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# Standing Committee on Access to Information, Privacy and Ethics

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Chair: Mr. John Brassard





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Tuesday, March 19, 2024

• (1105)

[*English*]

**The Chair (Mr. John Brassard (Barrie—Innisfil, CPC)):** I call this meeting to order.

Good morning, everyone.

[*Translation*]

Welcome to meeting No. 108 of the House of Commons of the House of Commons Standing Committee on Access to Information, Privacy and Ethics. Pursuant to Standing Order 108(3)(h) and the motion adopted by the committee on Monday, October 30, 2023, the committee is resuming its study of the decision of the Royal Canadian Mounted Police to not pursue a criminal investigation in relation to the SNC-Lavalin affair.

[*English*]

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders. Members are attending in person in the room and remotely using the Zoom application. As a reminder to all who are participating, make sure you keep the earpieces away from the microphones in order to avoid potential injury to our interpreters.

I'd now like to welcome our witness for today, Mr. Michael Wernick, formerly Clerk of the Privy Council and currently Jarislowsky Chair in Public Sector Management at the University of Ottawa.

Before we begin, I will ask again for unanimous consent to reset the clock at the top of the hour to give the opportunity to our Bloc and NDP members for six minutes of questioning.

Do I have unanimous consent on that?

**Some hon. members:** Agreed.

**The Chair:** Thank you.

First of all, Mr. Wernick, I want to welcome you to committee. I understand that you do not have an opening statement today, so we will go right to questions.

Mr. Barrett, you have six minutes. Go ahead.

**Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC):** Sir, has the RCMP contacted you regarding Justin Trudeau's role in the SNC-Lavalin scandal?

Chair, his response was not audible.

**The Chair:** Yes.

Mr. Wernick, I'm sorry. You'll have to unmute.

There you go.

**Mr. Michael Wernick (Jarislowsky Chair in Public Sector Management, University of Ottawa, As an Individual):** I'm sorry. It's the usual Zoom mute-unmute.

I did hear the question, sir. No, they have not.

**Mr. Michael Barrett:** But you were interviewed for the Ethics Commissioner's report, the "Trudeau II Report", on the SNC-Lavalin scandal. Is that correct?

**Mr. Michael Wernick:** Yes. I retired in April 2019, the Easter weekend. I was interviewed one time by the commissioner in the preparation of the report. I was interviewed by the RCMP that summer about the lobbying activities of principals of SNC-Lavalin.

**Mr. Michael Barrett:** Did you have any further contact with the RCMP with respect to SNC-Lavalin following that interview in 2019?

**Mr. Michael Wernick:** Never prior and never after that.

**Mr. Michael Barrett:** Did the RCMP ask you any questions dealing with Justin Trudeau?

**Mr. Michael Wernick:** That was five years ago. I do not remember the flow of the interview. We basically went over the material that you will see in the commissioner's report.

**Mr. Michael Barrett:** You don't remember if the Prime Minister's name was said by the RCMP. I can tell you that as part of complaints that I've filed with the RCMP, I have been interviewed by them. It was years ago, and I remember very distinctly how that interview went. I certainly would remember if the Prime Minister's name was mentioned. It was, I can tell you, in my case.

Was the Prime Minister's name mentioned—was a question asked of you about Prime Minister Justin Trudeau—when you were questioned by the RCMP?

**Mr. Michael Wernick:** The interview took the form of going through the chronology of events—who met with whom, who spoke with whom, who communicated with whom and so on. So yes, the role of the Prime Minister came up, because I was in contact with the Prime Minister during that period when I was clerk.

**Mr. Michael Barrett:** The question of obstruction of justice, which is a criminal offence, was raised with respect to the Prime Minister's involvement in the SNC-Lavalin scandal. These are, of course, events in which you were involved. Most Canadians would have expected that you would have been interviewed on that subject. Do you think you should have been interviewed in the RCMP's pursuits with respect to obstruction of justice concerns or allegations about Prime Minister Justin Trudeau?

**Mr. Michael Wernick:** I have no view on that, Mr. Cooper. It's up to the police whom they decide to interview.

**Mr. Michael Barrett:** Thank you very much. My esteemed colleague Mr. Cooper will have questions for you later. I'm Michael Barrett. I did have the opportunity to ask you questions when you appeared at the justice committee about the SNC-Lavalin scandal. I'm glad we have you here today as well.

Do you have any view on who the RCMP should have interviewed? We have a list of who the Ethics Commissioner interviewed and we know who the RCMP interviewed, but those lists aren't the same. Justin Trudeau, Katie Telford, Gerry Butts—do you think they should have been interviewed to exonerate the Prime Minister?

**Mr. Michael Wernick:** I have no view on whom the police should choose to interview. Not every issue of ethics or behaviour rises to the level of a preliminary investigation, fact-finding or examination. Not all of those move on to a full investigation in the terms that journalists and politicians use them.

These are decisions to be made by the police and by the prosecutorial service.

**Mr. Michael Barrett:** We know that the Prime Minister broke the law. It's a matter of public record that he broke the Conflict of Interest Act. There was a finding of that by the Ethics Commissioner.

We know there's a big gap in the RCMP's work. It's very curious how that came to pass.

If the RCMP were to pursue an investigation into the SNC-Lavalin scandal and Prime Minister Justin Trudeau, would you fully co-operate?

**Mr. Michael Wernick:** Of course.

**Mr. Michael Barrett:** If another law enforcement agency—the Ontario Provincial Police, for example—were to undertake an investigation into the SNC-Lavalin scandal, would you fully co-operate?

**Mr. Michael Wernick:** Of course.

**Mr. Michael Barrett:** Do you possess any documents related to the SNC-Lavalin scandal or the deferred prosecution agreement?

**Mr. Michael Wernick:** No. I left government in April 2019—five years ago.

**Mr. Michael Barrett:** The question wasn't when you left government. That's the second time you've offered us that date. The question was about you having the documents.

**Mr. Michael Wernick:** I have no documents.

**Mr. Michael Barrett:** Why did Justin Trudeau go to such great lengths to pursue a deferred prosecution agreement for his friends at SNC-Lavalin?

**Mr. Michael Wernick:** I have nothing to add to my testimony at the justice committee five years ago.

• (1110)

**Mr. Michael Barrett:** You have nothing to add. There was no rationale.

If I were to say it was to help out a Liberal-friendly firm, you have nothing to add to that?

**Mr. Michael Wernick:** I gave my testimony at two meetings of the justice committee two Parliaments ago and that's my account of events.

**Mr. Michael Barrett:** The history is quite clear that there was not a case made. We've, of course, heard the now-famous recording of you and the then-attorney general Jody Wilson-Raybould when you claimed, without any evidence and without any substantiation—it's yet to be provided—that it was about jobs.

We know that it was never about jobs. It was, in fact, about politics.

**The Chair:** Thank you, Mr. Barrett. That concludes your six-minute round.

Ms. Damoff, you have six minutes. Please go ahead.

**Ms. Pam Damoff (Oakville North—Burlington, Lib.):** Thank you, Chair.

Mr. Wernick, thank you for being here today on something that I really question, which is, given that you left government five years ago, what you can add to a police investigation, quite frankly.

I served as parliamentary secretary at public safety for a few years. I also served on the public safety committee for eight years. One thing that always struck me was the importance of the separation of the political arm from police investigations. We look at countries around the world where politicians dictate what police do. We don't want to emulate those countries, yet we are constantly hearing from the opposition and also on social media that somehow we as politicians should be telling police what they should and should not investigate, and who they should talk to.

Would you feel comfortable talking in general terms about the importance of that separation—that police investigations are independent of the political arm of the government?

**Mr. Michael Wernick:** Certainly. That is my wheelhouse these days—governance and public administration. I've written a book on the tradecraft of politics.

To the premise of your question, in a free, democratic society, it's very important that the justice system operate independently. That includes the police, the prosecutorial service and the courts. Parliament—you—create the framework of laws within which they operate, but in terms of their actual practice of investigations, arrests and prosecutions, those should be conducted fully independently.

**Ms. Pam Damoff:** What happens if politicians stick their fingers in and start directing the police?

**Mr. Michael Wernick:** Then you're not in a full democracy. You're in a sort of quasi-authoritarian society, like you see around the world.

You can see pressure being put on politicians. This is common practice in the United States Congress, where you're seeing hearings where prosecutors, police officials and law enforcement officials are being hauled before congressional committees in the United States. I think that's a form of pressure and intimidation on the law enforcement system.

**Ms. Pam Damoff:** Thank you.

I remember your testimony back in 2019 at justice committee. At the time, we had been doing Bill C-71 at the public safety committee. As someone who's advocated quite vocally for gun control, I became the target, and have been for a number of years, of the gun lobby, which has included threats, memes and all kinds of things on what I think you called "the vomitorium of social media".

I still remember that testimony, and thinking how accurate it was. Since that time it's only gotten worse—quite a bit worse, actually. Recently Mr. Barrett posted a video on social media with all of our email addresses, inviting people to contact us about trying to shut down an investigation of the RCMP. As a result, my staff had to open a subfolder in my inbox and labelled it "misogyny", because of the horrific emails and messages I was getting on social media.

Do you have any thoughts on the direction in which our country has gone in the last few years? I've been called a traitor; I've been told that the government is corrupt. I often say to people to take a look at Afghanistan, take a look at what's going on in the Middle East right now if you actually want to see countries where there are terrorists running a country, as in Gaza. You have Afghanistan, where women and girls have no rights at all. It really troubles me when people are making comparisons with other countries around the world like Russia—comparing Canada with that.

Your comments then have been proven correct, Mr. Wernick. Unfortunately, I've been a target of all of those kinds of comments. Do you have any comment as to how we can try to get back to a more civilized discussion on issues?

• (1115)

**Mr. Michael Wernick:** I think the chair will rein us in as being off topic at today's hearing. I would say that I've given plenty of interviews and have podcasts about this topic, and you can find all of my output as a professor on my LinkedIn feed.

**Ms. Pam Damoff:** Okay. Thank you.

Maybe we'll get back to the RCMP, which you're right is the topic of why you're here.

I have only about 45 seconds left. Is there anything that you wanted to add on the importance of the separation of the police, or have we covered it all?

**Mr. Michael Wernick:** I think I've said that. What I would point out to you parliamentarians is that there are issues of ethics and behaviour and conduct that do not rise to the law of criminal penalties.

That is why you—Parliament—created other laws and other independent bodies to deal with them. That is why you—Parliament—created the Conflict of Interest and Ethics Commissioner, the Public Sector Integrity Commissioner and the Commissioner of Lobbying, and allocated about \$25 million to those three bodies. Sometimes those bodies complete a case and refer an issue to the police; most of the time they do not.

**Ms. Pam Damoff:** Thank you very much.

**The Chair:** Thank you, Ms. Damoff.

Just before we go to Mr. Villemure, I just want to clarify something. At the opening of your comments, you mentioned something to the effect that you didn't know why Mr. Wernick was here.

I just want to remind committee members that on October 30, a motion was passed by unanimous consent to have the RCMP commissioner, Mr. Pincince, the Ethics Commissioner, the former ethics commissioner, and Mr. Wernick appear before committee. That is why he is here today.

I thank you, Mr. Wernick, for coming before committee.

[*Translation*]

Mr. Villemure, you have the floor for six minutes.

**Mr. René Villemure (Trois-Rivières, BQ):** Thank you very much, Mr. Chair.

Mr. Wernick, good morning. Earlier, you explained to us all the aspects of this matter in which you were not involved, and I just want to know what your role was. In which aspects of this matter did you take part?

**Mr. Michael Wernick:** So, as I said, I appeared before the Standing Committee on Justice and Human Rights five years ago. There are four hours of testimony on the matter. I testified before the Commissioner, as well. I explained everything to the Commissioner and to another parliamentary committee.

**Mr. René Villemure:** Forgive me, but I was not there four years ago. So, could you refresh my memory, please?

**Mr. Michael Wernick:** I was the Clerk of the Privy Council, meaning the deputy minister to the Prime Minister, until Easter weekend, five years ago.

**Mr. René Villemure:** In the story about Ms. Wilson-Raybould, SNC-Lavalin and the Prime Minister, what was your role at the time? I am not asking about your function, because I understand that. Rather, I am asking you about your participation in that situation.

**Mr. Michael Wernick:** It's very thoroughly outlined in the report of the Conflict of Interest and Ethics Commissioner.

**Mr. René Villemure:** Very well.

The Commissioner concluded that there was a breach of the Conflict of Interest Act. For its part, The Royal Canadian Mounted Police decided not to conduct an investigation because it considered that no offence was committed under the Criminal Code. Is that correct?

**Mr. Michael Wernick:** That is what I understood.

**Mr. René Villemure:** Since you were the Clerk of the Privy Council, and given the position you now hold, I would like you to confirm something for me: do you think a situation can be both unethical and legal?

**Mr. Michael Wernick:** The Parliament of Canada created several pieces of legislation. As I said, some legislation governs ethics and conflicts of interest. For instance, there's the famous Public Servants Disclosure Protection Act and the Lobbying Act, to name a few. Other legislation provides for offences arising from unethical behaviour, but those offences do not necessarily fall under criminal law.

**Mr. René Villemure:** I see.

It is therefore possible to breach the code of ethics without necessarily violating the Criminal Code, right?

**Mr. Michael Wernick:** That was the Commissioner's conclusion.

**Mr. René Villemure:** That's perfect. Thank you very much.

Tell me about cabinet confidence. Is it well defined? The RCMP Commissioner told us it depended somewhat on the person interpreting cabinet confidence. We asked Mr. Pincince the same question and, in some cases, there was more access to information, whereas in others there was less access. There does not seem to be a solid, bulletproof definition. Could you tell us a bit more about that, please?

• (1120)

**Mr. Michael Wernick:** I did not understand your question. What subject are you asking about?

**Mr. René Villemure:** Could you describe the parameters of cabinet confidence to us, because during their testimony, the RCMP Commissioner and Mr. Pincince told us that it was not always a yes or no question. In other words, some areas were unclear. In your opinion, where does cabinet confidence start, and where does it end?

**Mr. Michael Wernick:** You're asking me a broad question on a complex subject.

In general, it is very important for the governance of this country, meaning the federal government's model and that of the provinces, to ensure the confidentiality of discussions, of conversations, in the cabinet meeting room, whether they occur in person or in hybrid format. Several decisions by the Supreme Court of Canada recognize this basic principle.

The role of the Clerk of the Privy Council is long-standing. It has existed for 800 years. The exact role is to be the guardian of discussions, documents and processes of the Council of Ministers. He or she is the Secretary to the Cabinet and the Clerk of the Privy Council. One of the Clerk's responsibilities, among several, is to keep documents in-house and protect the confidentiality of Cabinet conversations and, correspondingly, the Privy Council's confidence. The Clerk is the guardian of the Cabinet's documents. I exercised some discretion in granting access to documents or discussions to the courts and the Commissioner, among others.

**Mr. René Villemure:** During your mandate as Clerk, was cabinet confidence very well defined, or did it tend to be assessed on a case-by-case basis?

**Mr. Michael Wernick:** Are you referring to disclosure and redaction of documents?

**Mr. René Villemure:** Yes.

**Mr. Michael Wernick:** It was assessed case by case.

**Mr. René Villemure:** It was therefore possible to disclose information more broadly on certain subjects or, on the contrary, to decide that relevant information fell directly under cabinet confidence, right?

**Mr. Michael Wernick:** Yes. In *R. v. Norman*, I gave the judge full access to the documents, because a court and a judge oversaw the process.

In other cases, it is possible to disclose part of the documents by redacting certain passages, meaning by not disclosing names or certain elements...

**Mr. René Villemure:** Excuse me for interrupting you, but my speaking time is limited.

Why, in this case, was no information disclosed?

**Mr. Michael Wernick:** I am not the one who made that decision. It was my successor, after I left.

**Mr. René Villemure:** I see.

Thank you very much, Mr. Wernick.

**The Chair:** Thank you, Mr. Villemure.

[English]

Mr. Green, you have six minutes. Go ahead, please.

**Mr. Matthew Green (Hamilton Centre, NDP):** Thank you very much.

On the topic of cabinet confidence, you'd mentioned that it's a long-standing convention. Is that correct in how you framed it?

**Mr. Michael Wernick:** It's about eight centuries' worth, yes.

**Mr. Matthew Green:** How does a convention compare with the laws and principles of parliamentary privilege as it relates to our ability to send for documents and evidence?

**Mr. Michael Wernick:** There's a role for the clerk, which is defined in the Canada Evidence Act, and there are often disputes between Parliament and the executive about the release of documents.

You may recall issues around Afghan detainees years ago, and so on, so it's always a case by case. It's not an absolute principle. You do not have the right to ask for my medical records or my tax returns and so on.

**Mr. Matthew Green:** To be clear, sir, as it relates to a convention—

**Mr. Michael Wernick:** Yes.

**Mr. Matthew Green:** —as I'm to understand, and forgive me for having notes to better refresh my memory or cite the actual laws, but when we were constituted we carried with us the Westminster system from the U.K. and the supremacy of parliamentary privilege supersedes conventions. Conventions are agreements among parliamentarians, but parliamentary privilege is actually supreme when it comes to the conventions of our abilities in our Standing Orders as it relates to standing committees to send for documents, evidence and witnesses.

**Mr. Michael Wernick:** No, that's your interpretation, and I know it's the interpretation of the law clerks of the House. It's not an interpretation I agree with or that the courts have always agreed with.

**Mr. Matthew Green:** Then who has primacy over the House of Commons? Is it the courts and the clerk, or the members of Parliament?

• (1125)

**Mr. Michael Wernick:** It's not a question of primacy of one or the other. We have a legislative branch, an executive branch and a judiciary, and there's tension among the three all the time.

**Mr. Matthew Green:** Then within that, in their appearance before the committee, the RCMP commissioner noted about cabinet confidences that cabinet confidence is there for a reason. I think the interpretation of cabinet confidence, as we discussed earlier, sometimes differs from one person to another. You just mentioned that you think that's my interpretation, that you have a different one, and the Supreme Court says that cabinet confidentiality is protected as a matter of constitutional convention, which is what you just referenced, or the rules of behaviour established by the government institutions that are not enforced by the courts, but are considered binding by those who operate the Constitution.

The people who operate the Constitution are the members of Parliament.

**Mr. Michael Wernick:** And the police, and the prosecutors, and the executive part of government. This is a principle that's binding on all branches of government.

**Mr. Matthew Green:** Do you think cabinet confidentiality should be further waived in the context of investigations conducted by the RCMP, or should this notion of client-solicitor privilege, where the government is both the client and the solicitor, provide them a shield from any kind of oversight for criminal accountability?

**Mr. Michael Wernick:** It's never that black or white. I think the onus should be to disclose as much as possible to formal legal processes like the police and the courts, but there may always be cases where redaction is appropriate.

We're having a discussion now about the divulgence of documents involving Chinese intelligence activities within Canada. It would be a very bad idea to simply turn over all the documentation without redaction.

**Mr. Matthew Green:** Who decides what's redacted?

**Mr. Michael Wernick:** The clerk has a role in deciding what cabinet confidences are released, on a case-by-case basis.

**Mr. Matthew Green:** Who else has roles?

**Mr. Michael Wernick:** Legal advice to the clerk.

**Mr. Matthew Green:** Does the cabinet have a role?

**Mr. Michael Wernick:** No, absolutely none.

**Mr. Matthew Green:** Does the Prime Minister?

**Mr. Michael Wernick:** No.

**Mr. Matthew Green:** In no cases or situations does the cabinet or Prime Minister decide what is and isn't redacted?

**Mr. Michael Wernick:** If you go back to a previous government, then the previous prime ministers have a role in whether to release documents of their ministry. Basically, you sequester the papers of each government when it leaves.

I went back to Prime Minister Harper a couple of times to get his consent to release documents related to the Norman affair because

it had happened while he was in office, so he gave that agreement and we turned over the documents to the clerk.

**Mr. Matthew Green:** Would that also carry by the same logic that Prime Minister Trudeau could waive cabinet confidence at any time, despite recommendations by the clerk and by legal advisers?

**Mr. Michael Wernick:** It's a discussion between the clerk and the Prime Minister. Ultimately, it is the clerk's job.

**Mr. Matthew Green:** To make the final decision?

**Mr. Michael Wernick:** Yes.

**Mr. Matthew Green:** Is there ever a situation where staff well below the clerk can make decisions on what redactions are done?

**Mr. Michael Wernick:** There would be advice from lawyers and from people like the security intelligence people as to whether redactions were appropriate or not. I always took the view to disclose as much as possible, but you wouldn't want to disclose business confidences or intelligence services or personal names and so on.

It's very similar to the process on access to information.

**Mr. Matthew Green:** In your experience, in your years, just to recap.... Forgive me for not being as familiar with this, as your LinkedIn profile might indicate, but how many years were you in government?

**Mr. Michael Wernick:** I was in government for 38 years, 17 years as a deputy minister.

**Mr. Matthew Green:** In that time, did you see a trend towards more cabinet confidences or fewer cabinet confidences? Is this a government that was transparent by default, or did it tend to have more instances where it declared a greater volume of work to be in cabinet confidence?

**Mr. Michael Wernick:** I'm not a historian. However, I think the trend line was to be for more disclosure. There was a running discussion between the Auditor General of Canada and the executive about the disclosure of documents related to the budget. I reached an agreement with the Auditor General at the time, Michael Ferguson, and I increased the disclosure of analysis documents related to the budget to the Auditor General.

**Mr. Matthew Green:** I believe that's my time.

**The Chair:** That is, Mr. Green. Thank you.

That completes our first round of questioning.

[Translation]

We are now moving on to the second round.

Mr. Berthold, you have the floor for five minutes.

**Mr. Luc Berthold (Mégantic—L'Érable, CPC):** Thank you.

Hello, Mr. Wernick.

When did you find out that SNC-Lavalin was being investigated for illegal lobbying?

• (1130)

**Mr. Michael Wernick:** I don't remember.

**Mr. Luc Berthold:** When was your interview with the RCMP on that matter?

**Mr. Michael Wernick:** During the summer, after my departure at Easter. I think the report was tabled during the month of August. The meeting probably occurred during the month of July, but I am not sure of the date.

**Mr. Luc Berthold:** After your interview with investigators, who did you think was targeted by the RCMP investigation?

**Mr. Michael Wernick:** I don't know. They asked me a series of questions about the timing of SNC-Lavalin's lobbying and political activities, as well as its representatives.

**Mr. Luc Berthold:** Did they ask questions about any ministers in particular?

**Mr. Michael Wernick:** No. During my interview with the RCMP, the issue was not ministers' behaviour, but that of SNC-Lavalin.

**Mr. Luc Berthold:** It remains that, in an illegal lobbying case, people subject to the Conflict of Interest Act are the usual targets.

During your last appearance before the Standing Committee on Justice and Human Rights, in March 2019, the Conflict of Interest and Ethics Commissioner had not yet completed the investigation. He later recognized that the Prime Minister was guilty of violating the Act, even though he was denied access to several Cabinet documents during his investigation. He concluded the following:

[351] [...] The actions that sought to further these interests were improper since the actions were contrary to the constitutional principles of prosecutorial independence and the rule of law.

[352] [...] Therefore, I find that Mr. Trudeau contravened section 9 of the Act.

In March 2019, at the Standing Committee on Justice and Human Rights, you said the following about Minister Wilson-Raybould:

So I repeat my contention that the Minister experienced lawful advocacy to consider doing something lawful in the public interest.

Do you stand by that statement, now that you know the Prime Minister was found guilty of violating the Act?

**Mr. Michael Wernick:** Excuse me, but I missed the question.

If I understood correctly, the Commissioner's conclusion was that there had been a violation of a provision of the Act...

**Mr. Luc Berthold:** It was section 9, Mr. Wernick. During your testimony, you clearly stated that the minister experienced lawful advocacy. However, the Conflict of Interest and Ethics Commissioner concluded the opposite.

The purpose of this study is to shed light on the RCMP's decision to prematurely end its criminal investigation of the Prime Minister. The Conflict of Interest and Ethics Commissioner question do. Regarding the SNC-Lavalin investigation, you said earlier that the RCMP did not question you about the Prime Minister's criminal involvement in the matter.

During your testimony, you said the following:

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.

Since the RCMP decided to end its investigation, I would like you to tell us which points you were unable to reveal at the time.

**Mr. Michael Wernick:** I have no idea. It was five years ago.

I would add, however, that during the month of August 2019, Ms. Wilson-Raybould clearly stated before the committee and during an interview with the media that she did not think it was criminal activity.

**Mr. Luc Berthold:** Mr. Wernick, you have a choice to make. The public is getting impatient. You have the opportunity to shed light on the potentially criminal involvement of the Prime Minister or to keep that information to yourself. You can say that you do not remember the facts. That is entirely your choice. Your entire career will be judged based on the answers you give to people.

Why did you try to influence the attorney general to intervene so as to avoid criminal proceedings against SNC-Lavalin?

**Mr. Michael Wernick:** I have nothing to add to what I already said to the Standing Committee on Justice five years ago and what I said to the Commissioner during the summer of 2019.

**Mr. Luc Berthold:** Do you think my question is threatening?

**The Chair:** Is that a question for Mr. Wernick, Mr. Berthold?

**Mr. Luc Berthold:** Yes.

**The Chair:** Repeat the question, please.

**Mr. Luc Berthold:** Mr. Wernick, did you find the question I asked you threatening, when I said that your answers were going to determine how your entire career would be judged?

**Mr. Michael Wernick:** No, not at all. It's not up to me to judge it.

**Mr. Luc Berthold:** When the Prime Minister sends the Clerk of the Privy Council, his most highly ranked official, to question a minister and have a conversation with her, she knows that the Prime Minister is the one who has the right of life and death over the future of her career. Do you think it was normal for Minister Jody Wilson-Raybould to feel threatened by the way you alluded to the Prime Minister during your conversation with her? There was a lot of subtext.

● (1135)

**The Chair:** Give a very brief answer, please.

**Mr. Michael Wernick:** The Commissioner's report provides a full interpretation of it all.

**The Chair:** Thank you, Mr. Berthold.

[English]

**Mr. Anthony Housefather (Mount Royal, Lib.):** Mr. Chair, I just want to personally note that I thought you sent me a very kind note yesterday and I just want to thank you for that.

**The Chair:** In the spirit of former prime minister Mulroney, yes, I did send that note.

**Mr. Anthony Housefather:** Mr. Wernick, thank you for being here. I think it is déjà vu for both of us to have Mr. Cooper, Mr. Barrett and me ask you questions. I really appreciate your being here.

Can I start by asking if you were involved in any way in the decision of the RCMP to close the investigation?

**Mr. Michael Wernick:** I've had no contact ever with the RCMP about any investigation or operations.

**Mr. Anthony Housefather:** Mr. Wernick, were you involved in any way in the interactions between the RCMP and the Privy Council Office related to the request by the RCMP to waive cabinet confidences, or, as you had said you left in April 2019, were you no longer there?

**Mr. Michael Wernick:** Before I left, I recused myself from any discussions and decisions about the divulgation or keeping of documents. As soon as I was invited to the justice committee I ordered that a hold on retention be put on all documents in the possession of the Privy Council Office and I turned over all of those issues about redaction and divulgation to my deputy clerk.

Then, of course, I left in mid-April and after that it would have been a matter for my successor.

**Mr. Anthony Housefather:** All right. As I understand, then, in terms of interactions with the RCMP about cabinet confidences, you had nothing whatsoever to do with that. Is that right?

**Mr. Michael Wernick:** I had no conversations with the RCMP about any aspect of the SNC-Lavalin matter, except, as I said, interviewing about SNC's lobbying activities.

**Mr. Anthony Housefather:** I understand.

Basically, you really have nothing much to say about the RCMP's investigation because, of course, you would have no personal knowledge of it. I also understand that the committee, the clerk and the chair properly invited you, but I also don't quite understand why you're here.

However, while you are here, can I ask another question that I've been curious about? I believe this was before you came to the justice committee, so you would perhaps have been involved. When the Privy Council Office originally determined whether or not there would be a waiver of cabinet confidence to permit Ms. Wilson-Raybould to testify, was that the largest waiver of cabinet confidence ever when she was permitted to divulge matters to the justice committee? Would others be within a certain scope?

**Mr. Michael Wernick:** I'm not sure I can answer that authoritatively. There were two large ones that I was aware of when I was clerk. One was to the Norman trial and the other was the waiver for the Attorney General.

**Mr. Anthony Housefather:** I know Mr. Green got into this, but what would be the considerations you would give in terms of determining, at the Privy Council Office, whether or not to grant such a waiver? How would you balance public interest versus confidentiality, etc.?

**Mr. Michael Wernick:** There is a public interest in the confidentiality of cabinet discussions. It's how we make cabinet work, so there is a large public interest in maintaining the convention and the practice of cabinet confidentiality. There may be a specific public interest in an inquiry, a trial, criminal proceedings or something like that, so that's the judgment that has to be exercised about weighing one public interest against another public interest.

**Mr. Anthony Housefather:** Would it be different when you have a request from a police force doing an investigation versus some other type of request such as a request from a committee of Parliament or a request from somebody else?

**Mr. Michael Wernick:** I think there would be a little bit of judgment in terms of whether the information would be kept in confidence by the person receiving it and what they would do with it. There's a very structured process by a commission of inquiry like the one that's under way now. There's a very structured process if you give it to the courts, and the courts operate under various laws and practices, and there are practices by parliamentary committees. Then there's just public disclosure, putting stuff out on the Internet.

Yes, it would certainly have some bearing on what would happen to the documents if they were used. I always took the principle to disclose as much as possible if it were for part of the justice system, courts, officers of Parliament, tribunals, investigations, commissions of inquiry and so on.

• (1140)

**Mr. Anthony Housefather:** I appreciate that.

Am I done, Mr. Chair?

**The Chair:** You have three seconds, Mr. Housefather.

**Mr. Anthony Housefather:** Thank you, Mr. Chair. I cede it, so Mr. Cooper or whoever's next gets it.

[*Translation*]

I could give the three seconds left of my time to Mr. Villemure.

**The Chair:** I gave a little more time to Mr. Berthold, but it was only about 20 seconds.

Mr. Villemure, you have the floor for two and a half minutes.

**Mr. René Villemure:** Thank you, Mr. Chair.

Mr. Wernick, I don't mean to be disrespectful, but I want to remind you that constantly referring to a five-year-old report by the justice committee, providing evasive answers, or saying that you don't remember, is not sufficient for this committee.

I'd like to ask you the following question. The conversation between you and Ms. Wilson-Raybould was recorded and transcribed, and I will now loosely translate some of what you said. You specifically said that you believed the Prime Minister was not asking her to do anything appropriate or interfere. He simply asked her to use all the tools she lawfully had at her disposal. That is what you said and I'd like your comments on it.

**Mr. Michael Wernick:** You have the Commissioner's interpretation of it all.

**Mr. René Villemure:** Yes, but I would like your answer.

**Mr. Michael Wernick:** I have nothing to add.

**Mr. René Villemure:** That is not acceptable.

I have no further questions, Mr. Chair.

**The Chair:** Wait one second, Mr. Villemure.

[*English*]

Mr. Wernick, you're an experienced government employee. You understand that your appearance before committee is protected by parliamentary privilege. Members have privilege to ask questions, and they expect that they're going to be directly answered. My expectation as the chair of this committee, Mr. Wernick, is that you're going to answer those questions.

[*Translation*]

Mr. Villemure, you have the floor for one minute and 45 seconds.

**Mr. René Villemure:** Thank you, Mr. Chair.

Mr. Wernick, as I said earlier, you told Ms. Wilson-Raybould that the Prime Minister was not asking her to do anything illegal, just to use all the tools at her disposal. When we read the transcript of the conversation, we see that there is some hesitation or, at the very least, something you left unspoken. I would like your comments on that conversation and what was left unspoken.

**Mr. Michael Wernick:** What aspect should I comment on? What is the question?

**Mr. René Villemure:** You said you did not believe the Prime Minister asked her to do anything appropriate or to interfere; he was just asking her to use all the tools she lawfully had at her disposal. You let it be understood that “something” had to be done. What did you mean by “something”?

**Mr. Michael Wernick:** I don't know.

**Mr. René Villemure:** I have no further questions, Mr. Chair.

**The Chair:** Thank you, Mr. Villemure.

[*English*]

We're going now to Mr. Green for two and a half minutes.

**Mr. Matthew Green:** Thank you very much.

I'm just going to pick up on that.

I wasn't around, obviously, when this happened, and certainly the Honourable Murray Rankin, Charlie and others from my caucus likely would have dealt with this.

Help me get a sense of when the telephone conversation happens between you and the former attorney general and you say that the prime minister's in a kind of a mood, and there's an assertion that he wanted her to shelve the prosecution, and it is said, “He's in a pretty firm frame of mind about this, so I'm a bit worried.”

What would you be worried about? This is your language from the recorded conversation.

**Mr. Michael Wernick:** Yes, you're asking me to dredge up memories from five years ago, and I gave my testimony on all of this to the justice committee and to the commissioner. To the best

of my recollection, this was an issue about the minister's role as a member of cabinet and the cabinet as a team.

**Mr. Michael Barrett:** I have a point of order, Chair.

**The Chair:** Hang on a second, Mr. Wernick.

Mr. Barrett, go ahead on your point of order, please.

**Mr. Michael Barrett:** Chair, you intervened in the previous round with very clear expectations about what's supposed to happen.

Mr. Green's question to the witness was very straightforward and the witness is now saying that he gave testimony about something that hadn't happened at the time. When he came before the justice committee, the recording that Mr. Green is referencing hadn't yet been released. Mr. Wernick didn't know he'd been caught.

The expectation of the committee is, of course, as you said, that the witness is going to answer the questions and not simply say, “I've answered that question before.”

However, Chair, for your consideration, of course committee can formally order that the witness answer the questions. If he refuses, then it is a violation of this committee's privilege, which would need to be reported to the House.

I don't think it needs to come to that, but I just think that perhaps one more urging and an opportunity for Mr. Green to restate his question so that we can get an actual answer from the witness....

● (1145)

**The Chair:** Thank you for that intervention, Mr. Barrett.

That is a valid point of order.

Mr. Wernick, I am now starting to get into one of those moods that you spoke of with the Prime Minister. I'm asking you to answer the questions directly.

Mr. Green, I'm not going to restart your clock. I'm going to ask you to restate your question and the expectation of this committee, Mr. Wernick—because they do have privilege to ask these questions—is for you to answer them.

Mr. Green, go ahead. I'm going to give you as much time as you need.

**Mr. Matthew Green:** Thank you very much.

This was referring to the December 19, 2018 conversation that had been recorded when you told Ms. Wilson-Raybould that Mr. Trudeau was in a kind of a mood and, in her words, wanted to shelve the prosecution of the Montreal-based engineering firm.

These are your words as recorded and distributed: “He's in a pretty firm frame of mind about this though, so I'm a bit worried”. You then went on to say, “I am worried about a collision then because he's pretty firm about this. I just saw him a few hours ago and this is really important to him”.

I raise that, sir, because in the context of previous testimony that you just provided this committee, you talked about feeling intimidated—maybe not you feeling intimidated, but about where that line could be crossed.

However, as was mentioned earlier, when you are sent as a messenger from the Prime Minister's Office and talk about a mood and about a collision course....

What did you mean by that?

**Mr. Michael Wernick:** First of all, I'm trying my best to respond to the questions and reconstruct a sequence of events.

I apologize to the members if I have events of five years out of sequence and if my testimony, which happened twice, was before or after other events. I don't have the chronology clear in my head. If I mixed it up, I apologize to the committee.

You're talking, I presume, about my first appearance at the justice committee, or are you talking about the...?

**Mr. Matthew Green:** I'm talking about the recording that came out.

I would say that it's a lot easier for you to operate in this committee if you just answer the questions. Then you don't have to think about what you did and you don't have to think about timelines.

Just answering—

**Mr. Michael Wernick:** Actually, the timelines matter to the answers, so yes, I do want to know the sequence of events.

**Mr. Matthew Green:** It was December 19, 2018.

**Mr. Michael Wernick:** Right, and that conversation was available to the commissioner, so I'm not sure what your question is still. I'm trying to answer it, but what is your question?

**Mr. Matthew Green:** You said the Prime Minister was in kind of a mood and that the Attorney General was on a collision course.

I'm going to put to you, sir, that it sounds like a threat. When you say that you arrived from meeting him a few hours ago and you came to her with that message, that sounds like a threat.

**Mr. Michael Wernick:** It certainly was not intended as a threat and it's not the interpretation of the commissioner.

**Mr. Matthew Green:** Those are my questions.

**The Chair:** Thank you, Mr. Green.

Mr. Cooper, you have five minutes.

Go ahead.

**Mr. Michael Cooper (St. Albert—Edmonton, CPC):** Thank you, Mr. Chair.

Thank you, Mr. Wernick.

Two days before Jody Wilson-Raybould testified before the justice committee, you drafted Order in Council 2019-0105, which partially waived cabinet confidentiality.

Is that correct?

**Mr. Michael Wernick:** No. I had left all the issues about cabinet confidences and divulgation to the deputy clerk, so she would have supervised the drafting of it. It's possible that I signed it off as the clerk. I don't remember.

**Mr. Michael Cooper:** You had no involvement whatsoever. Did you have no conversations with the Prime Minister? Did the deputy clerk have no conversations with the Prime Minister?

**Mr. Michael Wernick:** As soon as I was invited to the justice committee, I stepped back and recused myself from all the issues around document production.

**Mr. Michael Cooper:** You recused yourself entirely. Okay.

You wouldn't be able to comment, for example, on why the order in council was drafted in a way that prevented Jody Wilson-Raybould from providing her full version of events.

**Mr. Michael Wernick:** I did not participate in the drafting, but I'm sure we would have tried to strike some sort of balance between the confidentiality of those cabinet meetings and the specifics that Ms. Wilson-Raybould was going to be asked to testify about. I didn't participate in the drafting of that order.

**Mr. Michael Cooper:** Is it accurate to say that you recused yourself entirely from the drafting of that order in council at any discussions that may have taken place about expanding the scope of that?

• (1150)

**Ms. Pam Damoff:** I have a point of order, Chair. I understand that we are meeting today to talk about an RCMP investigation. That was what we—

**Mr. Michael Cooper:** It gets to the very heart of that issue.

**The Chair:** Hang on. I want to....

Go ahead.

**Ms. Pam Damoff:** I have the floor, Mr. Cooper.

Rehashing something that happened five years ago, which has been subject to numerous meetings of a whole bunch of different committees in Parliament.... We're talking about the RCMP. None of these questions have to do with an RCMP investigation.

My understanding, Mr. Chair, is you said he was here to talk about what the motion was in regard to. Maybe we could just stick to that.

**Mr. Michael Barrett:** You were asking about my Twitter in the last round.

**The Chair:** Michael, just hang on a second.

Thank you for that, Ms. Damoff. I appreciate your words.

Mr. Cooper, you have the floor and you can continue on this. I did stop your clock. I expect that you're going to come back....

**Mr. Michael Cooper:** I expect Mr. Wernick to answer the question that I asked.

**The Chair:** Go ahead, please.

**Mr. Michael Wernick:** I'm sorry, but I've lost the thread. What was the question?

**Mr. Michael Cooper:** Stop my clock.

**The Chair:** Go ahead, Mr. Cooper.

**Mr. Michael Cooper:** I asked you, Mr. Wernick—before I was interrupted—to clarify that, from the time that you had appeared at the justice committee, you entirely removed yourself from discussions concerning the scope of the order in council and any further discussions or consideration of expanding the scope of that order in council.

**Mr. Michael Wernick:** That's correct, and everybody concerned was interviewed by the commissioner in the months that followed.

**Mr. Michael Cooper:** To Ms. Damoff's point, it is relevant to the issue of an RCMP investigation because we heard testimony from the RCMP that the strongest theory towards establishing obstruction of justice was whether the Prime Minister removed Jody Wilson-Raybould to get an Attorney General who would make a decision the Prime Minister wanted, and that the RCMP was impeded in its investigation to determine that as a result of the parameters of that order in council.

Mr. Wernick, when you appeared at the justice committee back in 2019, you characterized your interactions, and those of the Prime Minister and his officials, with the Minister of Justice Jody Wilson-Raybould as so-called “lawful advocacy” to appropriately raise “public interest considerations” to the minister, particularly that SNC would move its headquarters from Montreal, resulting in the loss of at least 9,000 jobs. I'm going to ask you, what evidence did the government have that SNC-Lavalin would move its headquarters from Montreal if a deferred prosecution agreement was not entered into?

**Mr. Michael Wernick:** I think we went over this at the justice committee. There were representations, public statements and market disclosures made by SNC.

**Mr. Michael Cooper:** Mr. Wernick, you must have known that SNC had a financing agreement with the Caisse de dépôt that required it to maintain its headquarters in Montreal for another six years until 2024. It was public knowledge that SNC had entered a 20-year lease at its Montreal headquarters and had also announced major renovations to its headquarters in Montreal, worth millions. Two days before your infamous December 19, 2018, telephone call with Jody Wilson-Raybould, in which you specifically raised the issue of 9,000 jobs and SNC moving its headquarters, the CEO—

**Mr. George Chahal (Calgary Skyview, Lib.):** Chair, I have a point of order.

**The Chair:** Hang on, Mr. Cooper.

Go ahead with your point of order, Mr. Chahal. I just advise you that it's been the practice in this committee that I've given members their time to ask questions on a broad range of things in relation to this. If it's to object to the line of questioning from Mr. Cooper...

**Mr. George Chahal:** Mr. Chair, I haven't even made my point of order yet, so I'm not sure what you're objecting to.

**The Chair:** Go ahead. I'm not objecting to anything. I want to hear what you have to say.

**Mr. George Chahal:** Well, it does—

**Mr. Michael Cooper:** He's trying to disrupt my line of questioning—that's what he's doing.

**The Chair:** Just hang on, Mr. Cooper, please.

**Mr. George Chahal:** Mr. Cooper is interrupting my point of order, which I have not had the opportunity to make.

**The Chair:** Go ahead, Mr. Chahal.

**Mr. George Chahal:** Mr. Chair, I would like the opportunity to present my point of order. I ask Mr. Cooper about the relevance of his questioning, and—

**Mr. Michael Barrett:** The chair ruled on it.

**Mr. George Chahal:** —once again you have not let me finish, Mr. Barrett. You're not the chair.

**Mr. Michael Barrett:** The chair ruled on it.

**Mr. George Chahal:** Mr. Barrett, you're not the chair. If you'd let me finish—

**Mr. Michael Barrett:** He ruled on relevance.

**The Chair:** Mr. Chahal, I know which direction you're going on this.

**Mr. George Chahal:** Well, you do not, because I haven't finished my sentence.

**The Chair:** I do know which direction you're going on this.

**Mr. George Chahal:** All I would like to do—

**Mr. Michael Barrett:** Then challenge the chair.

**Mr. George Chahal:** —is say that the point of order—

**Mr. Michael Barrett:** He already ruled.

**Mr. George Chahal:** —is on the relevance of Mr. Cooper's questioning to do with the RCMP.

• (1155)

**Mr. Michael Cooper:** You're interrupting my line of questioning.

**The Chair:** Hang on. Hang on.

**Mr. Michael Barrett:** Chair, you've already ruled on this. You ruled on this already.

**The Chair:** Michael and Michael—

**Mr. George Chahal:** I presented my point of order.

**Mr. Michael Cooper:** This is typical Liberal obstruction. It's all part of a cover-up.

**The Chair:** Mr. Chahal, I want you to go through the chair on this, okay? Don't go through Mr. Cooper.

**Mr. George Chahal:** Thank you, Chair.

**The Chair:** You have a point of order that you're raising. State your point of order succinctly, please, and then we'll go from there.

**Mr. George Chahal:** If I'm allowed to do so, I will raise my point of order succinctly.

I'd like to know what the relevance of the questioning provided by Mr. Cooper is, because this has nothing to do with the RCMP.

**The Chair:** Mr. Chahal, I've been chairing this committee for 18 months now. In every circumstance when we've had discussions at this committee, I've given members broad latitude to discuss and ask questions that they feel are relevant to the situation, with the expectation that they're going to bring it back.

You're not issuing a point of order. Your point of order is actually very subjective.

Mr. Cooper, you have the floor. Go ahead, please. You have 53 seconds.

Thank you for your point of order, Mr. Chahal.

**Mr. Michael Cooper:** Thank you.

None other than two days before your infamous phone call with Jody Wilson-Raybould, in which you raised the issue of jobs and SNC moving, the CEO had publicly stated that SNC-Lavalin was committed to staying in Montreal.

Why did you tell Jody Wilson-Raybould that jobs were on the line and there was a risk of SNC moving its headquarters when you had to have known that this simply wasn't true?

**Mr. Michael Wernick:** That was my understanding at the time. The law that Parliament created in terms of deferred prosecution agreements—

**Mr. Michael Cooper:** How is it possible that this could have been your understanding at the time—

**Mr. Michael Wernick:** Will you let me finish, Mr. Cooper?

**Mr. Michael Cooper:** —in the face of everything I've laid out?

**The Chair:** Mr. Cooper, let him finish, please.

**Mr. Michael Wernick:** Will you let me finish?

**Mr. Michael Cooper:** Mr. Wernick—

**Mr. Michael Wernick:** You're badgering.

**Mr. Michael Cooper:** —your answer is simply—

**Mr. Michael Wernick:** You're badgering.

**Mr. George Chahal:** A point of order.

**The Chair:** Mr. Cooper—

**Mr. George Chahal:** A point of order.

**The Chair:** —thank you for your line of questioning. That concludes your time.

We'll now go to Mr. Bains for five minutes.

**Mr. George Chahal:** I do have a point of order.

**The Chair:** Go ahead with your point of order, Mr. Chahal.

**Mr. George Chahal:** Once again, I just want to acknowledge that the witness is here to answer the questions, not to be interrupted by the member asking the questions. If you ask a question, allow the witness to provide an answer.

I'd ask Mr. Cooper to apologize—

**The Chair:** Thank you, Mr. Chahal.

**Mr. George Chahal:** —for rudely interrupting the witness in the middle of his answer.

**The Chair:** I get the gist of what you're saying, Mr. Chahal.

We'll proceed with Mr. Bains now for five minutes.

Go ahead. Thank you.

**Mr. Parm Bains (Steveston—Richmond East, Lib.):** Thank you, Mr. Chair.

Thank you, Mr. Wernick, for joining us today.

Do you think cabinet confidentiality should be further waived in the context of investigations conducted by the RCMP?

**Mr. Michael Wernick:** Generally, there should be a maximum of disclosure, but it would be a case-by-case determination.

**Mr. Parm Bains:** Okay.

Would you agree that in this case, with waiving cabinet confidence in regard to the SNC-Lavalin situation, this represents one of the largest and most expansive waivers of cabinet confidences in Canada's history?

**Mr. Michael Wernick:** I don't know which documents were divulged, which were redacted and which were retained, so I don't really have a way of judging that against other production of document issues.

**Mr. Parm Bains:** You said that you've had a career of 38 years. Do you know how many times cabinet confidence has been waived in the past in the context of a potential criminal investigation?

**Mr. Michael Wernick:** I don't have a specific number on that. It usually would have been in the case of criminal investigations, commissions of inquiry, structured processes.

The one I'm most familiar with is the Admiral Norman trial. I authorized a very large disclosure of cabinet papers from the Harper and Trudeau governments to that trial.

**Mr. Parm Bains:** How large?

**Mr. Michael Wernick:** I don't remember. That was about eight years ago.

**Mr. Parm Bains:** Okay.

During your testimony at the justice committee in 2019, you stated, "the independence of the investigative and prosecutorial function has never been compromised". Do you still agree with that statement?

**Mr. Michael Wernick:** Actually, that's a statement by the director of public prosecutions.

**Mr. Parm Bains:** Okay.

The Ethics Commissioner interviewed a long list of staff officials. We heard from the RCMP commissioner that the Ethics Commissioner has more access than even the RCMP. If there is a criminal wrongdoing or a wrongdoing of any kind, then the commissioner must stop and hand over findings to the RCMP.

Is this your understanding of the rules around disclosure?

• (1200)

**Mr. Michael Wernick:** I don't have anything to rely on right now except my memory, but, yes, that would be my understanding.

**Mr. Parm Bains:** Are you aware of the number of people who were interviewed?

**Mr. Michael Wernick:** No. I've never had a conversation with the RCMP about any investigation or any operation, ever.

**Mr. Parm Bains:** How about the Ethics Commissioner?

**Mr. Michael Wernick:** I was interviewed by the Ethics Commissioner in the summer of 2019.

**Mr. Parm Bains:** How much time do I have left?

**The Chair:** You have two minutes.

**Mr. Parm Bains:** In his appearance before the committee, the RCMP commissioner, Mike Duheme noted the following about cabinet confidences:

Cabinet confidence is there for a reason. I think the interpretation of cabinet confidence, which we had a discussion on earlier, sometimes differs from one person to another.

Recently, the Supreme Court of Canada stated:

Beyond legislation, Cabinet confidentiality is protected as a matter of constitutional convention, or the rules of behavior established by government institutions that are not enforced by the courts, but are considered binding by those who operate the Constitution

What is your interpretation of cabinet confidentiality, and why is it important?

**Mr. Michael Wernick:** The Westminster system of cabinet government relies on the confidentiality of cabinet discussions, such that ministers can speak freely among their colleagues, and then they're bound by the decision that's called and bound by cabinet solidarity as a consequence of that. If you were operating in the open, like a city council, then people would behave like a city council and there would be far less candour within the cabinet room. That's the software on which Canada's federal and provincial governments run. It's been acknowledged as such by the Supreme Court.

That creates tensions between the different branches of government, and the courts will decide on that. The general framework has been set by the Supreme Court in more than one decision, and it's been set by the Federal Court in some specific cases in terms of arguments about specific documents and specific redactions.

**Mr. Parm Bains:** That's all I have to say, thank you.

**The Chair:** Thank you, Mr. Bains.

That concludes our first hour of questioning. We're now going to proceed to the second hour, which means we're going to reset the clock.

This is a reminder to members that if there is an intervention, it needs to be made through the chair. I don't want to have banter back and forth between members. I'm also going to remind members as well that relevance is subjective. I believe that members have their time to ask their questions. I also expect, as I said earlier, that members are going to come back to the point. If you're interrupting because you don't like something you're hearing, that's too bad.

Mr. Brock, you have six minutes. Go ahead.

**Mr. Larry Brock (Brantford—Brant, CPC):** Thank you, Chair.

Mr. Wernick, the focus of my time with you will be on the concept of a two-tier level of justice. However, before I get to that, with today being March 19, when did you know that you were going to be invited to this committee?

**Mr. Michael Wernick:** I don't know. It was about a week ago, I think.

**Mr. Larry Brock:** It was about a week ago?

**Mr. Michael Wernick:** I'll have to check my emails. It was something like that, yes.

**Mr. Larry Brock:** Okay. Then, in the past week or so, what did you do to prepare for this meeting?

**Mr. Michael Wernick:** It was just me and Google search.

**Mr. Larry Brock:** I'm sorry, what?

**Mr. Michael Wernick:** It was just me and my Google search. I haven't spoken to anybody about this appearance.

**Mr. Larry Brock:** No, that wasn't the question. How did you prepare? Did you review, for instance, your two transcripts of previous testimony at the justice committee?

**Mr. Michael Wernick:** I read the commissioner's report. I downloaded and read the two committee appearances, and I did a search for news articles.

**Mr. Larry Brock:** Okay, that's a good start.

Now, we know that the ultimate conclusion of the Dion report is that the Prime Minister directly, and through senior officials, used various means to exert influence over Jody Wilson-Raybould:

The authority of the Prime Minister and his office was used to circumvent, undermine and ultimately to attempt to discredit the decision of the director of public prosecutions as well as the authority of Ms. Wilson-Raybould as the Crown's chief law officer.

I'm going to quote from her book, *Indian in the Cabinet*. She says:

These efforts to pressure me—either directly or through Jessica—continued. Eventually, eleven officials from the PMO, the Privy Council Office, and the Office of the Minister of Finance made attempts. Over that four-month period there were approximately ten phone calls and ten meetings about SCN-Lavalin, culminating in a phone call I had with the clerk of the Privy Council on December 19, 2018.

Now, you didn't know that you were being audiotaped, did you?

• (1205)

**Mr. Michael Wernick:** No.

**Mr. Larry Brock:** I did review, with some great scrutiny, your previous transcripts and your evidence at the justice committee. You didn't take contemporaneous notes, unlike Jody Wilson-Raybould, of all your interactions with her, did you?

**Mr. Michael Wernick:** No.

**Mr. Larry Brock:** There was nothing you could use to refresh your memory in advance of your appearance at the justice committee five years ago.

**Mr. Michael Wernick:** Do you mean between December and my appearance in February?

**Mr. Larry Brock:** Yes.

**Mr. Michael Wernick:** No.

**Mr. Larry Brock:** Okay.

Now, in your opening statements, and I don't know if it was in your first or second testimony, you talked about a two-tier level of justice, but only in relation to the fact that SNC-Lavalin eventually did not receive the DPA and, ultimately, as we know, pled guilty to one count of fraud.

That's not the focus of the question. The focus is that, in my view, there is a perception among Canadians and numerous members—me included—that there was a political non-appetite by the RCMP to conduct a thorough investigation.

Prior to the commissioner's attendance not too long ago, they had close to four years of investigating this particular matter. Unlike the former Ethics Commissioner, who essentially interviewed 14 witnesses—you included—the RCMP interviewed four.

Now, I know you've already opined that you're not going to talk about police operations, but given that discrepancy, do you think there is a disconnect between in terms of how the Ethics Commissioner approached this investigation versus the RCMP?

**Mr. Michael Wernick:** I think the Ethics Commissioner's mandate, given by Parliament, is about violations of the Conflict of Interest Act, and the RCMP would be looking at a threshold of potential violations of criminal law, so they would be looking at it with a different lens.

It is entirely up to the RCMP whether they pursue preliminary investigations, fact-finding, final investigations or move on to laying of charges. That's their job.

**Mr. Larry Brock:** However, the evidence is still the same. The RCMP confirmed that they relied upon the evidence received from the Ethics Commissioner. He was ultimately stymied and was upset that he was unable to complete a fulsome report due to the actions of the Prime Minister, which is exactly the same rationale the RCMP had used in closing their investigation, because they could not obtain further information from the Prime Minister.

Were you aware of that?

**Mr. Michael Wernick:** I'm aware that that's what the commissioner wrote in his report—yes, of course.

**Mr. Larry Brock:** There are two elements to any criminal charge. The RCMP was investigating obstruction of justice and intimidation of a justice participant.

There are two elements: There has to be an act and there has to be a mental element—an intention to complete the act—known as *actus reus* and *mens rea*. I don't want to get into legal complexities, but that is the ultimate test.

Did you review the testimony of the RCMP commissioner from a few weeks ago?

**Mr. Michael Wernick:** No.

**Mr. Larry Brock:** All right.

Now, I'm going back to some of the evidence that—

**The Chair:** I'm sorry, Mr. Brock. You have 10 seconds left.

**Mr. Larry Brock:** I have no time. Thank you.

**The Chair:** Thank you.

Mr. Sorbara, you have six minutes.

**Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.):** Thank you, Mr. Chair.

It's great to be on this committee today. Happy Tuesday to everyone.

Mr. Wernick, thank you for being here with us today. When did you leave government, please?

**Mr. Michael Wernick:** I left on Easter weekend of 2019.

**Mr. Francesco Sorbara:** I do want to get this on the record, and you may have stated this earlier. How many years did you serve in the public service and in what capacity?

**Mr. Michael Wernick:** I served for 38 years in the public service—17 years as a deputy minister and three years as clerk.

**Mr. Francesco Sorbara:** I take it that over that 38-year period, you served under administrations or governments of both Liberal and Conservative stripe.

• (1210)

**Mr. Michael Wernick:** Indeed. I'm very sad to see Mr. Mulroney's death.

**Mr. Francesco Sorbara:** Yes. I'll state, and hopefully state it later this evening, that Mr. Mulroney was a transformative prime minister for Canada and for the time, as I will reflect on his many achievements we have heard about and have been reminded of in the last few days.

Mr. Wernick, I can only say, regarding your responsibility level, that what you as a former Clerk of the Privy Council and secretary to the cabinet carried on your shoulders was, in fact, a very high bar.

**Mr. Michael Wernick:** Thank you, sir.

**Mr. Francesco Sorbara:** In what capacity are you operating today? Are you just fully retired or are you still contributing to Canada and to our society?

**Mr. Michael Wernick:** I'm a part-time university professor. I've been endowed a chair, and I dabble in public administration, governance, public sector productivity management issues. My output is on the LinkedIn site that I maintain.

**Mr. Francesco Sorbara:** Yes, of course, the Jarislowsky chair, the endowed chair. As anyone knows in the investment world, what Jarislowsky, the individual, has done for Canada is actually quite exemplary.

Going to—

**Mr. Michael Wernick:** I hasten to add that he's still alive.

**Mr. Francesco Sorbara:** Yes, very much so.

Going to the question at hand, we've had a lot of questions. In fact, I think that today we had the same questions from some of my colleagues on the opposite side: The questions they asked today were the same ones they asked in 2019 because there really isn't anything new here that we need to look at.

In terms of cabinet confidentiality—you've obviously been in that cabinet room under governments—how important and how complex is that? If I had to explain to the voters back at home in Vaughan—Woodbridge the importance of cabinet confidentiality and what that means, can you elaborate on that, sir?

**Mr. Michael Wernick:** It's a big topic. We run cabinet government. You are elected as a team, you will be unelected as a team, and people are chosen to sit around the cabinet table among the caucus and the governing party, maybe more than one party if there's a coalition. It's a fundamental principle that people can go into the room and speak freely about their views on any topic, whether they're presenting their own ideas or discussing ideas presented by a colleague. They are elected as a team and then they stick to the decision. Once a decision is called, that is the decision of cabinet, which goes forward in terms of laws, policies and regulations. We do not operate the federal or provincial cabinets, as you know, like a city council or the American Congress, where everybody has an independent voice.

**Mr. Francesco Sorbara:** The independence, your quote on the rule of law in 2019, at your first appearance.... This was in 2019, probably almost five years ago or so, that you stated:

Should Canadians be concerned about the rule of law in this country? No. In the matter of SNC-Lavalin, it is now seven years since the first police raid on the company and four years since charges were laid by the RCMP, and during that entire time and up to today, the independence of the investigative and prosecutorial function has never been compromised. The matter is proceeding

That independence of a judiciary in Canada, from your point of view, the robustness of that independence and how that worked during the time you served as the Clerk of the Privy Council, please....

**Mr. Michael Wernick:** I stand by that commentary. It's the director of Public Prosecutions who said at the time, and went to the trouble of issuing a statement, that her office had never experienced political interference in a prosecution, and we have not seen interference in police investigations. As tempting as it was in the cases of blockades, pipeline blockades and the occupation of downtown Ottawa, it's a well-established principle of federal and provincial governments that police investigations and operations are conducted independently, and prosecutors and courts operate independently.

**Mr. Francesco Sorbara:** Not even just as a member of Parliament but as a citizen of this country, a Canadian citizen, we would expect nothing less than that independence to be upheld at all times.

**Mr. Michael Wernick:** Well, you see what happens in other countries when you start to see the government directing who should be investigated and arrested.

**Mr. Francesco Sorbara:** Yes, and it is unfortunate to see that happening in other countries. I know that, here in Canada, we must guard always to ensure that the independence is upheld. I thank you, sir, for those comments.

Mr. Wernick, I just want to say thank you for your 38 years of public service, and your duty and responsibilities that you held for both governments. Whether it was a Conservative government or a Liberal government, your service speaks for itself and I want to say thank you.

Chair, I'm finished with my remarks. Thank you.

• (1215)

**The Chair:** Thank you, Mr. Sorbara.

[Translation]

Mr. Villemure now has the floor for six minutes.

**Mr. René Villemure:** Thank you, Mr. Chair.

Mr. Wernick, as stated earlier, we're here today because of a motion asking the committee to look into why the RCMP didn't further investigate the case. As you know, we met with the RCMP commissioner and the person in charge of the investigation.

I'll refer to a question that we all asked you indirectly earlier and that concerns cabinet confidence. Believe me, I understand the need for cabinet confidence. It means that we can have candid discussions and share our opinions without fear of having our heads torn off. We see eye to eye on this. Now, I would like to know the rationale for your decision, at the time, to withhold documents.

**Mr. Michael Wernick:** As I said, I did not take part in the decision regarding the submission of documents. The decision, which the commissioner disputed, was made by the clerk who took over from me.

**Mr. René Villemure:** Okay.

Let's go back to your days as clerk. Suppose you had to make a decision regarding the release or withholding of documents. What would be your basis or rationale for deciding to release everything, to release some things or to withhold everything?

**Mr. Michael Wernick:** I didn't participate in the decision because these decisions must be viewed as independent and must be free from partisan political considerations. At the time, I was immersed in the case. That's why I couldn't really be seen as independent.

As I said in response to another question, if the decision is made to hold a commission of inquiry or a court trial, or to conduct a police investigation, the aim should be to maximize the release and submission of documents.

**Mr. René Villemure:** As clerk, you weren't involved in the decision. However, you were clerk for a long time. In your opinion, the release of cabinet confidences should be assessed based on whether the matter involves a commission of inquiry, a trial, an appearance before a committee, a disclosure to a journalist or any number of other possibilities. Is that right?

**Mr. Michael Wernick:** I think that it depends on the use of these documents and protection in terms of the process and natural justice.

**Mr. René Villemure:** Do you think that parliamentarians should have access to these documents?

**Mr. Michael Wernick:** I don't think that the issue is black and white. In my opinion, in some cases, redaction is necessary. For example, I'm thinking of cases involving national security information or personal information. Parliamentary privilege does exist. However, you can't ask for access to my medical records or tax returns, for example. I think that relevance still matters.

**Mr. René Villemure:** Let me explain where my question is coming from.

We recently gained access to about 400 pages of completely redacted documents concerning the Winnipeg laboratory. They were released to the public, with the exception of information regarding privacy and investigative methods used by the Canadian Security Intelligence Service. In the activity that I took part in, we saw a form of preventive redaction. There was a bit of over-redaction.

In some cases, would it be better not to release information at all, in order to limit exposure? Are documents usually redacted too much? In the case of the Winnipeg laboratory, I was struck by the shift from a totally redacted document to a document with very little redaction.

**Mr. Michael Wernick:** I think that the situation should always be looked at on a case-by-case basis. The information provided by intelligence and security services is highly sensitive. We're discussing foreign interference in our society and in politics. In these types of cases, I think that we must strike a balance between transparency and the risk of compromising our ability to gather this information.

**Mr. René Villemure:** The SNC-Lavalin case isn't a matter of national security. How can the need for cabinet confidence be balanced with the parliamentarians' need to know? That's the issue here. The RCMP commissioner said that he didn't have access to all the information. Since he didn't have access to the information, he didn't lay charges.

As parliamentarians, we wonder who decides what weight to give to transparency and the need for confidence. Both sides matter. Could you shed some light on this? Your extensive experience in the government strikes me as valuable.

• (1220)

**Mr. Michael Wernick:** I think that it's a matter of judgment. It's case by case. There must be a balance between the public interest in maintaining confidentiality and the public interest in the case in question.

I don't know whether I can explain five very simple principles. I have always encouraged the submission of as many documents as possible for the process in question. This process may be an inquiry, a police investigation or a commission, for example.

**Mr. René Villemure:** Thank you for your enlightening response.

When I think about the Winnipeg laboratory, one question comes to mind. You weren't involved in the case, of course. However, the shift from 400 redacted pages to approximately zero worries me. The over-redaction or lack of information doesn't give parliamentarians or the public the chance to fully understand the situation.

I'll get back to the case at hand. If you had to do things over again, would you make the same decisions regarding advice or conversations with Ms. Wilson-Raybould, or would you do things differently?

**Mr. Michael Wernick:** That's a completely hypothetical question. There's no point in looking back. I'm always looking ahead.

**Mr. René Villemure:** It isn't hypothetical, it's retrospective. You still...

**The Chair:** Mr. Villemure, your time is up.

[English]

You're over by 30 seconds.

[Translation]

**Mr. René Villemure:** Okay, thank you.

[English]

**The Chair:** Thanks, René.

Mr. Green, go ahead for six minutes.

**Mr. Matthew Green:** Thank you very much.

Mr. Wernick, picking up from our last exchange, when you suggested that Commissioner Dion didn't come to the conclusion there was a threat or an act of intimidation between you, as an emissary of the Prime Minister, and Ms. Jody Wilson-Raybould, I refer to the "Wernick Report", page 3, paragraph 14, where it is stated:

On the basis of the evidence gathered, [he] concluded at paragraph 285 of the *Trudeau II Report* that "the individuals who acted under the direction or authority of the Prime Minister in this matter [...] could not have influenced the Attorney General simply by virtue of their position."

My reading of that says that, not necessarily, it didn't happen, but that by basis of your position the commissioner didn't believe you were in a position to provide that influence on the Attorney General because you were not the Prime Minister, so that's a bit of a different reading. What's your response to that?

**Mr. Michael Wernick:** Well, Parliament created the commissioner to make these judgments of interpretation, and that's his interpretation.

**Mr. Matthew Green:** It's based on the evidence gathered, and we're here today because there's a thought that perhaps not all the information was present. Is it your understanding that the commissioner would have had access to all the information necessary to make that decision?

**Mr. Michael Wernick:** I don't know. I mean, my conversation with the Attorney General was a matter of public record before he completed his report.

**Mr. Matthew Green:** On multiple occasions, almost as a warning, you referred to how a scenario in which the government directs the police leads to an authoritarian culture. Is that an appropriate summary of your remarks?

**Mr. Michael Wernick:** I think it is very important, in a free and democratic society, that the police make decisions about operations and investigations independently.

**Mr. Matthew Green:** When they don't, I believe you characterize that as being authoritarian. Is that correct?

**Mr. Michael Wernick:** It's what we see in partial democracies and authoritarian countries. You can look at the headlines in a number of countries—Poland, Turkey, Russia and others—where directing or intimidating the police in regard to whom they should investigate, whom they should arrest and what charges should be laid... That is not full-blown democracy.

**Mr. Matthew Green:** What would your opinion be for the same scenarios in which pressure is applied to the prosecution but not the police?

**Mr. Michael Wernick:** It's the same thing. I mean, that is why the Harper government created an independent director of public prosecutions. That only dates from 20 years ago, and that was created specifically to ensure the independence of the prosecutorial service.

**Mr. Matthew Green:** Why did you resign?

**Mr. Michael Wernick:** As I said in my letter, I felt I couldn't do the job anymore.

**The Chair:** Thank you, Mr. Green.

We're going to go to Mr. Barrett now, because that concluded our first round, so we are on five-minute rounds. Mr. Barrett, go ahead, please.

• (1225)

**Mr. Michael Barrett:** Do you own shares in SNC-Lavalin?

**Mr. Michael Wernick:** I don't own shares in anything.

**Mr. Michael Barrett:** Have you ever owned shares in SNC-Lavalin?

**Mr. Michael Wernick:** I've never owned shares in anything: I was covered by conflict of interest rules.

**Mr. Michael Barrett:** As someone who specializes in governance, what do you think about cabinet confidence being used to hide wrongdoing and to shield members of the executive from effective investigation by police?

**Mr. Michael Wernick:** If that were the case, then that's not a very good idea, not a good thing.

**Mr. Michael Barrett:** We had the RCMP before parliamentary committees tell us that they have not been able to productively pursue investigations because of the executive's refusal to waive cabinet confidence, so you would characterize that as what? You said, "Not very good."

**Mr. Michael Wernick:** It depends what the confidences in question were and what they would have led to.

**Mr. Michael Barrett:** I think we know that in these cases they would have led to charges being laid against Justin Trudeau, and that's why—

**Mr. Michael Wernick:** That's your hypothesis. We don't know. I don't know what was redacted, withheld and produced.

**Mr. Michael Barrett:** Indeed we don't know because the executive has used its power, the Prime Minister has used his power to shield himself from effective investigation by police. It creates a real problem when we don't know what we don't know. We don't have anyone who watches the watchers, including our federal police.

On that, in a previous response, you said that when politicians start meddling in the justice system, it's not full democracy; it's authoritarianism. However, that's what we saw with SNC-Lavalin, isn't that right?

**Mr. Michael Wernick:** Well, where was the interference with the justice system?

**Mr. Michael Barrett:** Well, sir, welcome back from 2019. I know you had a front-row seat at the time. The Prime Minister was found to have used his influence to pressure the Attorney General. That's a finding of an independent officer of Parliament. That's not my opinion. We know this to be a fact.

We know that you, sir, doing the Prime Minister Justin Trudeau's bidding, in an extended phone call put tremendous pressure on then Attorney General Jody Wilson-Raybould to do exactly what the Prime Minister wanted, and that was to give a deferred prosecution agreement—or, for the uninitiated, effectively a get-out-of-jail-free card for a Liberal-friendly firm—to friends of the Prime Minister. That's pressure.

What happened when Ms. Wilson-Raybould didn't do what she was supposed to do in the Prime Minister's estimation? She was kicked out of cabinet. When someone spoke up on her behalf, they were kicked out of cabinet—Dr. Philpott. For their dissent, they were both ejected from caucus. It seems like that's a pretty heavy hammer the Prime Minister was able to carry, and what did he do? He put in a justice minister who would do what he wanted to have done, do his bidding. That is, as you described it, authoritarian, because that's exactly the kind of interference in the justice system that happens in tinpot dictatorships.

**Mr. Michael Wernick:** That's one narrative. Another narrative is that the maximum pressure put on the Attorney General was to provide reasoning and rationale for why she declined to use a tool—an entirely legal tool—that was provided by cabinet, a deferred prosecution agreement, which was made available for certain cases. Deferred prosecution agreements are not illegal acts. They're legal tools. It's how we got the two Michaels back from China.

**Mr. Michael Barrett:** No one has said that a DPA is illegal. What we're saying is that the Prime Minister inappropriately interfered in the administration of justice in this country. Someone who would be willing to do that can't be trusted to, of course, protect themselves from prosecution by the RCMP for obstruction of justice by using powers of the executive. That's blatant interference.

Do you have any regrets about how Jody Wilson-Raybould was treated?

**Mr. Michael Wernick:** Not every issue of ethics or behaviour rises to the level of a breach of criminal law. That is why Parliament created a Conflict of Interest and Ethics Commissioner.

**Mr. Michael Barrett:** Do you have regrets about how Ms. Wilson-Raybould was treated?

**Mr. Michael Wernick:** I have no regrets about anything that happened. We all made our best decisions at the time with the information we had—everybody involved in the affair.

• (1230)

**The Chair:** Thank you, Mr. Barrett.

Ms. Damoff, you have five minutes. Go ahead, please.

**Ms. Pam Damoff:** Thanks, Chair.

Mr. Wernick, can you maybe...? Gosh, I don't even know where to start after that line of questioning.

We're here to talk about why the RCMP didn't lay charges. Maybe I'll start with this: Can you explain again the difference between what the Ethics Commissioner does and what the Royal Canadian Mounted Police do?

**Mr. Michael Wernick:** Well, I'm not an expert on the RCMP. I've never worked for them and I've never worked at Public Safety, but they are the federal police force. They're also community police forces in many parts of the country, as you know. In terms of their acting as the federal police force, they are there to investigate and pursue violations of almost any federal crime, so largely it's criminal law, but there are other laws that they would act as the enforcement body on. They are often made aware of things, through complaints, referrals or whatever, and they would have preliminary fact-finding. They might pursue a more detailed investigation and they might decide to refer it to the prosecutor for the laying of charges. Those are decisions made within the police force.

**Ms. Pam Damoff:** Then the Ethics Commissioner is.... It doesn't follow that a finding by the Ethics Commissioner in turn results in charges being laid by the RCMP. Is that right?

**Mr. Michael Wernick:** No. Parliament, over the years, created a number of watchdogs and investigative bodies to look at the enforcement of other laws. The ones that are relevant here, I think, are the Conflict of Interest and Ethics Commissioner, the Public Sector Integrity Commissioner and the Commissioner of Lobbying. Not every issue of ethics and behaviour rises to the standard of a breach in criminal law. I remind you that the Attorney General said, on more than one occasion, that she didn't think criminal activity had taken place.

**Ms. Pam Damoff:** Thank you.

The questions directed towards you have been rather fierce, Mr. Wernick, about your time when you were a public servant. My experience with the public service is that it is non-partisan, that it is there to carry out the policy that Parliament.... We pass laws; the public service implements those laws.

My experience—and I just wonder if you could comment on this—is that your role was not to be partisan and to do, as Mr. Barrett just said, “Justin Trudeau's bidding”. Is that correct?

**Mr. Michael Wernick:** I was deputy minister to the Prime Minister, so I was there to support him in all of the roles that our Prime Minister plays. I've been before parliamentary committees of the House and Senate probably 30 times. This is the sixth time since I retired. I'm not intimidated or worried about helping Parliament do its job.

**Ms. Pam Damoff:** I guess my question was whether the public service is partisan.

Most public servants serve through different political parties and are doing so in a very professional way, not being partisan. I'm thinking not just of the separation with the RCMP. I look at Correctional Service of Canada, where they carry out and follow policies put in place by the government, and they are doing it in a non-partisan way.

Is that an accurate description of our public service?

**Mr. Michael Wernick:** I think the line that you're trying to draw, which I agree with, is around partisan party politics—team blue, team red, team orange—and that is not the job of the public service. The public service is there to support, advise and implement the policies and programs of whoever has the confidence of the House of Commons at the time.

**Ms. Pam Damoff:** Thank you.

I served on municipal council for five years. I appreciate that comparison with how decisions are made. It's very public. It's all done out in the open. There are very strict rules on when we can even go in camera. There are specific topics that we need to deal with. It's very different from cabinet.

Do you think most Canadians understand the whole concept of cabinet confidence? I ask because it's been portrayed very differently by the opposition as a way to keep secrets.

I just wonder what you think about that. Do Canadians actually understand the thinking behind what a cabinet confidence is and why it's in place?

**Mr. Michael Wernick:** As a matter generally, I would guess that Canadians are busy with their lives, their families and their communities, and they don't think about how government works, except in episodes where there is some conflict or some problem. Then they may pay attention for awhile, but then it fades away.

The issues that this committee has wrestled with around access to information and transparency are important. You could be drafting new transparency laws to shift the balance towards disclosure and so on. Parliament basically sets the overall balance points.

• (1235)

**The Chair:** Thank you, Ms. Damoff and Mr. Wernick.

[*Translation*]

Mr. Villemure, you have the floor for two and a half minutes.

**Mr. René Villemure:** Thank you, Mr. Chair.

Mr. Wernick, I understand and agree that the public service must be impartial. You said earlier that you read the Ethics Commissioner's report. You know the findings. I would like your assessment of these findings as an impartial official.

**Mr. Michael Wernick:** I believe that everyone involved in this case—including the Prime Minister, individuals at the Prime Minister's Office, myself as clerk, the deputy minister of justice and policy advisors—tried to do their jobs as effectively as possible and in good faith.

**Mr. René Villemure:** I remember the situation at the time. The same thing happened again recently. The Ethics Commissioner found that there had been an offence. However, the RCMP didn't say whether there had been an offence, and merely stated that it couldn't look into the matter. Understandably, this creates doubt.

I understand that something can conflict with the code of ethics without being criminal in nature. However, how can public confidence in the government be restored or strengthened? In these types of cases, which involve an apparent contradiction, people have their doubts.

**Mr. Michael Wernick:** Since then, Canadians have had the opportunity to have their say in two general elections. It's a form of accountability for Canadians. If you, as parliamentarians, aren't satisfied with the rules for transparency, you can change the legislation.

**Mr. René Villemure:** Thank you.

**The Chair:** Thank you, Mr. Villemure.

[English]

Mr. Green, for two and a half minutes, go ahead.

**Mr. Matthew Green:** Mr. Wernick, on a couple of occasions you mentioned that it was five years ago, a long time. I think you stated that you're not a historian, but you are a professor and you are teaching governance.

What lessons do you teach your students about this whole affair?

**Mr. Michael Wernick:** I don't talk about this affair as a specific....

You can read my book on governance.

**Mr. Matthew Green:** I'm just going to tell you, from where I sit, that sounds supremely arrogant when I'm asking you a question in this committee. I'm not interested in buying your book, sir. I am interested in your answering the question. What lessons were learned from this whole affair?

If your suggestion is that you don't delve into this conversation at all in your class, that's fine, but to continue to say, "Check my résumé, check my LinkedIn, read my book, buy my book," is not landing the way you think it probably is.

I'll ask you again what lessons you have learned from this affair, whether to students or to this committee for recommendations, because ultimately we have a responsibility to have some kind of report or recommendations coming back from this. Five years later, it's still a mess. It's still murky, and it still undermines the people's faith in the democratic institution here.

**Mr. Michael Wernick:** Parliament can change the laws, so I have two specific recommendations.

One is that the law that was drafted and implemented by this Parliament in 2018 about deferred prosecution agreements has some

ambiguity in it in terms of the evaluation of economic interest, which was the subject of one of the conversations.

You should go in and reopen the law and take a look at the language on what can and cannot be used in considerations around the deferred prosecution agreement, because it will come up again some time in the future. There is a job that only you parliamentarians can do.

If you're not happy with the rules about disclosure of cabinet confidences to police forces or judges, change the law.

**Mr. Matthew Green:** Thank you.

It really wasn't that hard. I appreciate that answer.

Those are all of my questions.

**The Chair:** Thank you, Mr. Green.

Mr. Cooper, you have five minutes.

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

Mr. Wernick, your telephone conversation with Jody Wilson-Raybould on December 19, 2018 was made at the request of Justin Trudeau. Is that correct?

• (1240)

**Mr. Michael Wernick:** I'm sorry. I didn't hear that.

**The Chair:** Restate the question, please.

**Mr. Michael Cooper:** Your telephone conversation with Jody Wilson-Raybould on December 19, 2018 was made at the request of Justin Trudeau. Is that correct?

**Mr. Michael Wernick:** It was not specifically to call her, but my recollection of it—and you can read me back my testimony—is that he wanted to find out what her rationale was for not pursuing the DPA at the time.

**Mr. Michael Cooper:** In his testimony to the Ethics Commissioner, Justin Trudeau testified that he did make that request.

To put some context with respect to that call, hours before you initiated that call, you met with the Prime Minister; his chief of staff, Katie Telford; and his then-principal secretary, Gerald Butts, in which SNC-Lavalin and the issue of a deferred prosecution agreement came up.

**Mr. Michael Wernick:** Yes, that was our last meeting before the Christmas holidays and the two-and-a-half week break before we all came back in January, so it was—

**Mr. Michael Cooper:** Thank you for that, Mr. Wernick. No. I appreciate it. You answered the question.

**Mr. Michael Wernick:** Mr. Brassard, can I finish my answer?

**Mr. George Chahal:** I have a point of order.

**The Chair:** Hang on.

Mr. Cooper, please....

I see your point of order. I'm going to maybe solve what you're going to be asking.

I would just ask that you give Mr. Wernick an opportunity to answer the question, please, Mr. Cooper.

**Mr. George Chahal:** Thank you, Chair. I thank you for that.

**The Chair:** Go ahead and answer the question.

**Mr. Michael Wernick:** It was one of many issues that we discussed at a Christmas holiday wrap-up meeting.

**Mr. Michael Cooper:** Okay. Thank you for that.

To put further context with respect to that call, one day before that call, Jody Wilson-Raybould's chief of staff was summoned by Katie Telford and Gerald Butts, and was told by Butts and Telford that they didn't want to hear anything more about legalities. They wanted to get a deferred prosecution agreement done.

When the Prime Minister asked you to make this call, he was effectively giving Jody Wilson-Raybould her last chance to make the decision that he wanted before he fired her, wasn't he?

**Mr. Michael Wernick:** I'm not aware of the conversation that Ms. Telford and Mr. Butts had at the time. When I had my call, I wouldn't have been aware of that, and this was before Mr. Brison resigned from cabinet and created the need for a cabinet shuffle.

**Mr. Michael Cooper:** Mr. Wernick, that conversation of Ms. Telford and Mr. Butts is now well documented, backed up by contemporaneous notes taken by Ms. Wilson-Raybould's chief of staff, so let's look at the facts.

After months of pressure on the Attorney General and the day following the meeting where the Prime Minister's chief of staff and principal secretary tell Ms. Wilson-Raybould's chief of staff, we don't care about legalities, just get it done, you give Ms. Wilson-Raybould a call at the request of the Prime Minister, wherein you state that the Prime Minister is quite determined that he's going to find a way to get it done one way or another, that he is in a very firm mood about this, and you were worried about a collision occurring between him and her. Those are some very strong words—veiled threats.

Why would you use those words if in fact it wasn't Jody Wilson-Raybould's last chance to make the decision the Prime Minister wanted before he was going to fire her?

**Mr. Michael Wernick:** You're hypothesizing an intention to fire her, which I was certainly not aware of at the time.

**Mr. Michael Cooper:** Well, you issued a number of threats after the Prime Minister's chief of staff and principal secretary had, only a day prior, said, we're done with the legalities, and then, guess what? Two and a half weeks later, after this phone call following the Christmas break, she was fired as Attorney General.

Taken together, I would submit that there is no reasonable conclusion that can be drawn other than the Prime Minister fired Jody Wilson-Raybould when she wouldn't acquiesce to his demands to interfere in the criminal prosecution of SNC-Lavalin.

Do you know what that's called, Mr. Wernick? It's called obstruction of justice, isn't it?

**Mr. Michael Wernick:** That's for the police to determine.

**Mr. Michael Cooper:** Mr. Wernick, you couldn't back up with any credibility the issue of SNC-Lavalin moving its headquarters.

What about the jobs? What analysis had the government taken that at least 9,000 jobs were on the line?

**Mr. Michael Wernick:** I think that was all covered at the justice committee and the production of documents for that. I don't have any of that material in front of me—

**Mr. Michael Cooper:** The answer you gave to Ms. May when she posed that question to you is that no analysis had been done.

● (1245)

**Mr. Michael Wernick:** There had been statements by the company on market disclosures, and there had been representations by the company, which are on the record.

**Mr. Michael Cooper:** This was a pressure campaign made by the Prime Minister and not in the public interest. It was clearly the Prime Minister acting in the interest of SNC-Lavalin, and that's exactly what the Ethics Commissioner found.

**The Chair:** Thank you, Mr. Cooper.

Mr. Housefather, go ahead for five minutes.

**Mr. Anthony Housefather:** Thank you so much, Mr. Chair. It's always nice to watch Mr. Cooper as a prosecutor. He certainly fires off those questions well, but, Mr. Wernick, I want to come back to the issue.

As far as I recollect, Jody Wilson-Raybould was shuffled from one cabinet position to another and then resigned. Is that not what happened in your recollection of her history in cabinet?

**Mr. Michael Wernick:** She was the Minister of Justice during that period, from December 18 until early January, when there was a cabinet shuffle. The cabinet shuffle was created by Mr. Brison's leaving cabinet and led to a number of moves, of which she was one. She remained a member of cabinet and she participated in the cabinet retreat in Sherbrooke that weekend, which was before The Globe and Mail story—

**Mr. Anthony Housefather:** Also, then, she was the one who proactively resigned as a cabinet minister, correct?

**Mr. Michael Wernick:** That would have been a couple of weeks later, I believe.

**Mr. Anthony Housefather:** Yes. I wasn't asking you on timing. I just wanted to recollect that she was shuffled and then resigned. She was never fired. The word "fired" keeps coming up for some reason, and I wanted to clarify that.

I remember that in your testimony when you testified before the justice committee, you talked about the fact that there were not two classes of justice in Canada and that the rule of law prevails.

Do you still maintain that opinion?

**Mr. Michael Wernick:** In 2024?

**Mr. Anthony Housefather:** Yes, as of today, do you still believe that?

**Mr. Michael Wernick:** I certainly hope so.

**Mr. Anthony Housefather:** Fine: I note that only because we're here and I think the purpose of the committee is to look into the RCMP's investigation.

I personally trust in the RCMP. I believe they follow the rule of law and that they don't have political interference in their deliberations or in the way they determine whether or not to prosecute or to terminate work on a case. I think that's the testimony we've heard up until now on the RCMP side. I wanted to make sure that nothing in the RCMP's testimony here has changed your opinion about the rule of law prevailing in Canada.

I gather that's a no.

**Mr. Michael Wernick:** No, and we have a very healthy set of feedback loops and accountability tools in Canada.

I'll venture out and point you to the ArriveCAN issue, which has blown up in the last little while. We have a parliamentary committee at work. We have at least three—I think it's four—officers of Parliament at work, and we do have a police investigation. In fact, there was an entanglement last week at one of the parliamentary committees because witnesses didn't want to compromise a police investigation.

We have all kinds of accountability tools in Canada, which seem to still be functional.

**Mr. Anthony Housefather:** Okay. That's good to know. Checks and balances are always important.

Let me end my questioning, Mr. Wernick, because I think that, really, the purpose for you being here is still a little dubious to me, other than to rehash what happened in 2019. Can I ask you not whether you have any regrets but whether you have any thoughts to share as to improvements to the system based on your reflections over what happened with SNC that we should be considering as legislative or regulatory changes to put into effect or procedural changes?

**Mr. Michael Wernick:** Well, as I said to Mr. Green, I think there is some redrafting and clarification that could be put into the provisions around deferred prosecution agreements, because it will come up again, and, as I think I said at a previous appearance at this committee, I would like to see proactive transparency legislation.

I'm very disappointed that Parliament dropped the ball on access to information. You could write laws that require proactive disclosure of all kinds of sources of government information and make those practices permanent, because any future government can roll them back.

**Mr. Anthony Housefather:** I have one last question, Mr. Chair.

I have just one last question based on your experience, Mr. Wernick, and I also do want to thank you for your service. If the RCMP wanted to get at materials that were a cabinet confidence and, for whatever reason, the Clerk of the Privy Council rejected the request from the RCMP, does the RCMP not have other judicial tools it theoretically could use to obtain those materials or to seek to obtain those materials?

• (1250)

**Mr. Michael Wernick:** Yes. I mean, I'm not a lawyer. My understanding is that you always have a referee: the Federal Court and the Supreme Court. Some issues on redaction, disclosure and withholding have gone to the Federal Court and even to the Supreme Court.

**Mr. Anthony Housefather:** As you said, there's always a tension between the executive, legislative and judicial branches—and that would be a dispute resolution at the judicial branch.

Thank you so much, Mr. Chair.

**The Chair:** Thank you, Mr. Housefather and Mr. Wernick.

Mr. Brock, for five minutes.

Go ahead.

**Mr. Larry Brock:** Thank you, Chair.

I would like at this time to move a motion:

That, pursuant to Standing Order 108(1)(a), the committee order Mr. Wernick and the Privy Council Office to produce all records of communications between Mr. Wernick and any board members, employees, or representatives of SNC-Lavalin (now AtkinsRéalis) between the period of November 4th, 2015 - March 19th, 2024, and that these communications be provided within 14 days of the adoption of this motion.

I hope we have unanimous consent.

**The Chair:** Thank you for that, Mr. Brock.

Has that been distributed to the clerk or not?

**Mr. Larry Brock:** It has not.

**The Chair:** Okay. Hang on a second, please.

**Ms. Pam Damoff:** Chair—

**The Chair:** Hang on, Ms. Damoff.

**Ms. Pam Damoff:** Okay.

**The Chair:** My understanding is that there's no requirement for that to be sent to the clerk if it's a verbal notice.

Mr. Brock has moved a motion. It is in order and is related to this.

Ms. Damoff, did you have something?

**Ms. Pam Damoff:** I did, Chair. I just wondered if we could suspend until we get a copy of it, please.

**The Chair:** Okay.

It has been sent. I am going to suspend for a minute.

Is it in both official languages, too, just to be clear?

**Mr. Larry Brock:** Not yet.

**The Chair:** Ms. Damoff, it is a verbal motion, so there's no requirement for it to be distributed.

What I'm going to do is to ask Mr. Brock to read it again slowly for the interpreters.

If you can do that, Mr. Brock, go ahead, please.

**Mr. Larry Brock:** I'm happy to. It reads as follows

That, Pursuant to Standing Order 108(1)(a), the committee order Mr. Wernick and the Privy Council Office to produce all records of communications between Mr. Wernick and any board members, employees, or representatives of SNC-Lavalin (now AtkinsRéalis) between the period of November 4th, 2015 - March 19th, 2024, and that these communications be provided within 14 days of the adoption of this motion.

**The Chair:** Thank you for that, Mr. Brock.

Mr. Wernick, I'm going to ask that you just hang on for a second while this gets discussed.

Ms. Damoff, I saw your hand. Is this in relation to the motion that's been moved by Mr. Brock?

**Ms. Pam Damoff:** It is, Chair.

I still think we should get a copy of it before we start discussing it here.

**The Chair:** Okay.

According to discussions with the clerk, there's no obligation for a verbal motion that's presented at committee to be distributed, but we are going to try to distribute that as soon as we can.

It's going to be distributed. Mr. Brock has read the motion into the record. We're going to get that to you as soon as we can, Ms. Damoff.

Is there any other discussion on the motion?

**Ms. Pam Damoff:** Chair, do you want me to raise my hand again?

**The Chair:** Go ahead.

**Ms. Pam Damoff:** Mr. Wernick does not work for the Government of Canada any longer, and has not for five years. I don't know how Mr. Brock can compel Mr. Wernick to provide anything to the committee when he's no longer working for the Government of Canada and has already said that he didn't take anything with him.

It just makes no sense to me whatsoever. He's a private citizen who has no.... He doesn't work for the government.

• (1255)

**The Chair:** Thank you, Ms. Damoff.

Mr. Brock was seeking unanimous consent for this motion.

Do we have unanimous consent to adopt the motion as presented by Mr. Brock?

[*Translation*]

Do you have anything to add, Mr. Villemure? If so, go ahead, you have the floor.

**Mr. René Villemure:** We don't have the French version of the motion.

**The Chair:** The clerk is working on it. That's why I told Mr. Brock to read the motion slowly. We can wait.

[*English*]

Mr. Brock, do you have something to say?

**Mr. Larry Brock:** Yes. Thank you, Chair.

This is in relation to Ms. Damoff's most recent intervention.

I get her point. I understand her point. I think the evidence we heard today was very clear, and that's why the motion references not only Mr. Wernick but the Privy Council Office itself.

**The Chair:** Thank you for that, Mr. Brock.

In relation to the motion—and maybe this addresses Ms. Damoff's concern—if the motion read “order Mr. Wernick and/or the Privy Council”, that might address the concern Ms. Damoff has.

I see your hand, Mr. Wernick.

Are you waving goodbye or are you trying to get my attention?

**Mr. Michael Wernick:** No, I'm always trying to be helpful to the committee.

I have no objection to producing what I have. I can tell the committee, if this would be useful, that there was an inquiry by the Commissioner of Lobbying during the same period—it started in March 2019 and concluded in November 2019, and I very helpfully have some of the documents from the Commissioner of Lobbying. There was a production of documents to her at the time.

I'm quite happy to send that to the clerk of the committee this afternoon.

**The Chair:** I appreciate that intervention, Mr. Wernick.

Ms. Damoff, your hand is still up. Is it in relation to the motion?

**Ms. Pam Damoff:** It is, Chair.

I'm looking at the time. We have three minutes left in our meeting. I'm wondering if we could resume this on Thursday, when everyone has the motion in front of them. Mr. Villemure does not have it in French. We really don't have time to discuss this properly and we may want to make amendments to it, but we really need to see a copy of it. I'm just wondering if we can resume this at our meeting on Thursday.

**The Chair:** The challenge with that, Mr. Damoff, is that we have the President of the Treasury Board coming in on Thursday for an hour, and then we have the former and current ethics commissioners coming in. The notice hasn't been posted yet, but they are coming. I've also been asked by Mr. Villemure to find a little bit of time in that meeting to discuss an important issue in relation to the social media study.

So I would like to dispose of this now. We do have a little extra time if we need it.

I know the clerk is working on the motion, but is there any other discussion on the motion?

Mr. Wernick has indicated that he has no problem with providing the committee with documents. If the Privy Council can provide documents to the committee as well, as requested in the motion, then I'm going to seek what Mr. Brock had initially indicated, and that is to have unanimous consent on this motion. If we don't, that's fine. If we do, then that moves things along.

Mr. Bains, go ahead, please.

**Mr. Parm Bains:** I'm wondering if what Mr. Wernick is offering is sufficient for Mr. Brock to just withdraw it, and if he wants to discuss that—

**The Chair:** We'll see once he offers that. He's made the offer.

Is that it, Mr. Bains?

**Mr. Parm Bains:** That's all, Chair.

[*Translation*]

**The Chair:** Mr. Villemure, you have the floor.

**Mr. René Villemure:** Thank you, Mr. Chair.

To follow up on what Mr. Bains said, I thought that we could wait to see what Mr. Wernick sends us. If anything is missing, we can pass the motion. That would give us a chance to go about our business after 1 p.m.

[*English*]

**Ms. Pam Damoff:** I have a point of order, Chair.

There was no interpretation for Mr. Villemure's intervention.

[*Translation*]

**The Chair:** I'm sorry. I'm told that it works now.

Mr. Villemure, can you repeat your comment?

• (1300)

**Mr. René Villemure:** Yes.

To follow up on what Mr. Bains said, I'm wondering whether we could wait until we receive Mr. Wernick's documents to see what they entail. If Mr. Brock isn't satisfied, we can then adopt his motion. That would help us finish the meeting on time, because we all have a rather busy schedule. I want to know what can be provided. If it's enough, all the better. If not, we can adopt the motion.

**The Chair:** The motion has already been emailed to all members in both official languages. I suggest that you keep that email.

[*English*]

Mr. Brock, Mr. Wernick has already made the commitment to provide the documents he has. I know you're also seeking documents from the Privy Council in your motion. Based on what Mr. Villemure just said, would you be satisfied with the committee's receiving the documents from Mr. Wernick, assessing them and then dealing with the motion later on, or do you want to deal with the motion right now? That's where we're at right now based on what Mr. Villemure said.

**Mr. Larry Brock:** Well, I appreciate the commentary by my colleague Mr. Villemure, but the motion is very specific. It's for information that is still in the possession of Mr. Wernick that may or may not be relevant to our study and for information that is still within the possession and control of the Privy Council Office. We've heard evidence today, Mr. Chair, that prior to his departure, as the Clerk of the Privy Council, he made sure that all of his records were retained. He's not in a position to retrieve all of that documentation. Certainly the current Clerk and the staff at the PCO would be in a position to do so.

I'm not prepared to cede to Mr. Villemure's suggestion, because I think it would just prolong the delivery of information. I'd rather have everything that's in the control and possession of both entities, Mr. Wernick personally and the PCO, be received by this committee.

**The Chair:** That's a fair point, Mr. Brock.

Ms. Damoff, go ahead.

**Ms. Pam Damoff:** Thanks, Chair.

I actually support what Mr. Villemure put forward as a suggestion. I think as a committee we could ask Mr. Wernick to provide that documentation to us.

I notice, now that we have a copy of the motion, that Mr. Brock has asked for documents to March 19, 2024. My question is actually for Mr. Brock. Is he asking Mr. Wernick to provide private correspondence he might have had since he left government? That seems completely unreasonable, Chair.

**The Chair:** I am going to seek clarity from Mr. Brock.

I see Mr. Wernick—

**Mr. Michael Wernick:** I've had no communications with any of those companies since leaving government, so it would be an empty file.

**The Chair:** The challenge we have right now is that we do have a motion that's been presented. We have to deal with the motion as presented on the floor. I appreciate the intervention by Monsieur Villemure, and I appreciate your intervention.

Mr. Brock has proposed a motion. He did ask initially for unanimous consent on his motion, so I'm going to seek that. Do we have unanimous consent on that?

Okay.

Monsieur Villemure, is that *oui*?

Is that “yes”, Mr. Green?

I just need unanimous consent.

**Mr. Anthony Housefather:** I don't think we agree, because, as Ms. Damoff mentioned to you, we potentially want to offer some amendments.

**The Chair:** Then there's no agreement for unanimous consent.

**Mr. Anthony Housefather:** I'm sorry, Mr. Chair.

**The Chair:** Mr. Housefather, I'm going to accept that.

Now on the motion, not seeing any further discussion, I am going to call for a vote.

Madam Clerk, could you take the vote, please?

**Mr. Anthony Housefather:** I have a point of order, Mr. Chair.

**The Chair:** No.

**Ms. Pam Damoff:** Chair, my hand was up.

**The Chair:** It wasn't, Ms. Damoff, because I did look at the screen. I'm sorry, but it was not.

I called the vote and I'm going to go to the vote right now. Thank you.

Go ahead, Madam Clerk.

**Mr. George Chahal:** On a point of order, no vote had been called, Mr. Chair.

Ms. Damoff had her hand up, Mr. Chair. You were not paying attention. You were looking at your colleagues, looking for direction.

**Mr. Michael Barrett:** You're yelling. Think of the interpreters.

• (1305)

**Mr. George Chahal:** I'm not yelling. You should turn your mic off.

I have a point of order. Mr. Barrett, I have a point of order.

**The Chair:** Just hang on a second.

Mr. Chahal, I appreciate your point. As I was discussing the options and I saw there was no consent—Mr. Housefather indicated that—I checked to see if there were any further hands up or any further discussion and there was not, so I did call the vote.

I do see a couple of hands on points of order.

Ms. Damoff's hand is up now, and then it's Mr. Green.

**Mr. George Chahal:** And Mr. Green—

**The Chair:** George, you're not the Chair of this committee, so let me do my job. If you have a point to make, make it and make it relevant.

**Mr. George Chahal:** You have not allowed me to talk about my point of order, Mr. Chair. You've interrupted me every time.

**The Chair:** You did say—

**Mr. George Chahal:** I have a point of order, and you've interrupted me again, as did your colleague.

**The Chair:** George, your point of order was that the vote wasn't called, and I just answered that and said the vote was called.

I'm going to go to Ms. Damoff and then Mr. Green after that because I did see your hand.

This is on a point of order, so go ahead, Ms. Damoff.

**Ms. Pam Damoff:** Thank you, Chair.

On the point of order, I did have my hand up. There might have been a difference of a second between when my finger hit it and when you called the vote, but we were talking about Monsieur Villemure's suggestion and I had my hand up to offer an amendment to the motion. I really think we're not that far off here.

Mr. Wernick has been very open about what he can provide to the committee, and Mr. Brock wants to know what correspondence he's had. He can provide us with what was tabled before. He said he's had nothing for the last five years.

**The Chair:** Thank you, Ms. Damoff.

**Ms. Pam Damoff:** I think, Chair, in fairness you should allow us to amend this motion and allow Mr. Wernick to provide the committee with the information he has.

I think you're trying to jam the vote, Mr. Chair, and I don't think that's—

**The Chair:** Actually, I'm not.

**Ms. Pam Damoff:** —appropriate.

**The Chair:** I didn't see any—

**Ms. Pam Damoff:** I know, but it's difficult when we're virtual too. In fairness to you, Chair, I recognize that it's hard to try to manage the room and those who are appearing virtually as well, but I feel as though I'm being put at a disadvantage here because I'm virtual because I'm sick this week.

**The Chair:** Thank you.

Mr. Green, please go ahead on your point of order.

**Mr. Matthew Green:** Mr. Chair, I do caution you on this, as somebody else who's.... My intention is to support the demand; my intention was to support the demand for documents.

I do believe that there ought to be procedural fairness when debating motions. I do not believe, sir, that you have provided procedural fairness for debate. I might not agree with tactics around filibustering or running out the clock, but what I am cautioning you against is creating a very dangerous precedent in this committee of having what could be viewed as a hyperpartisan chair, sir.

I would say that rolling from a unanimous consent directly into calling a vote offers no time for adequate debate and I think would cloud your ability to chair this committee on a move-forward basis. I say that respectfully as somebody who believes that you've done a good job to date, but I am concerned with the way you are handling this particular motion, even in supporting the motion.

I would ask for your indulgence to allow debate when motions are called, because the precedent you set by not allowing debate when it's called and surreptitiously calling votes shows a level of partisanship that I haven't seen in you to date, sir. I would appeal to your reconsideration of that and to allow a debate to happen. Allow that process, as in the standing procedures and courtesies within the way in which we conduct this committee.

**The Chair:** I do appreciate that intervention.

Just for clarity, there were no hands up when I called that vote. I just want to make that very clear.

Ms. Damoff, if your hand went up a split second later and I didn't see it when I went from the unanimous consent to calling the vote, then that is what happened, okay?

I'm going to go back on some good faith.

I know you had an amendment, Ms. Damoff. I'm going to give you an opportunity to present that amendment. Then my hope is that we can go to a vote at that point and dispose of this motion, because I'm sensing that most of us...most of the committee is in agreement with what Mr. Brock has proposed.

I'm going to go back and allow you, Ms. Damoff, to put your amendment forward. Then we can deal with it. Go ahead, please.

• (1310)

**Ms. Pam Damoff:** Thank you, Chair.

In the spirit of what Mr. Villemure had suggested, I would suggest removing the words “and the Privy Council Office”. That would allow Mr. Wernick to provide the documents that he has, as well as the non-existent documents between 2019 and 2024. Once we've received those and reviewed them, if we feel that we need more information, we can deal with another motion at that time.

**The Chair:** Okay—

**Ms. Pam Damoff:** I think what I'm suggesting respects what Mr. Villemure had suggested we do. Since we want to vote on this apparently today, I think that change.... If Mr. Brock feels that once we get that information.... As you say, if the committee feels that the information is not sufficient, then we can ask for more at that time.

**The Chair:** Thank you.

Ms. Damoff has proposed an amendment to remove “and the Privy Council Office”. Is there any discussion on that amendment?

Do we have consent to...?

**Mr. Michael Barrett:** No.

**The Chair:** We don't have consent. Okay.

I don't see any further discussion.

Madam Clerk, I'm going to go to the vote on the amendment.

(Amendment agreed to: yeas 6; nays 4 [*See Minutes of Proceedings*])

**The Chair:** We're going to go to the main motion as amended.

Mr. Barrett, go ahead.

**Mr. Michael Barrett:** It is fascinating that we have Liberal members who are working overtime to try to bury documents from PCO. We have Mr. Wernick, who says that this afternoon he can just email over what he has. So that satisfies that. Obviously he can't send the documents that he says don't exist.

I heard Mr. Bains say the documents from PCO don't exist. Well, then that's a very quick return for PCO to make. So if there's nothing to see here, I really don't understand why they are so determined to keep the information from coming out. You'll recall that we were told that sunshine is the best disinfectant and that that's what we would see from Justin Trudeau, but what we're seeing from his parliamentary secretaries—

**Ms. Pam Damoff:** On a point of order, Chair. Are we debating the motion in front of us or my amendment? My amendment has already passed.

**The Chair:** We're debating the main motion as amended. Go ahead.

**Ms. Pam Damoff:** Okay. The main motion doesn't even mention PCO anymore, so I don't understand. Mr. Barrett is accusing me of trying to cover something up. We voted on the PCO part. That's done. Now we're on the main motion.

**The Chair:** Mr. Barrett is on the main motion. He's discussing the main motion. He has the floor, Ms. Damoff.

Go ahead, Mr. Barrett.

**Mr. Michael Barrett:** We have Ms. Damoff, a parliamentary secretary for Justin Trudeau, who literally doesn't even want me to say PCO. She's trying to say that it's out of order for me to talk about PCO and PCO documents that were mentioned in the motion. We also have the former Clerk of the Privy Council in front of us dealing with Justin Trudeau's SNC-Lavalin scandal, in which he used his powers to protect himself from effective RCMP investigation. Now we have multiple parliamentary secretaries and members and Liberal chairs who are again trying to cover up what happened, and it's absolutely egregious, but of course it's also transparent to see that that's what they're doing.

So voting for a motion that is completely neutered, that is not providing the transparency that Canadians deserve, is an affront to the basic premise of openness, even considering how far it has fallen under this government. They seem to plumb new depths every day in their attempts to cover up for a corrupt Prime Minister.

• (1315)

**The Chair:** Thank you, Mr. Barrett.

Ms. Damoff, is your hand still up?

**Ms. Pam Damoff:** Yes, Chair, it is. Thank you.

You know, Mr. Barrett insists on using words like “cover-up” and “corrupt” and he knows that my inbox is going to fill up. Already social media is talking about my being a pearl clutcher because I don't like the kinds of messages I get. I think maybe I should just walk over to Mr. Barrett's office and show him the kinds of wording and emails I get and the things I am called.

We're not a corrupt government, Mr. Barrett, in spite of what you want to say. The fact is that Mr. Villemure put forward a reasonable suggestion, especially since we're dealing with this at the last minute in committee. I was quite clear that if the documents we receive are not adequate, we can ask for more documents later.

This has been thrown at the committee at the last minute. There is absolutely no cover-up, and to imply that there is or to imply that there's some kind of corruption happening in the Government of Canada is just ridiculous, and it feeds into all of that kind of mistrust of our democracy that for some reason the Conservatives want to put out there for Canadians.

So, Chair, I feel really strongly. I was quite clear that this wording was removed in order for us to get documents quickly. This whole thing is about why the RCMP is not investigating. We've gone down such a slippery slope into other things that it's just mind-boggling to me, but we need to stop accusing people of covering up and being corrupt when that's simply not the case.

**The Chair:** Thank you, Ms. Damoff. We don't have endless time here.

Mr. Cooper, go ahead—

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

**The Chair:** —on the motion.

**Mr. Michael Cooper:** On the motion, I know that it's really, really difficult. It must be difficult to have to come in every day and defend Justin Trudeau's corruption, but that's what these Liberal MPs have to do. I hope the voters in their ridings take note.

Look, this motion has been completely neutered. It's been gutted, and there's only one explanation for that, which is that it's to continue a cover-up that has gone on for five years. I vote against the motion.

**The Chair:** Thank you, Mr. Cooper.

Ms. Damoff, your hand is up. I suspect it was for your previous intervention, or is it for a new one?

**Ms. Pam Damoff:** No, Mr. Chair.

Again, maybe I'll have to walk over to Mr. Cooper's office. I don't think anyone in this committee room right now wants to try to destabilize what our country is like, but these consistent claims of cover-up and corruption...

Mr. Chair, I think it was pretty clear, when I moved my amendment, that this is to provide documents quickly. Then we could revisit. That is not a cover-up and I wish my colleagues would retract their comments.

I think we're probably ready to go to a vote, Mr. Chair.

**The Chair:** Go ahead, Mr. Barrett, quickly, please.

**Mr. Michael Barrett:** Ms. Damoff says there's a trigger at some point that would have her order the production of other documents. If there's an amendment to that effect, it would be supportable and would demonstrate transparency and all the nice things we're being told to believe.

However, it's important that the context is very clear for the record. This is a case where Justin Trudeau was found to have illegally used his position to interfere with the Attorney General's role. This isn't above board behaviour, then. We know he's used his office to shield the release of documents that are politically damaging. That is the definition of a cover-up. It was true in this case. It's true in the case of the Winnipeg labs, where they said it was a case

of national security. However, it's not national security. We had judges and members of Parliament identify that, in fact, it was politically damaging, not damaging or injurious to the security of our country. This is a pattern we see in the government.

If they don't want to be labelled as “corrupt” or as having participated in cover-ups, there's a remedy. That remedy would be—

• (1320)

**Mr. Michael Cooper:** Transparency....

**Mr. Michael Barrett:** It would be transparency.

We'd welcome an amendment that has a trigger to have documents ordered from PCO. In the absence of that, it can only be described as what it is. It's the government being true to its form, which is protecting itself politically at all costs. That's done by a cover-up.

**The Chair:** Thank you, Mr. Barrett.

On the main motion as amended, go ahead, Monsieur Villemure.

[*Translation*]

**Mr. René Villemure:** Thank you, Mr. Chair.

I want to move an amendment that would be added to the end of the motion as amended. The amendment would ask that, if the committee isn't satisfied with the documents received 10 days after the request, the Privy Council provide all the requested documents within an additional 10-day period.

I think that this amendment will bridge the gap between the two parties. Ms. Damoff never said that she doesn't want to, and Mr. Barrett did bring up a point. We don't want a cover-up. I propose that the key factor that he seeks be the end of the 10-day period for receiving the documents. If the parties aren't satisfied, we could automatically ask for the documents from the Privy Council, which would have to submit them within an additional 10 days.

[*English*]

**The Chair:** Okay.

[*Translation*]

**Mr. René Villemure:** We're currently drafting the amendment.

**The Chair:** Thank you, Mr. Villemure.

I see that Ms. Damoff has raised her hand.

[*English*]

**Ms. Pam Damoff:** Thank you, Mr. Chair.

Thank you, Mr. Villemure.

I think we should probably go with 14 days, because Mr. Wernick said he could get it to us today. In that case, we're shortening the timeline. I don't know if PCO can even provide five-year-old or nine-year-old documents that quickly, so we may have to be flexible on our timeline. Other than that, I think it's a reasonable amendment.

I appreciate the professional way Mr. Villemure conducts himself in this committee.

**The Chair:** Thank you, Ms. Damoff.

I'm going to excuse myself, because it's a subamendment we're dealing with, not an amendment. I want to clarify that.

**Mr. Michael Barrett:** We're amending the motion as amended.

**The Chair:** Right. Okay. I realize that you're amending the motion as amended and that, according to the clerk, is a subamendment, just to be clear.

I think we all know what we're dealing with here. The only thing I need clarification on is—as we do like timelines—the 14 days after we receive the documents from Mr. Wernick, if we're going to deal with that.

[Translation]

Mr. Villemure, do you agree with the change to 14 days?

**Mr. René Villemure:** Yes.

[English]

**The Chair:** Mr. Wernick, I see your hand. Go ahead, please.

**Mr. Michael Wernick:** I'm trying to be helpful to the committee, Mr. Chair.

**The Chair:** I appreciate that.

**Mr. Michael Wernick:** You may be debating a distinction without a difference. I don't have private records. I retained some PCO records relative to my function as clerk. They are the records that were provided to the Commissioner of Lobbying or to the Ethics Commissioner.

These will be PCO records. I just need to make a trip to Staples and I will get them to the clerk of the committee, but they're basically the same thing. They are the PCO records that were provided to the Commissioner of Lobbying and to the Ethics Commissioner.

**The Chair:** Thank you.

**Mr. Michael Wernick:** I would suggest that the clerk would want to review some of these, because some of them involve confidences and they're marked with "solicitor-client" or "commercially sensitive" or "secret" or whatnot. She will have to wade through those issues on behalf of the committee.

**The Chair:** Just to clarify, by "clerk", I think you mean the law clerk, right, Mr. Wernick?

**Mr. Michael Wernick:** It's up to you.

**The Chair:** We have an amendment from Mr. Villemure. The amendment is—

Go ahead, on the amendment.

**Mr. Michael Barrett:** Did Ms. Damoff move a subamendment to the date?

**Ms. Pam Damoff:** No.

**The Chair:** No.

Ms. Damoff's suggestion was 14 days, right? We're working on the basis that it's 14 days after the receipt of Mr. Wernick's information, okay?

We likely will need a subamendment, then, from Ms. Damoff to do that. I'm going to encourage her to do that: to just subamend Mr. Villemure's motion of 10 days to 14 days.

Ms. Damoff?

• (1325)

**Ms. Pam Damoff:** Yes, that's fine.

I think he accepted it, so do we need to vote on that separately, Chair?

**The Chair:** We need to move a subamendment. You can't just accept an amendment like that.

Okay. Just so we're clear, we're on the subamendment proposed by Ms. Damoff to change 10 days to 14 days, and I'm including "after the receipt of Mr. Wernick's documents". Okay? Are we in agreement with that?

**Some hon. members:** Agreed.

**The Chair:** Okay. We are.

The subamendment as proposed by Ms. Damoff and Mr. Villemure's amendment as amended, are we in agreement with that? That is 14 days after we receive Mr. Wernick's documents. Are we in agreement with that?

**Mr. Michael Barrett:** The 14 days?

**The Chair:** The 14 days.

**Mr. Michael Barrett:** That's Ms. Damoff's amendment. Yes, we agree.

(Subamendment agreed to [See Minutes of Proceedings])

**The Chair:** Okay. We agree with that.

Now we're on the main motion as amended several times, which includes Mr. Wernick's documents and documents from the Privy Council Office, 14 days after we receive Mr. Wernick's documents.

Hang on a second. What we're voting on, to be clear, if the documents received are not satisfactory, that the PCO provide the documents within 14 days....

Just hang on a second.

**The Clerk:** Would you like me to read it?

**The Chair:** Yes, if you don't mind, Madam Clerk, just repeat that. I can't read your writing.

I'm going to need everyone's attention here, because this what we're dealing with right now.

Go ahead, Madam Clerk.

**The Clerk of the Committee (Ms. Nancy Vohl):** The amendment that was moved by Mr. Villemure I will repeat, because it was not in written text. Basically, it's after.... On the motion as amended first, it says, "after the adoption of this motion", and there would be a semicolon.

Then we would add, if the documents received from Mr. Wernick...if the committee judges them not to be satisfactory within 14 days of the reception of the documents from Mr. Wernick, that PCO provide the documents within 14 days. This is what we're voting on.

**The Chair:** Thank you, Madam Clerk.

This is what we're voting on right now.

I think that captures the spirit of what you were discussing, Ms. Damoff.

I see your hand.

**Ms. Pam Damoff:** I just need some clarity, Mr. Chair, on how it's changed.

The committee's going to decide if the documents are satisfactory or not—I want to make sure that's in there—and then it's 14 days from when the committee decides that they're not satisfactory. Is that right, or...?

I guess my first point is that I think it needs to include who is deciding that the documents are not satisfactory, which I think should be the entire committee. Then it also needs to include what the time frame is for the 14 days and when that kicks in.

It's just clarity I'm seeking, Mr. Chair.

**The Chair:** I just need everybody's attention, please, just so that we're clear on this.

The expectation is that it will be the decision of the committee on these documents that are received by Mr. Wernick if, in fact, we need the PCO. If we need to include that in the motion so that it's clear... However, my understanding and the clerk's understanding, based on the discussion that's happened today, is that that's the way it is. It will be a decision of the committee as to whether to get the PCO documents within the 14 days.

Now, that 14 days is after the receipt of the documents that Mr. Wernick is going to provide to the committee.

Does that clarify things, Ms. Damoff? Thank you.

Go ahead, Mr. Barrett.

**Mr. Michael Barrett:** The challenge, of course, is that this supposes there's an interest in moving forward with the rest of the documents. What I would prefer to see is, if we're not including the PCO in the documents being ordered today, that it's time triggered.

I appreciate that there needs to be some subjective analysis of that, but if it comes back to the full committee.... We've been mired in this for quite some time already. I would forecast that the same

would happen again. Therefore, I would rather put it to the chair that the documents have been well received or not, and if not, then the production order is issued. However, if it comes back to the committee, that might just be the end of it then.

• (1330)

**The Chair:** Might I suggest that—and I'm just throwing this out there—if one party is not satisfied, then that could trigger the discussion at the committee, which I could facilitate at a committee meeting under committee business. I'm just trying to figure out some sort of mechanism that we can use. To me, that would be the mechanism. If somebody indicates to me that they're not satisfied with the documents that Mr. Wernick provides, then that would force a discussion at committee, at which point we would make a decision on the PCO after our committee discussion.

Go ahead, Ms. Damoff.

**Ms. Pam Damoff:** I think that's reasonable, Mr. Chair. If someone on the committee is not satisfied with the documents, then you can call a committee meeting. I think that's a very reasonable suggestion and approach.

**The Chair:** My reason for that is to address Mr. Barrett's concern, Ms. Damoff, that this is not prolonging itself and that we're trying to figure out whether we're happy or not with the documents.

**Ms. Pam Damoff:** I think we're all on the same page here, Mr. Chair. I really do, and I appreciate your suggestion.

**The Chair:** Okay.

I do have to go back to Mr. Barrett.

Does that satisfy, if we have...? We can even put it in the motion that if one party is not happy with the documents that come back, then that would trigger a discussion at committee and the chair would signal when that would happen.

**Mr. Michael Barrett:** Mr. Chahal suggested that a committee of the two Michaels here would be able to decide, but barring that, I think that we have an understanding that it will come back to committee.

**The Chair:** I'm not going to put that in the motion. I think we can have a clear understanding of what was discussed.

Madam Clerk, are you clear on that?

Thank you.

We are on the main motion as—

**The Clerk:** We're on the amendment from Mr. Villemure as amended.

**The Chair:** Yes, the amendment from Monsieur Villemure as amended. Just bear with me a second.

Is there consensus and agreement on the amendment proposed by Mr. Villemure, as amended? I'm not seeing any hands on the screen, so I'm going to accept that.

(Amendment as amended agreed to [*See Minutes of Proceedings*])

**The Chair:** Now we are on the main motion as amended. I don't see any further discussion.... Tell me that's not a discussion. No, it's a thumbs up. Okay.

**Some hon. members:** Oh, oh!

**The Chair:** All right. I don't see any discussion. Do we have consensus on the main motion as amended and not require a recorded vote? Okay, we do.

Mr. Green? Thank you. The motion is adopted.

(Motion as amended agreed to [*See Minutes of Proceedings*])

**The Chair:** Mr. Wernick, I want to thank you for your time today. Thank you for your patience and sticking around and providing us with the information that you did.

I want to thank the committee clerk, the analysts, and the technicians. Everyone, on behalf of Canadians, thank you. The meeting is adjourned.

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