

Alex Benay is on a mission to disrupt public service culture from within

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THE HILL TIMES

THIRTIETH YEAR, NO. 1607

CANADA'S POLITICS AND GOVERNMENT NEWSPAPER

WEDNESDAY, FEBRUARY 20, 2019 \$5.00

News Politics

Butts' exit could help government wield more effective defence strategy in SNC-Lavalin affair, politicians say

Gerald Butts has removed himself from the daily political grind of strategizing how to keep the Liberals in power. But observers say it's unlikely he will be consigned to watch the campaign unfold from the sidelines.

Ex-principal secretary Gerald Butts, longtime confidant to the prime minister and the architect behind the Liberal Party's stunning ascent from the political wilderness, resigned on Feb. 18 amid allegations that the Prime Minister's Office intervened in the prosecution of SNC-Lavalin. He's pictured leaving a caucus meeting last month in the West Block. *The Hill Times* photograph by Cynthia Münster



BY BEATRICE PAEZ

Gerald Butts' resignation as the prime minister's most trusted

adviser could be an attempt for the Trudeau government to mount a more effective defence against alle-

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News Politics

Perception a problem with retired Supreme Court justices involved in the 'highly partisan' SNC-Lavalin affair, say some court watchers

BY SAMANTHA WRIGHT ALLEN

With a former Supreme Court justice tapped as counsel to former attorney general Jody Wilson-Raybould, some court

watchers say they are "uneasy" with the optics of a political judiciary. But two former justices say she has the right to get good legal

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» **Booting Butts** is only moving the frying pan to a different fire: **Powers p. 5**

» Wilson-Raybould story **threatens Trudeau's feminist brand**, could hurt in election: strategists **p. 4**

» Butts' departure **breeds more questions**: editorial **p. 8**

News Byelections

'Underdog' NDP in Outremont faces 'hard battle' to keep ex-leader's seat: NDP analysts

NDP candidate Julia Sánchez says she has a good campaign team in Montreal, and isn't losing out on party resources focused on leader Jagmeet Singh's byelection race in B.C.

BY SAMANTHA WRIGHT ALLEN

The Quebec riding of Outremont is the Liberals' to lose,

with the NDP a "long shot" to keep former leader Tom Mulcair's seat in the upcoming byelection, say NDP analysts, who call candidate Julia Sánchez a "star," but still the clear underdog.

From what he's heard on the ground, former NDP national director Karl Bélanger said the party is doing everything it can, "but the current political context makes an NDP win a long shot" as the party struggles in Quebec to maintain double-digit support in the polls, and given "their leader and most of their main organizers are focused on Burnaby South."

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News Hill media

Hill reporters push back against lack of access to MPs in West Block

'For a reporter, this is terrible,' says CBC's Julie Van Dusen. Two suggestions for new scrum spots were rejected, but talks to find a solution continue.

BY AIDAN CHAMANDY

Parliamentary reporters say they're disappointed with the limited access they have to catch Members of Parliament for comment in the new West Block, and though they've brought their concerns to House security officials there's no resolution yet.

Their frustrations largely stem from MPs being able to take

a back entrance to the House of Commons Chamber by the Speaker's corridor, which reporters don't have access to, as well as the smaller foyer than the previous Centre Block location, and fewer offices and meeting rooms. While negotiations are "open" according to Philippe-Vincent Foisy, president of the Parliamentary Press Gallery and a Radio-Canada political reporter, "there's no agreement yet."

In a Feb. 15 email to Press Gallery members, Mr. Foisy said many MPs are using a back and southern entrance to the Commons to come and go. "These entrances are closest to Wellington and the rest of downtown Ottawa, so it is human nature to [choose] this path," he wrote. "However, this reduces our chances to interview MPs."

The Press Gallery proposed two possible scrum locations.

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Publications Mail Agreement #40068926 0 94922 81130 1

News Politics

Perception a problem with retired Supreme Court justices involved in the 'highly partisan' SNC-Lavalin affair, say some court watchers

Jody Wilson-Raybould's hiring of Thomas Cromwell as counsel is 'good for the client, good for the PMO, good for Canada,' says a Supreme Court specialist.

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advice and it doesn't politicize Canada's highest court.

When Ms. Wilson-Raybould (Vancouver Granville, B.C.) resigned from cabinet on Feb. 12, she said in a statement she knew many "wish for [her] to speak" on the SNC-Lavalin scandal. The fallout has snowballed daily since the Feb. 7 *Globe and Mail* report that the former attorney general faced pressure from the Prime Minister's Office to make a deal with the Quebec engineering company facing fraud and corruption charges and to avoid prosecution.

Less than a week after Ms. Wilson-Raybould's resignation, Prime Minister Justin Trudeau's (Papineau, Que.) principal secretary, longtime adviser, and close friend Gerald Butts also resigned, and in his Feb. 18 statement "categorically" denied that he or anyone in the PMO pressured Ms. Wilson-Raybould.

She's retained former Supreme Court justice Thomas Cromwell as counsel for "advice on topics that [she is] legally permitted to discuss in this matter." As a former minister she is bound by cabinet confidence and as attorney general, by solicitor-client privilege.

Some say Mr. Cromwell's presence—and that of former Supreme Court justice Frank Iacobucci as an SNC-Lavalin lawyer—prompts concerns that their position is being politicized, damaging the principle of judicial independence. University of Waterloo political

scientist Emmett Macfarlane said it's "about the perception" and the fact "they seem to be used and politicized for that reason."

"We have to be sensitive to the fact that these are deeply political contexts," said Prof. Macfarlane, and questioned whether retired Supreme Court judges—as "extremely powerful people" with "tremendous reputational influence"—are "being used for political cover in certain contexts."

Having retired judges "weighing in" while those they served with remain on the bench, "might colour how current judges see an issue," said Prof. Macfarlane, and is "an important debate" we should be having.

"Is there a line in terms of what retired judges should take on?" he asked "The absence of a line is a legitimate cause for some concern."

Mr. Cromwell, who left the court in August 2016 after serving eight years and now works as senior counsel at Borden Ladner Gervais, declined to comment. Six current justices who served with Mr. Cromwell still sit on Canada's highest court.

Former justice Louis LeBel, who sat on Canada's highest bench from 2000 to 2014, said he was surprised to see some describe Mr. Cromwell's involvement as "weaponizing" the court because retired justices have long returned to legal activities, and it's "accepted" that they can give legal opinions.

"It is perfectly legitimate to raise issues about what former justices of the court could or should do after leaving the court, but from what I have seen until now in this matter, I think both former justice Iacobucci and Mr. Cromwell have been doing consult work," said Mr. LeBel, a lawyer at Langlois Kronström Desjardins.

He and former justice John Major both told *The Hill Times* it's appropriate for retired justices to offer legal advice, but by tradition they don't fully return to practise and appear in court as an advocate for a client.

Mr. Major, who sat as justice from 1992 to 2005 and is now counsel at Bennett Jones, said he's read the criticism but it



Former attorney general Jody Wilson-Raybould is bound by two oaths of office—cabinet confidence and solicitor-client privilege—but has retained former Supreme Court justice Thomas Cromwell for advice on what she can say. *The Hill Times* photograph by Andrew Meade

doesn't "make a very impressive case," and that it "seems sensible" for an MP to hire a "sound lawyer."

"The benefit of free choice is more important than a misconceived aura," said Mr. Major, who disagreed that judicial pedigree offers an advantage. "The law is the law, no matter who you get it from."

"I think, without sounding too sanctimonious, the truth of what happened is what we're looking for and perception shouldn't deter people from taking proper steps," said Mr. Major, who couldn't speak directly to the case because he's being consulted by a legal firm for an opinion.

Past justices also entered 'politically sensitive' arenas

In the past, retired justices have worked in "politically sensitive" arenas, Mr. LeBel noted, and given their experience "it should not be a surprise that they might be called upon to do things that are difficult and sensitive."

Former Supreme Court justice Ian Binnie, for example, was named arbitrator in 2015 during the fraught Senate expense scandal that was a constant political headache for the Conservative government ahead of that year's election. A decade before, Mr. Major led the federal inquiry into the Air India investigation, noted Mr. LeBel as one other example.

While it's not uncommon for judges to work at law firms, Prof. Macfarlane said, "this is a very particular, very public, very political, and now very partisan context and I think it makes me and others court watchers uneasy."

Liberal Senator Serge Joyal (Kennebec, Que.), who specializes in legal and constitutional issues, said there are already ethical rules that govern former justices, and he trusts them to "know exactly the limits of their own involvement."

The "appearance of justice has to be maintained and protected" as a principle "fundamental to the whole credibility of the judicial system," he said, but he doesn't yet see it as a concern.

"At this stage we're not there yet at all and I'm sure former justice Cromwell is very well aware of it," and "the explosive situation" surrounding Ms. Wilson-Raybould.

Rob Walsh, former House of Commons law clerk, said in his opinion former judges are likely hired as legal counsel because they "will be taken more seriously" and their "advice given greater weight."

Retired justices "should not allow themselves to be used in this way," said Mr. Walsh by email, and ideally, if working, their service should be for a law firm where they privately give legal knowledge.

"The former judge ought not to take on a public role of acting for a particular client, especially a high-profile political client," said Mr. Walsh, though in the Wilson-Raybould case he doesn't think there's great "risk of politicization" of their former judi-

cial function or the current bench. The same analysis applies to Mr. Iacobucci, he said.

Their involvement unearths an old debate around what judges should do after retirement, of which there are three main schools of thought, explained Dalhousie University law professor Richard Devlin. Some believe in absolute prohibition on return to practice, given judges were at the apex of their career; a second approach is "anything goes," as younger appointees retire earlier and can offer a public good with their expertise in practice; and third, that there should be some limitations, including that former judges don't litigate.

It's a "healthy" debate to be having said Prof. Devlin, who chairs the Canadian Association for Legal Ethics.

"We can't treat our judges as if they were some religious community beyond review," said Prof. Devlin, who said his sense is that the judiciary is "split" on the subject, while Prof. Macfarlane said he doubts many "in the legal community are ringing any alarm bells," since most are "very hesitant to say anything that looks like criticisms of individual judges."

Cromwell as counsel 'good' move: Meehan

Eugene Meehan, a former executive legal officer at the Supreme Court of Canada, said retaining a former Supreme Court justice as counsel doesn't "politicize the process." He likened the choice to seeing a specialist physician who can deal with the issue fast and efficiently.

"Cromwell is such a specialist," said Mr. Meehan, who specializes in Supreme Court matters at his practice, Supreme Advocacy. "Good lawyers do not self-identify with their clients. Good lawyers see both sides. This lawyer's appointment is good for the client, good for the PMO, good for Canada."

Canadian judicial and constitutional expert Peter Russell was dismissive of concerns raised around politicization of the courts, suggesting it's a "dangerous attitude" that minimizes real threats to democracy.

"Their days on the court are over, they're no longer big decision-makers, they have expertise, and, beyond that even, an understanding of a whole legal and political system that can be very valuable—a kind of resource that shouldn't be dried up" because people "hold their noses" when politics enters the picture.

It's also important to understand the independence of the judiciary is not absolute, he said.

"There are inevitably, in every society, connections between the courts and the political system. You can't avoid that, but you should try, as much as one can, to prevent an interference with the judgement of those who are in the justice system," from partisan interests, Mr. Russell said.

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FLEISHMANHILLARD HIGHROAD

FleishmanHillard HighRoad Ottawa is pleased to welcome Pierre Cyr as Vice President, Public Affairs. FHR is Canada's leading public affairs and integrated communications agency.

Mr. Cyr brings an in-depth understanding of government and politics drawn from working on Parliament Hill and at Queen's Park. A seasoned professional, he will provide senior counsel to clients on a wide range of offerings, including public affairs, crisis and issues management, executive communications and high-level media relations.

Fluently bilingual, Mr. Cyr most recently served as Director of Board and Stakeholder Relations at Canadian Blood Services. He was a key member of Premier Kathleen Wynne's staff as Executive Director of Operations, where he oversaw political strategy, planning, and outreach to community groups as well as the Liberal Caucus Services Bureau. He also served as Chief of Staff to senior provincial cabinet ministers, as well as in Director-level roles in several minister's offices. In 2011, Mr. Cyr was Director of Political Operations for the Leader of the Liberal Party of Canada, where he coordinated political operations and community outreach across the country.

Mr. Cyr also currently serves on the Board of Directors of the Empire Club of Canada and is Operational Vice President (Organization) of the Ontario Liberal Party.