amanda Connolly, *Jody Wilson Raybould Resigns from Cabinet Amid SNC-Lavalin Affair, Trudeau 'Surprised and Disappointed'*. Global News (February 12, 2019), <https://globalnews.ca/news/4952236/jody-wilsonraybould-resigns-snc-lavalin-affair/>
- ¹⁰ John Paul Tasker, *Key Moments from Jody Wilson-Raybould's SNC-Lavalin Testimony*. CBC (February 28, 2019), <https://www.cbc.ca/news/politics/key-moments-jody-wilson-raybould-snc-lavalin-scandal-1.5036629>
- ¹¹ Amanda Connolly, *'Consider a Second Opinion': Gerald Butts says 'Grey Area' between Political Staff, Wilson-Raybould on SNC-Lavalin Affair*. Global News (March 6, 2019), <https://globalnews.ca/news/5023881/snc-lavalin-gerald-butts-jody-wilson-raybould/>
- ¹² Kathleen Harris, *Trudeau Says 'Erosion of Trust' Sparked SNC-Lavalin Controversy; Scheer Renews Call for His Resignation*. CBC (March 7, 2019), <https://www.cbc.ca/news/politics/trudeau-snc-lavalin-1.5046438>
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- ¹⁵ *Id.*
- ¹⁶ *Id.*
- ¹⁷ "Miazga v. Kvello Estate, 2009 SCC 51", CanLII para 46.
- ¹⁸ "Krieger v. Law Society of Alberta, 2002 SCC 65", CanLII para 29.
- ¹⁹ Victoria Colvin, *The SNC-Lavalin Affair and the Politics of Prosecution*, The Conversation (February 19, 2019), <http://theconversation.com/the-snc-lavalin-affair-and-the-politics-of-prosecution-111778>
- ²⁰ *Conflict of Interest Act*, S.C. 2006, c. 9, s. 3, ss. 9
- ²¹ Maura Forrest, *Ethics Commissioner Launches Investigation into Political Interference Allegations in SNC-Lavalin Case*. National Post (February 11, 2019), <https://nationalpost.com/news/politics/ethics-commissioner-launches-investigation-into-political-interference-allegations-in-snc-lavalin-case>
- ²² *Director of Public Prosecutions Act*, S.C. 2009, c. 9, s. 121, ss. 10, 15.
- ²³ Canada, Public Prosecution Service of Canada, *Public Prosecution Service of Canada Deskbook*, (Ottawa: Public Prosecution Service of Canada) s. 1.2, 2.2.
- ²⁴ Canada, Parliament, House of Commons, Standing Committee on Justice and Human Rights, *Minutes of Proceedings and Evidence*, 42nd Parl, 1st Session, No. 135 (27 February 2019) at 2, <https://www.ourcommons.ca/Content/Committee/421/JUST/Evidence/EV10349068/JUSTEV135-E.PDF>
- ²⁵ *Id.* at 2, 3, 4
- ²⁶ *Id.* at 4
- ²⁷ *Id.* at 3
- ²⁸ *Id.* at 3,4,5,6
- ²⁹ *Id.* at 3
- ³⁰ *Id.* at 5
- ³¹ Brian Platt, Maura Forrest, Jesse Snyder, *Secret Recording of Wernick by Jody Wilson-Raybould Backs Interference Allegations in SNC-Lavalin Scandal*. National Post (March 29, 2019), <https://nationalpost.com/news/politics/newsalert-justice-committee-releases-texts-recording-from-wilson-raybould>

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<https://www.ourcommons.ca/Content/Committee/421/JUST/Evidence/EV10349068/JUSTEV135-E.PDF>

³³ *Id.* at 6

³⁴ *Id.* at 6

³⁵ Amanda Connolly, 'Consider a Second Opinion': Gerald Butts says 'Grey Area' between Political Staff, Wilson-Raybould on SNC-Lavalin Affair. Global News (March 6, 2019), <https://globalnews.ca/news/5023881/snc-lavalin-gerald-butts-jody-wilson-raybould/>

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³⁸ Amanda Connolly, 'Consider a Second Opinion': Gerald Butts says 'Grey Area' between Political Staff, Wilson-Raybould on SNC-Lavalin Affair. Global News (March 6, 2019), <https://globalnews.ca/news/5023881/snc-lavalin-gerald-butts-jody-wilson-raybould/>

³⁹ Kathleen Harris, 'Nothing Inappropriate': Butts Says SNC-Lavalin Scandal Only Blew up after Cabinet Shuffle. CBC (March 6, 2019), <https://www.cbc.ca/news/politics/butts-snc-lavalin-wilson-raybould-1.5044704>

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⁴² Kathleen Harris, Trudeau Says 'Erosion of Trust' Sparked SNC-Lavalin Controversy; Scheer Renews Call for His Resignation. CBC (March 7, 2019), <https://www.cbc.ca/news/politics/trudeau-snc-lavalin-1.5046438>

⁴³ Amanda Connolly, 'Consider a Second Opinion': Gerald Butts says 'Grey Area' between Political Staff, Wilson-Raybould on SNC-Lavalin Affair. Global News (March 6, 2019), <https://globalnews.ca/news/5023881/snc-lavalin-gerald-butts-jody-wilson-raybould/>

⁴⁴ Kathleen Harris, 'Nothing Inappropriate': Butts Says SNC-Lavalin Scandal Only Blew up after Cabinet Shuffle. CBC (March 6, 2019), <https://www.cbc.ca/news/politics/butts-snc-lavalin-wilson-raybould-1.5044704>; Michael Wernick Testifies at Justice Committee: Full Opening Statement. Maclean's (March 6, 2019), <https://www.macleans.ca/politics/michael-wernick-testifies-at-justice-committee-full-opening-statement/>

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⁴⁶ Andrew Coyne, *Canadians Have Fallen Desperately out of Love with Justin Trudeau*. National Post (May 6, 2019), <https://nationalpost.com/opinion/andrew-coyne-canadians-have-fallen-desperately-out-of-love-with-justin-trudeau>;

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