Response to Senate Committee on Legal and Constitutional Affairs (LCJC)

1) Were victims groups consulted in the development of the remediation agreement regime? If so, provide a list of the specific victims groups that were consulted.
2) Did SNC-Lavalin take any steps to contact the Department of Justice to give their opinion on the remediation agreement regime or did the Department of Justice consult with SNC-Lavalin?
3) Provide any examples of jurisprudence that indicates clearly that the expression "public interest" includes or was considered by tribunals to include the interests of the victim.

Question 1

Proposed response:

Between September 25 and December 8, 2017, the Government of Canada conducted a public consultation to seek input on potential enhancements to the Integrity Regime and on a possible Canadian deferred prosecution agreement regime. The views of interested parties were collected in a number of ways, including through a dedicated website for Canadians to submit feedback, as well as through face-to-face meetings and teleconferences.

The Government specifically brought to the attention of victim stakeholder umbrella organizations and provincial and territorial directors of victim services, the Government's public consultation on expanding Canada's toolkit to address corporate wrongdoing, which included the discussion paper on deferred prosecution agreements. These organizations had the means to distribute the information broadly through their respective networks. Government officials met with over 370 participants and received 75 written submissions.

The Government of Canada did not seek the consent of participants to identify their involvement with this process, and therefore it is not possible to identify specific participants.

However, a report summarizing the views of those that participated in this consultation process can be found here.

https://www.tpsgc-pwgsc.gc.ca/ci-if/ar-cw/rapport-report-eng.html#s4

Question 2

The Lobbying Registry recorded no contact between SNC-Lavalin and Justice officials in the two years preceding the coming into force of the Remediation Agreement Regime provisions in the *Criminal Code*.

At a Transparency International conference on May 17, 2018, a participant who identified himself as being an employee of SNC-Lavalin approached a Department of Justice official and attempted to engage that official in a discussion about deferred prosecution agreements. The official did not engage in the conversation.

Question 3

The most recent relevant Supreme Court of Canada case is *R*. v. *Anthony-Cook*, 2016 SCC 43, [2016] 2 S.C.R. 204 https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16201/index.do , in which Moldaver J., speaking for the Court, explained how the public interest test benefits victims in the context of a joint submission on sentence:

> A. *The Proper Test*
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> [32] Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. But, what does this threshold mean? Two decisions from the Newfoundland and Labrador Court of Appeal are helpful in this regard.
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> [33] In *Druken*, at para. 29, the court held that a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system". And, as stated by the same court in *R. v. B.O.2*, 2010 NLCA 19, at para. 56 (CanLII), when assessing a joint submission, trial judges should "avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts".
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> [34] In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold — and for good reason, as I shall explain.
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> …
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> [39] From the Crown's perspective, the certain or near certain acceptance of joint submissions on sentence offers several potential benefits. First, the guarantee of a conviction that comes with a guilty plea makes resolution desirable (Martin Committee Report, at pp. 285-86). The Crown's case may suffer from flaws, such as an unwilling witness, a witness of dubious worth, or evidence that is potentially inadmissible — problems that can lead to an acquittal. By agreeing to a joint submission in exchange for a guilty plea, the Crown avoids this risk. Second, the accused may have information or testimony to offer the Crown that can prove invaluable to other investigations or prosecutions. But this information may not be forthcoming absent an agreement as to a joint submission. Third, the Crown may consider it best to resolve a particular case for the benefit of victims or witnesses. When an accused pleads guilty in exchange for a joint submission on sentence, victims and witnesses are spared the "the emotional cost of a trial" (*R. v. Edgar*, 2010 ONCA 529, 101 O.R. (3d) 161, at para. 111). Moreover, victims may obtain some comfort from a guilty plea, given that it "indicates an accused's acknowledgement of responsibility and may amount to an expression of remorse" (*ibid.*).