

Federal Court



Cour fédérale

Ottawa, March 8, 2019 – A decision was issued today by the Honourable Catherine M. Kane of the Federal Court in file T-1843-18:

**IN THE MATTER OF SNC-LAVALIN GROUP INC., SNC-LAVALIN INTERNATIONAL INC.
AND SNC-LAVALIN CONSTRUCTION INC. v THE DIRECTOR OF PUBLIC PROSECUTIONS**

Summary: The Applicants sought judicial review of the decision of the Director of Public Prosecutions [DPP] made on October 9, 2018, which declined to invite the Applicants to enter into negotiations for a remediation agreement. Recently enacted *Criminal Code* provisions in Part XXII.1 permit and govern remediation agreements. A remediation agreement is defined as “an agreement, between an organization accused of having committed an offence and a prosecutor, to stay any proceedings related to that offence if the organization complies with the terms of the agreement”. The October 9, 2018, decision indicates that the DPP “continues to be of the view that an invitation to negotiate a remediation agreement is not appropriate in this case. Therefore no invitation to negotiate a remediation agreement will be issued and as a result crown counsel shall continue with the prosecution of this case in the normal course [...]”.

The Respondent then brought a Motion to Strike the Application for Judicial Review on the basis that the Application has no reasonable prospect of success given that the decision of the DPP is not an administrative decision but an exercise of prosecutorial discretion, which is not subject to judicial review, except for abuse of power.

The Court acknowledged that the threshold to strike an Application for Judicial Review is high, but found that the threshold had been met. The Court concluded, upon consideration of the extensive submissions of the parties and the jurisprudence, that the Application for Judicial Review had no reasonable prospect of success in the context of the law and the governing jurisprudence and when a realistic view is taken. The law is clear that prosecutorial discretion is not subject to judicial review, except for abuse of process. The decision at issue – whether to invite an organization to enter into negotiations for a remediation agreement – clearly falls within the ambit of prosecutorial discretion in the same way as many other decisions that prosecutors are regularly called to make in criminal proceedings. Courts have no supervisory role with respect to decisions made by prosecutors in the exercise of their discretion.

In addition, the Court found that it would not have jurisdiction to review the decision of the DPP because, in this context, the DPP derives its authority, as the delegate of the Attorney General, from the common law, not from a federal statute, and would, therefore, not fall within the definition of “federal board, commission or other tribunal” in section 2 of the *Federal Courts Act*.

The Court therefore struck the Application for Judicial Review, without leave to amend.

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A copy of the decision can be obtained via the home page (“What’s New”) of the Web site of the Federal Court:
http://www.fct-cf.gc.ca/fc_cf_en/Index.html

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