Translated from the original French

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| R. c. SNC-Lavalin inc. | 2022 QCCS 1967 |
| SUPERIOR COURTJM 2497 |
| **Criminal and Penal Division** |
| Canada |
| PROVINCE OF QUEBEC |
| DISTRICT OF MONTREAL |
|  |
| **Nos.:** | 500-36-010199-225 (Sup. Ct.)500-01-223556-215 (C. Q.) |
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|  |
| DATE: | May 31, 2022 |
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| **PRESIDING: THE HONOURABLE ERIC DOWNS, J.S.C.** |
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| HER MAJESTY THE QUEEN |
| Prosecutrix  |
| v. |
|  |
| SNC-Lavalin Inc.SNC-Lavalin International Inc. |
| Accused |
|  |
|  |
| **JUDGMENT ON THE APPLICATION FOR AN ORDER APPROVING A REMEDIATION AGREEMENT** |
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THIS JUDGMENT CONTAINS A TEMPORARY AND PARTIAL ORDER PROHIBITING THE PUBLICATION, BROADCASTING AND TRANSMISSION OF CERTAIN INFORMATION RELATING TO A CO-ACCUSED IN CASE No. 500-01-223556-215 AS WELL AS TO AN ACCUSED IN RELATED CASE No. 500‑01‑223557‑213, AND THIS UNTIL THE JURY IS SEQUESTERED OR UNTIL THE COURT ORDERS OTHERWISE. **Editor’s note: Publication, broadcasting or transmission of highlighted portions is prohibited**

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# OVERVIEW

1. The Prosecutor submits a draft remediation agreement (hereinafter the “Draft Agreement”) that it entered into with the organizations SNC-Lavalin Inc. (hereinafter “SNCL”) and SNC-Lavalin International Inc. (“SNCLI”) or, collectively, the “Organizations”, the accused in case number 500-01-223556-215, for the purposes of the Court’s approval under s. 715.37(6) Cr. C.[[1]](#footnote-1)
2. In September 2018, the Canadian legislator introduced the remediation agreement regime in Part XXll.1 of the *Criminal Code*. The Draft Agreement in this case is the first submitted before a court for approval in Canada.
3. The Parties jointly contend that the Draft Agreement is in the public interest and that its terms are fair, reasonable, and proportionate to the gravity of the alleged offences. It is the culmination of an offer to enter into negotiations for a remediation agreement and the resulting negotiation process undertaken by the Parties from September 2021 to February 2022, governed by common law and Part XXIl.1*.*
4. The Draft Agreement incorporates the mandatory and optional content of any remediation agreement, prescribed by s. 715.34 Cr. C., under two main categories of conditions: the Organizations’ financial obligations and the follow-up on compliance measures. The Draft Agreement also includes the Organizations’ admission of responsibility, established based on a Statement of Facts, as well as their commitment to cooperate in the future.
5. With the remediation agreement regime, Parliament has certain specific objectives: to hold an organization accountable, to correct the corporate culture and to remedy the harm caused by the offences while avoiding negative consequences to innocent third parties.
6. To that end, the Parties have agreed that the Draft Agreement should provide for financial obligations on the part of the Organizations and monitoring by an Independent Monitor appointed to ensure the application and, if necessary, the improvement of the existing integrity program.
7. The Parties propose that the financial obligations and integrity monitoring be spread over three (3) years, if the Court finds that these terms have all been met. In such a case, the proceedings will be stayed by the effects of s. 715.4(2) Cr. C.
8. The financial framework of the Draft Agreement consists of:
	1. payment of a penalty (715.34(1)(f) Cr. C.);
	2. forfeiture of property, benefit and advantage resulting from the offences (715.34(1)(e) Cr. C.);
	3. payment of reparations to the victim (715.34(1)(g) Cr. C.);
	4. payment of a victim surcharge (715.34(1)(h) Cr. C.).
9. The parties argue that the penalty amounts to a fine imposed on an organization. The penological principles of common law and Part XXIII of the *Criminal Code*, more specifically s. 718.21 Cr. C., apply *mutatis mutandis*.
10. The parties to the Draft Agreement agree that payment of the $18,135,135 penalty satisfies all of these principles and the objectives of the remediation agreement regime.
11. This amount represents the projected profit of $6,908,623, multiplied by a punitive factor of 350%, or $24,180,181, less a 25% cooperation credit. This credit is equal to $6,045,046.
12. Forfeiture under s. 715.34(1)(e) Cr. C. refers to the forfeiture of proceeds of crime regime under Part XII.2 of the *Criminal Code*. The parties to the Agreement agree that the payment of $2,490,721 amounts to a fine in lieu of the proceeds of crime based on the circumstances of this case.
13. The reparation measure to the victim, in this case the corporation *The Jacques Cartier and Champlain Bridges Incorporated* (hereinafter “JCCBI”), provided for in s. 715.34(1)(g) Cr. C., expressly refers to the restitution procedure described in s. 738 Cr. C. Based on the evidence, the parties agree that the payment of $3,492,380 to the victim corresponds to adequate reparation for the harm done.
14. The victim surcharge is required under provisions 715.34(1)(h) and 715.37(5)  Cr. C., which set it at thirty percent (30%) of the penalty or any other percentage that the Prosecutor deems appropriate in the circumstances. Here, the Parties have agreed on a percentage of thirty percent (30%) of the penalty, i.e., $5,440,541.
15. The Prosecutor and the Organizations therefore agree to the payment of a total amount of $29,558,777.
16. Following a public hearing, the Court rendered the following conclusions:

[translation]

**THE COURT HEREBY**:

**GRANTS** the application for an order approving an amended remediation agreement, under s. 715.37 Cr. C.

**APPROVES**, as is,the amended remediation agreement, in accordance with the terms and conditions set forth therein, including the schedules to the remediation agreement.

**ANNOUNCES** that it will issue detailed reasons shortly in a written decision, in accordance with s. 715.42 Cr. C.

**EMPHASIZES** that, in that decision, the Court will set out the reasons that justify making the amended remediation agreement approval order.

**ALLOWS**, as of this moment, the publication of the amended remediation agreement (Book of Exhibits B, Tab 1), with the exception of its SCHEDULE B STATEMENT OF FACTS, given the temporary and partial order prohibiting publication, broadcasting and transmission (Public Order No. 5), rendered on May 10, 2022, and the future submissions of the parties and impleaded parties.

1. In this judgment, the Court sets out its reasons and gives the procedural context of the case, including the conduct of hearings *in camera* that preceded the public hearings, the various anonymity, confidentiality and sealing orders, as well as the partial and temporary publication, broadcasting and transmission prohibition orders.
2. Furthermore and by way of introduction, the Court notes that Canada, like several other countries, has implemented a remediation agreement regime.
3. Parliament was inspired primarily by the British regime, subjecting the approval of similar agreements to a judicial review, in this case the Superior Court.
4. The remediation agreement regime should develop in the coming years and become a tool in the legal arsenal for the fight against economic crimes perpetrated by organizations.
5. In the Court’s opinion, by encouraging the voluntary disclosure of crimes committed by organizations and favouring their cooperation, remediation agreements must be approved by the courts when they are in the public interest and meet the conditions set out in the *Criminal Code*.

# CONTEXT

## The files on the merits

1. On September 23, 2021, Normand Morin, SNCL and SNCLI were charged with various *Criminal Code* offences. More specifically, the summons bearing number 500‑01‑223556‑215 charges the Organizations with the offences of fraud on the government (s. 121 Cr. C.), forgery (s. 366 Cr. C.), fraud (s. 380 Cr. C.) and their respective conspiracies (s. 465 Cr. C.), which occurred between September 1997 and March 2004, in Montreal, in connection with the award of the Jacques Cartier Bridge refurbishment contract.[[2]](#footnote-2)
2. On September 27, 2021, the Organizations and Normand Morin appeared before the Court of Québec.
3. On that same date, Kamal Francis appeared on the same charges in a related case bearing number 500‑01‑223557‑213.
4. The Court of Québec adjourned for orientation and declaration on November 12, 2021 and February 15, 2022.
5. On November 12, 2021, Kamal Francis elected to be tried before a judge of the provincial court.
6. On March 7, 2022, the three co-accused jointly registered the judge and jury option and the case was postponed until the Superior Court session opened on March 9, 2022.
7. On that date, the Prosecutor filed the indictment against the three co-accused and began setting the timetable for the pre-hearing conference, as required under s. 625.1(2) Cr. C.

## Offer process and negotiations

1. On September 23, 2021, the same day as the summons was served, the Prosecutor served a *Public Notice of Offer to Negotiate a Remediation Agreement*[[3]](#footnote-3). Concurrently with this public notice, the Prosecutor served a *Detailed Notice of Offer to Negotiate a Remediation Agreement*[[4]](#footnote-4)pursuant to s. 715.33 Cr. C., the contents of which are privileged and confidential.
2. *The Public Notice of Offer to Negotiate a Remediation Agreement* came in the wake of the consent given on September 15, 2021, by the Directeur des poursuites criminelles et pénales, Mtre Patrick Michel, in accordance with s. 715.32(1)(d) Cr. C.[[5]](#footnote-5)
3. This offer is a procedural act in the form of a judicial notice. It informs the Organizations of the framework and timetable for the proposed negotiations and includes the content required under s. 715.33 Cr. C. Acceptance of this offer is deemed an undertaking to comply with the stipulated framework and timetable.
4. Pursuant to s. 715.33(1)(j) Cr. C., the *Detailed Notice* fixes the deadline to respond to the offer, in this case, fifteen (15) days, and a timetable for the negotiation stages, within a maximum period of three (3) months for presenting the approval procedure before the Superior Court.
5. In s. 715.33(1)(d) Cr. C., the legislator specifies that, by agreeing to the terms of the notice, “the organization explicitly waives the inclusion of the negotiation period and the period during which the agreement is in force in any assessment of the reasonableness of the delay between the day on which the charge is laid and the end of trial”.
6. On September 27, 2021, at the Organizations’ appearance, the Prosecutor filed the *Public Notice* into the records of the Court of Québec. Filing the public version of the notice of offer is consistent with the principles of open court, transparency of public prosecutors and consideration of the financial public interest, in particular, because it eliminates any ambiguity surrounding the offer and therefore minimizes the uncertainty of the situation of a public company, the SNC-Lavalin Group Inc. (“SNCLG”).
7. On October 1, 2021, the Organizations, duly authorized by board resolutions, served their *Notice of Acceptance of the Offer to Negotiate A Remediation Agreement.*[[6]](#footnote-6)They thereby accepted the terms of the negotiation, which included, under s. 715.33(1)(e) Cr. C., the obligation to “provide all information requested by the prosecutor that the organization is aware of or can obtain through reasonable efforts”.
8. In this case, to define the bases for determining the financial framework and improving the compliance measures, the Prosecutor targeted the following documentation in its *Detailed Notice*:
	1. Information allowing the identification of any person involved in the act forming the basis of the offences charged as well as the actions taken in respect of these persons;
	2. The accounting for the Jacques Cartier Bridge refurbishment project, including any internal or external audit reports, making it possible to calculate the anticipated profit associated with the project’s completion;existing ethics, compliance and integrity programs applied by the Organizations;
	3. existing ethics, compliance and integrity programs applied by the Organizations;
	4. any agreement or settlement previously entered into between the Organizations and any investigative, government oversight or other body, or other law enforcement agency in Canada or elsewhere, since February 15, 1999, and their comprehensive follow-up reports;
9. On October 1, 2021, the Parties began the process of negotiating a draft agreement.
10. According to the Parties, the entire negotiation and preliminary approval process is protected by settlement privilege, as defined by the Supreme Court, and may only be made public upon completion.[[7]](#footnote-7) In fact, in 715.42(1) and (2) Cr. C., the legislator states that the Court is required to publish the remediation agreement as soon as practicable – once “approved by the court”.
11. Upon expiry of the three (3) month negotiation period and following various requests from the Organizations, the Prosecutor agreed to extend this period by two (2) months to check some things that had become necessary in the course of negotiations.
12. On February 25, 2022, the parties mutually agreed to the terms of a remediation agreement within the meaning of s. 715.37(1) Cr. C. and jointly agreed to submit the Draft Agreement to this Court for approval.

## Prosecutor's application for the Draft Agreement’s approval

1. On February 25, 2022, in accordance with s. 715.37(1) Cr. C. and with the Organizations’ consent, the Prosecutor sent the Court a written application for approval, in the form of an *Application for an Order Approving the Remediation Agreement and for the Temporary and Partial Anonymity, Confidentiality and In Camera Orders* (the “Application for Approval”).[[8]](#footnote-8)
2. The following exhibits support the application,[[9]](#footnote-9) namely:
	1. - Draft Agreement between Her Majesty the Queen and SNC-Lavalin Inc. and SNC-Lavalin International Inc., including Schedule A, a copy of the summons; Schedule B, [translation] “Statement of Facts”; and Schedule C, Follow-up Report Calendar;
	2. - Consent to negotiate a remediation agreement, s. 715.32 (1)(d) Cr. C.;
	3. - Summons 500-01-223556-215 (Schedule A to the Draft Agreement);
	4. - Public Notice of Offer to Negotiate a Remediation Agreement (715.33 Cr. C.);
	5. - Detailed Notice of Offer to Negotiate a Remediation Agreement (715.33 Cr. C.), including, under Schedule A, [translation] “Consent to Negotiate a Remediation Agreement”; under Schedule B, [translation] “Draft Notice of Acceptance”; and under Schedule C, the [translation] “Statement of Facts”;
	6. - Notice of Acceptance of the Offer to Negotiate a Remediation Agreement by the Organizations, 715.33 Cr. C.;
	7. - Notice to victims, 715.36 Cr. C.
3. The Parties in this Application point out that communications between the Organizations and the Prosecutor that took place within the context of negotiations for the Draft Agreement are protected by settlement privilege, and that this privilege extends to readying the *Application for Approval* before the Court and until the public hearing.
4. In the Application, the Parties propose a two-step procedure to the Court – the first confidential, the second public – that is grounded on the application of settlement privilege, public interest considerations, and British law regarding Deferred Prosecution Agreements, which provides for just such a procedure.[[10]](#footnote-10)
5. On March 15, 2022, the Court held a hearing *in camera* at the Parties’ request and issued orders to preserve the anonymity and confidentiality of the file, as well as hearings *in camera* for all of the dates required to ready the public presentation of the application to approve a remediation agreement.[[11]](#footnote-11)
6. On March 23, 2022, the Parties produced written submissions in support of the Draft Agreement’s approval, some parts of which provide the factual framework of the offences with which the Organizations were charged.[[12]](#footnote-12)
7. That same day, the Prosecutor also filed a book of exhibits, in two volumes, containing 39 exhibits,[[13]](#footnote-13) and a list of admissions signed by the Parties.
8. On March 31, 2022, the Parties filed joint submissions regarding the consideration to be given to the victim impact statement (715.37(3)(4) and 722 Cr. C.)[[14]](#footnote-14) and a list of amended admissions.[[15]](#footnote-15)
9. On April 4, 2022, the Prosecutor sent the Court an *Application to Obtain Temporary and Partial Publication, Broadcasting and Transmission Prohibition Orders for Part of a Remediation Agreement, the Reasons for its Approval and the Supporting Exhibits* (715.42 Cr. C.),[[16]](#footnote-16)to which the Organizations responded with their written submissions on April 5, 2022.[[17]](#footnote-17)
10. On April 6, 2022, the Court held a second hearing *in camera* in order to orally complete the Parties’ written submissions, establish the procedure to consider the victim impact statement, establish the procedure for the publication of the file and the applicable publication prohibition orders, order the re-recording and stenographic transcripts, and finally schedule a public hearing for the approval.[[18]](#footnote-18)
11. On April 20, 2022, at the Court’s invitation, the Prosecutor sent a Case Management Protocol, the victim impact statement and the application for a sealing order and for the temporary and partial order prohibiting the publication, broadcasting and transmission of certain information pertaining to a remediation agreement (715.42 Cr. C.).[[19]](#footnote-19)
12. On April 27, 2022, the Court held a third and final hearing *in camera* and scheduled the public hearing for approval of a remediation agreement for May 10, 11 and 12, 2022.[[20]](#footnote-20)
13. On May 3, 2022, the Prosecutor sent the Court the amended version of the application referred to in paragraph 49,[[21]](#footnote-21) to be presented at the public hearing on May 10, 11 and 12, 2022. The Prosecutor appended Schedule A, a Case Management Protocolgoverning the hearing for the approval of the remediation agreement, to this application.
14. Before the public hearing was held, the Court, in accordance with the ancillary conclusions sought by the amended application, issued temporary anonymity, confidentiality, sealing and *in camera* orders, reserving the right of the Parties and the impleaded parties to make additional representations regarding the publication of the proceedings at the public hearing.[[22]](#footnote-22)
15. The Parties, at the Court’s invitation, agreed that the *Amended Application for a Sealing Order and for Temporary and Partial Orders Prohibiting the Publication, Broadcasting and Transmission of Information on a Remediation Agreement* be served on the impleaded parties at least one clear juridical day before the hearing.[[23]](#footnote-23)
16. The Court naturally held that, at the public hearing for the approval of a remediation agreement provided for in s. 715.37 Cr. C., the *in camera* order would be lifted and the entire record to date would become public, such that publication could then only be limited in accordance with s. 715.42 Cr. C., which provides that the Court may issue a publication prohibition order “if it is satisfied that the non-publication is necessary for the proper administration of justice”.
17. In this case, from the start of the public hearing, “the prevention of any adverse effect to any ongoing investigation or prosecution”, according to the factor prescribed in s. 715.42(3)(c) Cr. C., required two separate, temporary, and partial publication prohibition orders: (1) with respect to a possible jury trial for the Organizations should the Court refuse to approve the Draft Agreement; and (2) with respect to a jury trial for the co‑accused Normand Morin, and potentially also for Kamal Francis, should he re-elect and choose a jury trial within the timeframe prescribed by law in his related  case (500-01-223557-213).[[24]](#footnote-24)
18. Thus, these two temporary and partial orders covered only information on the record that could affect the fairness of a jury trial, until this risk was eliminated.

## Temporary and Partial Anonymity, Confidentiality and *In Camera* Orders

1. It is appropriate here to provide more context on the issuance of the temporary and partial anonymity, confidentiality and *in camera* orders.
2. In the Application for Approval of the Draft Agreement, the Parties proposed a two-step approval procedure: a confidential preliminary step followed by a public final step.
3. As indicated above, the parties draw a parallel with the process established by the United Kingdom’s Parliament through its regime governing Deferred Prosecution Agreements.

**Court approval of DPA: preliminary hearing**

1. **(1)** After the commencement of negotiations between a prosecutor and P in respect of a DPA but before the terms of the DPA are agreed, the prosecutor must apply to the Crown Court for a declaration that--
2. entering into a DPA with P is likely to be in the interests of justice, and
3. the proposed terms of the DPA are fair, reasonable and proportionate.

...

**(4)** A hearing at which an application under this paragraph is determined must be held in private, any declaration under sub-paragraph (1) must be made in private, and reasons under sub-paragraph (2) must be given in private.

...

**Court approval of DPA: final hearing**

1. **(1)**When a prosecutor and P have agreed the terms of a DPA, the prosecutor must apply to the Crown Court for a declaration that-
2. the DPA is in the interests of justice, and
3. the terms of the DPA are fair, reasonable and proportionate.

**(2)** But the prosecutor may not make an application under sub-paragraph (1) unless the court has made a declaration under paragraph 7(1) (declaration on preliminary hearing)...

1. A hearing at which an application under this paragraph is determined may be held in private.
2. But if the court decides to approve the DPA and make a declaration under sub‑paragraph (1) it must do so, and give its reasons, in open court.[[25]](#footnote-25)
3. In this case, the parties have agreed that the content of the Draft Agreement’s negotiations is confidential and that the documents created and communications exchanged with a view to reaching an agreement are protected by settlement privilege.[[26]](#footnote-26)
4. The Prosecutor and Organizations argued that settlement privilege protects the approval process at least until it is approved. The parties pointed out that, given the impact on a future trial for the Organizations and the rules governing publicly traded companies, the disclosure of information could have an impact on the markets, especially if the Court refused to approve the Draft Agreement.
5. The parties argued that settlement privilege is broad in scope, whether or not a settlement is reached. The parties relied on the following statement from the Supreme Court's judgment in *Sable Offshore Energy Inc. v*. *Ameron International Corp.*:

[T]he protection is for settlement negotiations, whether or not a settlement is reached. That means that successful negotiations are entitled to no less protection than ones that yield no settlement.

Since the negotiated amount is a key component of the “content of successful negotiations”, reflecting the admissions, offers, and compromises made in the course of negotiations, it too is protected by the privilege.[[27]](#footnote-27)

1. Although Canada’s *Criminal Code* is silent on the privileged character of the negotiations and does not establish a procedure similar to the one in the United Kingdom, the Court ruled that, in the particular circumstances of this case, the two‑step process proposed by the parties was appropriate.
2. In addition, it bears noting that under 715.34(2) Cr. C., Parliament states that the admissions made by the Organizations during negotiations remain inadmissible in evidence in civil or criminal proceedings until the Court approves a remediation agreement.
3. Finally, the regime under Part XXII.1 specifies that the Court is required to publish the remediation agreement “approved by the court” as soon as practicable, along with any reasoned order useful to its coming into force and the accompanying confidentiality conditions, the whole pursuant to 715.42(1)(2) Cr. C.
4. Accordingly, the Court gave effect to the parties’ application for an order to temporarily enter these proceedings into the court ledger under the pseudonyms A v. B, without referring to the Court of Québec file number in which the laying of information, the public notice of offer to negotiate a remediation agreement and the Organizations’ notice of acceptance were filed. Similarly, the names of the Parties and their respective attorneys were not entered into the court ledger.[[28]](#footnote-28)
5. The Court also granted the parties’ request and ordered that the Prosecution's application for an order approving a remediation agreement and for temporary and partial anonymity, confidentiality and *in camera* orders be temporarily filed under seal at the office of the Court.[[29]](#footnote-29)
6. Also, the Court granted the Parties’ request that they be allowed to make their preliminary representations *in camera* for the purposes of responding to any questions raised in the proceedings and written submissions regarding compliance with the conditions of the Draft Agreement, in accordance with the criteria set out in s. 715.37(6) Cr. C.
7. Moreover, contrary to the British procedure, the Court did not consider the merits of the Agreement during this *in camera* phase, reserving this exercise for the public hearing.
8. Finally, it was agreed that during a public hearing for the Draft Agreement’s approval pursuant to s.715.37(3) Cr. C., the Court could determine the conditions and time for lifting the confidentiality measures, then, if applicable, for publishing the approved Agreement and accompanying reasoned orders pursuant to ss. 715.42 Cr. C.

## Sealing of a document protected by settlement privilege

1. It bears noting that once the public hearing ends and the Agreement is approved by the Court, all documents filed, including those adduced during the hearings *in camera*, become public, with the exception of a single one.
2. The Parties agreed that a single document would be permanently protected by settlement privilege, namely Schedule C entitled [translation] “Statement of Facts” under Exhibit R-5 - Detailed Notice of Offer to Negotiate a Remediation Agreement of the *Application for Approval.*
3. That exhibit is a communication that was exchanged for the purpose of taking a position during the negotiations and is not an integral part of the agreement submitted for approval.
4. As the Supreme Court ruled in *Sable Offshore Energy Inc. v.* *Ameron International Corp.,[[30]](#footnote-30)* settlement privilege is a rule of evidence that protects communications between parties negotiating in a dispute.

The purpose of settlement privilege is to promote settlement. The privilege wraps a protective veil around the efforts parties make to settle their disputes by ensuring that communications made in the course of these negotiations are inadmissible.

...

[T]he protection is for settlement negotiations, whether or not a settlement is reached.  That means that successful negotiations are entitled to no less protection than ones that yield no settlement.[[31]](#footnote-31)

1. The Parties, who hold the privilege, requested during the public hearing that this Schedule C be sealed; the Court granted this application and issued the appropriate order.[[32]](#footnote-32)

## Publication, Broadcasting and Transmission Prohibition Order under s. 715.42 Cr. C.

### Application of the regime of s. 715.42 Cr. C.

1. The legislator provides a framework for the obligations to publish the remediation agreement in s. 715.42 Cr. C.
2. According to 715.42(1) Cr. C., the Court must “as soon as practicable”, publish the remediation agreement “approved by the court” along with the reasons justifying that approval order as set out under 715.37(6) Cr. C.
3. Referring to this subsection, the Parties argued that the agreement can be published only after its approval and cannot be published if approval is refused.
4. In addition, according to 715.42(2) Cr. C., the Court “may decide not to publish the agreement or any order or reasons referred to in paragraph (1)(b), in whole or in part, if it is satisfied that the non-publication is necessary for the proper administration of justice”.
5. On that score, under 715.42(3) Cr. C., the legislator lists those factors that are to be considered when “decid[ing] whether the proper administration of justice requires making the decision referred to in subsection [715.42] (2)” Cr. C.:
6. society’s interest in encouraging the reporting of offences and the participation of victims in the criminal justice process;
7. whether it is necessary to protect the identity of any victims, any person not engaged in the wrongdoing and any person who brought the wrongdoing to the attention of investigative authorities;
8. the prevention of any adverse effect to any ongoing investigation or prosecution;
9. whether effective alternatives to the decision referred to in subsection (2) are available in the circumstances;
10. the salutary and deleterious effects of making the decision referred to in subsection (2); and
11. any other factor that the court considers relevant.
12. It therefore appears that subsections 715.42(2) and (3) Cr. C. create a specific statutory regime prohibiting publication.
13. The wording of 715.42(2) Cr. C. nuances the criteria established by the Supreme Court. In essence, it rewords the criteria established by the *Dagenais/Mentuck* judgments*,* which require a “serious risk” as opposed to the “prevention of any adverse effect”, for example. In *Dagenais/Mentuck,* the Supreme Court sets out the following test for granting a publication, broadcasting and transmission prohibition order:
14. such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
15. the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.[[33]](#footnote-33)

### Prevention of any adverse effect to ongoing prosecutions (715.42(3)(c) Cr. C.)

1. As mentioned above, in light of the specific facts of this case, during the public hearings, the Prosecutor argued that temporary and partial publication, broadcasting and transmission prohibition orders were necessary for two distinct purposes, namely:
2. to prevent any adverse effect to the prosecution of the Organizations, should the Draft Agreement not be approved by the Court;
3. to prevent any adverse effect to the prosecution of the co-accused Morin, who must stand trial before a jury, and against the accused Françis in the related case 500-01-223557-213, should he re-elect and choose a trial before judge and jury.

#### Publication Prohibition Order for Accused Organizations

1. The Prosecutor requested a temporary and partial publication, broadcasting and transmission prohibition order in respect of documents the contents of which may adversely affect the potential prosecution of the Organizations. These documents are:
2. The Draft Agreement (R-1 and R-1A of the *Application* *for Approval)* under paragraph 715.42 (1)(a) Cr. C.;
3. Where applicable, the excerpts adversely affecting the holding of a fair trial, notably those relating to the content of Schedule B to the Draft Agreement, namely the [translation] “Statement of Facts” (R-1 of the *Application for Approval*), in the reasons for the decision not to make that order approving the Draft Agreement, pursuant to s. 715.42 (1)(b) Cr. C.;
4. The Prosecutor suggested that this order remain valid until the Court approves the Draft Agreement or, failing that, until it approves a guilty plea, jury sequestration, re-election or order to the contrary issued by this Court in the context of the ongoing proceedings bearing number 500-01-223556-215.
5. The Court, after hearing the representations of the parties and the impleaded parties, granted this application, which was not the subject of any real debate. The Court therefore issued the temporary and partial publication, broadcasting and transmission prohibition order reserving the right of the parties and impleaded parties to make additional representations following the Court's decision on the remediation agreement, in light of the prevailing circumstances at the time.[[34]](#footnote-34)

#### Publication prohibition order for co-accused and related accused

1. The Prosecutor requested a temporary and partial publication, broadcasting and transmission prohibition order in the event the Court approved the Remediation Agreement, because the proceedings are ongoing against Normand Morin, while they are stayed against the Organizations.
2. More specifically, the Prosecutor submitted that a schedule to the Remediation Agreement containing the factual narrative of the offences and certain documentary exhibits supporting the representations might reveal information likely to affect the fairness of the jury trial of Mr. Morin and Mr. Francis, if the latter re-elects and chooses a trial before a jury.
3. More specifically, the Prosecutor identified the following items that should be exempted from publication, broadcasting and transmission:
4. Schedule B to the Draft Agreement, namely the [translation] “Statement of Facts” (R-1 of the *Application for Approval);*
5. The Parties’ oral submissions in support of the Draft Agreement, bearing on the contents of Schedule B to the Draft Agreement, namely the [translation] “Statement of Facts” (R-1 of the *Application for Approval)*;
6. Exhibits AR-26 and AR-27 filed in support of these submissions;
7. Paragraph 38 of the list of admissions (AR-40).
8. The Prosecutor requested that this publication, broadcasting and transmission prohibition order remain valid until there occurred a re-election before a provincial court, a guilty plea, a jury sequestration, or an order to the contrary issued by this Court in the proceedings bearing numbers 500‑01‑223556‑215 and 500‑01‑223557‑213.
9. The Prosecutor also requested that the above orders be issued on an interim basis pending a judgment on the merits with respect to the approval of the Draft Agreement.
10. The Court, after hearing the representations of the Parties and Impleaded Parties issued the requested order in respect of the items mentioned in paragraph 91(iii) and (iv).
11. The Court also issued a temporary and partial order and authorized the publication, broadcasting and transmission of a redacted and contextualized version of Schedule B, namely the statement of facts.[[35]](#footnote-35)

# LEGISLATIVE FRAMEWORK

1. This being the first decision rendered in Canada under s. 715.37 Cr. C., it is appropriate to review the history that led to the creation of a remediation agreement regime in Canada and the legislative framework established in the *Criminal Code*.

## The History of Remediation Agreements in Canada

1. Remediation agreements, also referred to as "deferred prosecution agreements” (“DPA”), are not a Canadian creation. DPA regimes already existed in several jurisdictions before making an appearance in our legal system, notably in the United States where they have been widely used for economic crimes since the early 1990s.[[36]](#footnote-36). A few years later, the United Kingdom drew inspiration from the United States and implemented its own DPA system with the adoption, in 2013, of Schedule 17 to the *Crime and Courts Act 2013.*[[37]](#footnote-37)While public consultations were held in Canada on the appropriateness of incorporating this system into the *Criminal Code*, other jurisdictions like France and Australia were implementing similar mechanisms.[[38]](#footnote-38)
2. It was in this context of global development of a new tool for fighting corporate crime that, in the fall of 2017, the Government of Canada organized a public consultation with over 370 participants concerning improvements to the Government of Canada's Integrity Regime and the adoption of a deferred prosecution agreement regime.
3. In its working paper for public consultation, the Government of Canada notes that corporate crimes are often challenging to identify, time-consuming and resource-intensive to prosecute, and difficult to prove. In addition, businesses may be reluctant under the “traditional” system to report misconduct due to the prospect of a criminal conviction, which could damage the company’s reputation and economic prospects.[[39]](#footnote-39)
4. In this same document, the Government of Canada cites some of the perceived advantages of DPAs. In addition to being effective, one of their goals is to reduce the negative consequences of a conviction for an offence for employees, shareholders, customers, pensioners, suppliers, etc. who did not participate in the criminal activities. Criminal prosecution can thus be reserved for individuals within these companies who engaged in unlawful acts. In that regard, one of the major advantages of DPAs is that they allow businesses to avoid being disqualified from public contracts.[[40]](#footnote-40) However, the Government of Canada also admits in this document that according to some, DPAs could undermine public confidence in the criminal justice system if businesses come to see them as a “cost of doing business”.[[41]](#footnote-41)
5. In February 2018, the Government of Canada reported on the responses received in the context of its public consultation and announced that most of the public consultation’s participants supported establishing a DPA system.[[42]](#footnote-42)
6. Finally, this mechanism was introduced in Canada by the *Budget Implementation Act, 2018, No. 1.*[[43]](#footnote-43) This law came into force in September of that same year.[[44]](#footnote-44)

## The Canadian Remediation Agreement Regime

1. While this economic crime fighting tool is rooted in other jurisdictions, Parliament adopted a statutory DPA regime that was all its own.
2. In developing Part XXll.1 Cr. C., the legislator hewed closer to the foundations of the British regime than the American one, in that it opted for a judicial review and transparency. It also gives a place to the victim.
3. On a preliminarily basis, it is useful to review the contents of s. 715.31 Cr. C., which acts as a guideline for all of the provisions of Part XXIl.1 Cr. C. In this provision, the legislator states the objectives of a remediation agreement regime:

The purpose of this Part is to establish a remediation agreement regime that is applicable to organizations alleged to have committed an offence and that has the following objectives:

1. to denounce an organization’s wrongdoing and the harm that the wrongdoing has caused to victims or to the community;
2. to hold the organization accountable for its wrongdoing through effective, proportionate and dissuasive penalties;
3. to contribute to respect for the law by imposing an obligation on the organization to put in place corrective measures and promote a compliance culture;
4. to encourage voluntary disclosure of the wrongdoing;
5. to provide reparations for harm done to victims or to the community; and
6. to reduce the negative consequences of the wrongdoing for persons — employees, customers, pensioners and others — who did not engage in the wrongdoing, while holding responsible those individuals who did engage in that wrongdoing.
7. All of the provisions establishing a comprehensive legislative regime governing remediation agreements must be read in light of these objectives.
8. Instead of performing an exhaustive review of each provision of Part XXII.1 Cr. C., it will be more relevant at this stage to highlight the fundamentals.

## Judicial Review and Transparency

1. In the report it issued after the public consultations, the Government of Canada noted that most respondents in favour of introducing deferred prosecution agreements preferred the British model because of its transparency.[[45]](#footnote-45)
2. Without delving into the details of the legal mechanisms implemented in foreign jurisdictions, the difference between the American and British models was summarized as follows by author Polly Sprenger in her book *Deferred Prosecution Agreements: The law and practice of negotiated corporate criminal penalties*:

The primary difference envisaged by the UK government, and later enacted by the *Crime and Courts Act 2013*, was that UK DPAs, unlike their American predecessors, would be overseen, endorsed and enforced by the courts, rather than the prosecutor or regulator: “Under our plans, the judiciary will play a vital independent role in this process to ensure that DPAs are properly scrutinised, transparent and in the interests of justice. They will be empowered to block them if they do not agree that they are an appropriate response to the organisation's wrongdoing”. The oversight by the court, would ensure “public scrutiny of the process - the public will know what wrongdoing has taken place and the sanctions for it, including any penalty that has been paid. The final hearing will be held in open court and the final agreement will be published by the prosecutor”.[[46]](#footnote-46)

1. As Judge Brian Leveson observed in the British judgment *Serious Fraud Office and Standard Bank PLC,* “[in] contra-distinction to the United States, a critical feature of the statutory scheme in the UK is the requirement that the court examine the proposed agreement in detail, decide whether the statutory conditions are satisfied and, if appropriate, approve the DPA”.[[47]](#footnote-47)
2. The *Criminal Code* also favours a judicial review of “remediation agreements”,[[48]](#footnote-48) the term finally chosen to designate the "[a]greement, 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”.[[49]](#footnote-49) Indeed, the legislator provides that the Parties must submit the remediation agreement to the Court for approval.[[50]](#footnote-50)
3. Thus, in addition to verifying that the remediation agreement does indeed contain the mandatory elements set out under s. 715.34 Cr. C. (which will be analyzed later in this judgment), the Court must decide whether it is satisfied that the following conditions are met:

715.37(6) The court must, by order, approve the agreement if it is satisfied that

1. the organization is charged with an offence to which the agreement applies;
2. the agreement is in the public interest; and
3. the terms of the agreement are fair, reasonable and proportionate to the gravity of the offence.
4. The *Criminal Code* therefore provides for a genuine judicial review of remediation agreements, not merely what is colloquially referred to as “rubber stamping”.
5. Moreover, the Court’s role is not limited to approving the initial agreement, since, on application by the Prosecutor, it can vary the agreement[[51]](#footnote-51) or terminate it, if the organization breaches the terms of the agreement.[[52]](#footnote-52) Finally, the Court may be seized for the purposes of declaring that the terms of the agreement have been met, which results in a stay of the proceedings against the organization for any offences to which the agreement applies. These proceedings are then deemed never to have been commenced and no other proceedings may be initiated for the same offences.[[53]](#footnote-53)
6. This desire for a transparent process is also reflected in the contents of s. 715.42 Cr. C. which provides, among other things, that the Court is required, as soon as practicable, to publish the remediation agreement it approved and the order it made under s. 715.37 Cr. C., as well as the reasons for that order or the reasons for the decision not to make that order. However, the second paragraph of this section provides for an exception if the Court is satisfied that non-publication is necessary for the proper administration of justice. This may be the case if it is necessary to prevent any adverse effect to any ongoing investigation or prosecution.[[54]](#footnote-54)

## Place for the Victim

1. Parliament stresses the importance of victims’ interests at various stages of the remediation agreement process. Indeed, one of the purposes of s. 715.31 Cr. C. is to denounce and provide reparations for harm done to victims or the community. What is more, the Prosecutor must take public interest into consideration when deciding to negotiate a remediation agreement, which includes the impact of the act or omission on any victim.[[55]](#footnote-55) It is even more telling that the remediation agreement must include an indication of any reparations the organization is required to make to the victims, notably restitution. If the Prosecutor believes that this measure is not indicated under the circumstances, it must provide a statement explaining why and indicating any measure required in lieu of reparations.[[56]](#footnote-56) Also, the duty to inform victims is an integral part of these provisions.[[57]](#footnote-57)
2. Above all, it is explicitly provided that the Court is *required* to take into consideration the following elements in connection with the victim’s interest at the approval hearing:

715.37(3) To determine whether to approve the agreement, the court hearing an application must consider

1. any reparations, statement and other measure referred to in paragraph 715.34(1)(g);
2. any statement made by the prosecutor under subsection 715.36(3);
3. any victim or community impact statement presented to the court; and
4. any victim surcharge referred to in paragraph 715.34(1)(h).
5. Section 715.37(4) also emphasizes the role of victim or community impact statements. Finally, the victim’s interest is again taken into consideration at the publication stage.[[58]](#footnote-58)

# ANALYSIS

1. The Court’s analysis will be twofold: a first and somewhat formal stage to verify that the elements referred to in s. 715.34 Cr. C. have been addressed in the Remediation Agreement agreed upon between the parties (hereinafter the “Agreement”) and that the procedures relating to the victim have been respected. This will be followed by a second stage in which the Court will analyze the terms of the Agreement in greater depth to ensure that it is in the public interest and that its terms are fair, reasonable and proportionate to the gravity of the offence.

## Formal Verification of the Agreement’s Content

1. The legislator has provided that the Agreement *must* include certain elements provided for in subsection 715.34(1) Cr. C., and *may* also include the additional elements set out in subsection 715.34(3) Cr. C.

###### Mandatory content

1. An examination of the Agreement and its schedules reveals that the parties have provided for all of the mandatory elements of subsection 715.34(1) Cr. C. A review of each paragraph will demonstrate this. According to the above provision, the Agreement must include the following elements:
2. *a statement of facts related to the offence that the organization is alleged to have committed and an undertaking by the organization not to make or condone any public statement that contradicts those facts*
3. The statement of facts relating to the offences with which the Organizations are charged can be found in Schedule B. In the first paragraph of the Agreement, the Organizations acknowledge that this statement is true and accurate and constitutes a fair representation of the information of which they are aware. In paragraph 2 of the Agreement, the Organizations undertake not to make or condone any public statement that contradicts the Statement of Facts, whether made by the Organizations or any affiliate of SNCLG or their respective representatives, or by any former employee, with the exception of representations made in the context of legal proceedings or before a court of law. Paragraphs 3 and 4 of the Agreement specify the procedure that applies if this undertaking is breached and the manner in which the Organizations will communicate.
4. *the organization’s admission of responsibility for the act or omission that forms the basis of the offence*
5. In paragraph 5 of the Agreement, the Organizations declare that they are responsible for the acts or omissions described in the Statement of Facts, which form the basis of the offences charged.
6. *an indication of the obligation for the organization to provide any other information that will assist in identifying any person involved in the act or omission, or any wrongdoing related to that act or omission, that the organization becomes aware of, or can obtain through reasonable efforts, after the agreement has been entered into*
7. In paragraph 46 of the Agreement, the Organizations acknowledge that they have the obligation to disclose to the Prosecutor any other information that is brought to their attention or can be obtained through reasonable efforts after the conclusion of the Agreement, which will assist in identifying any persons involved in the acts or omissions, or in any wrongdoing related to the acts or omissions relating to the offences charged.
8. *an indication of the obligation for the organization to cooperate in any investigation, prosecution or other proceeding in Canada — or elsewhere if the prosecutor considers it appropriate — resulting from the act or omission, including by providing information or testimony*
9. In paragraph 47 of the Agreement, the Organizations acknowledge their obligation to cooperate in any investigation, prosecution or other proceeding in Canada or elsewhere resulting from the acts or omissions relating to the offences charged, if the Prosecutor so requires, including by providing information or testimony.
10. *with respect to any property, benefit or advantage identified in the agreement that was obtained or derived directly or indirectly from the act or omission, an obligation for the organization to*
	1. *forfeit it to Her Majesty in right of Canada, to be disposed of in accordance with paragraph 4(1)(b.2) of the Seized Property Management Act*,
	2. *forfeit it to Her Majesty in right of a province, to be disposed of as the Attorney General directs, or*
	3. *otherwise deal with it, as the prosecutor directs*
11. Pursuant to paragraphs 18 and 19 of the Agreement, the parties agree that an amount of $2,490,721, corresponding to the property, benefit or advantage that the Organizations obtained or derived directly or indirectly from the acts or omissions set out in the statement of facts and which are attributable to them, will be forfeited to Her Majesty in right of the province of Quebec, to be disposed of as directed by the Attorney General, in accordance with the *Act respecting the forfeiture, administration and appropriate of proceeds and instruments of unlawful activity.*[[59]](#footnote-59) [[60]](#footnote-60)
12. *an indication of the obligation for the organization to pay a penalty to the Receiver General or to the treasurer of a province, as the case may be, for each offence to which the agreement applies, the amount to be paid and any other terms respecting payment*
13. Paragraphs 20 to 22 indicate the Organizations’ obligation to pay a penalty of $18,135,135 in six equal installments of $3,022,522.50.[[61]](#footnote-61)
14. *an indication of any reparations, including restitution consistent with paragraph 738(1)(a) or (b), that the organization is required to make to a victim or a statement by the prosecutor of the reasons why reparations to a victim are not appropriate in the circumstances and an indication of any measure required in lieu of reparations to a victim*
15. As regards reparations for the harm caused to the victims, in paragraphs 23–24 of the Agreement, the Organizations undertake to pay $3,492,380 to the Crown corporation JCCBI.[[62]](#footnote-62)
16. *an indication of the obligation for the organization to pay a victim surcharge for each offence to which the agreement applies, other than an offence under section 3 or 4 of the Corruption of Foreign Public Officials Act, the amount to be paid and any other terms respecting payment*
17. There is an indication in paragraph 25 of the Organizations’ obligation to pay a $5,440,541 victim surcharge, that is, 30% of the penalty set forth for in the Agreement, in six (6) equal installments of $906,756.83.[[63]](#footnote-63)
18. *an indication of the obligation for the organization to report to the prosecutor on the implementation of the agreement and an indication of the manner in which the report is to be made and any other terms respecting reporting*
19. Under paragraph 38 of the Agreement, the Organizations undertake, throughout the effective period of the Agreement, to ensure that the SNCLG affiliates submit three (3) reports on the implementation of the Independent Monitor’s recommendations to the Prosecutor and Independent Monitor, signed by the Chief Executive Officer or the Chief Integrity Officer of SNCLG. The terms and contents of these reports are provided for in paragraphs 39 to 42 of the Agreement.
20. *an indication of the legal effects of the agreement*
21. The legal effects of the Agreement are indicated in paragraphs 11 to 16 of the Agreement. This includes, more specifically, the stay of the proceedings in 500‑01‑223556‑215 and the fact that no other proceedings may be brought against the Organizations in respect of the offences charged during the Agreement’s effective period. On the other hand, paragraph 16 specifies that the Agreement does not grant immunity against prosecution for acts or omissions not directly or indirectly related to the facts associated with the offences charged.
22. *an acknowledgement by the organization that the agreement has been made in good faith and that the information it has provided during the negotiation is accurate and complete and a commitment that it will continue to provide accurate and complete information while the agreement is in force*
23. In paragraph 6 of the Agreement, the Organizations acknowledge that the Agreement was made in good faith, that to the best of their knowledge, the information they provided at the Prosecutor’s request during the negotiations is accurate and complete and that they will continue to provide such information to the Prosecutor throughout the Agreement’s effective period, i.e. three (3) years.
24. *an indication of the use that can be made of information obtained as a result of the agreement, subject to subsection (2)*
25. In paragraph 7 of the Agreement, the Organizations acknowledge that the Prosecutor may use information disclosed to it during the Agreement’s negotiation for the purposes of any current or future proceedings, provided that such information pre-dates the negotiations and subject to any legally recognized privilege that may attach thereto. The following paragraph provides, in accordance with 715.34(2) Cr. C., that no admission, confession or statement accepting responsibility for a given act or omission made by the Organizations as a result of the Agreement is admissible in evidence against those Organizations in any civil action or criminal proceedings related to that act or omission, with the exception of those admissions, confessions or statements contained in the statement of facts and admission of responsibility deferred to in paragraphs 715.34(1)(a) or (b), if the Agreement is approved by the Court.
26. *a warning that the breach of any term of the agreement may lead to an application by the prosecutor for termination of the agreement and a recommencement of proceedings*
27. Paragraph 49 includes a warning that the Prosecutor may ask the Court to terminate the Agreement in the event that the Organizations breach one of its terms. Where applicable, paragraph 14 provides that the stayed proceedings may be recommenced, without a new information or new indictment.
28. *an indication of the obligation for the organization not to deduct, for income tax purposes, the costs of any reparations or other measures referred to in paragraph (g) or any other costs incurred to fulfil the terms of the agreement*
29. In paragraph 27 of the Agreement, the Organizations undertake not to deduct, for income tax purposes, the costs of the payments referred to in paragraphs 18 to 25 of the Agreement.
30. *a notice of the prosecutor’s right to vary or terminate the agreement with the approval of the court*
31. Paragraphs 48 and 49 of the Agreement provide that the Prosecutor may apply to the Court to vary the Agreement during its effective period, or to terminate the Agreement in the event that one of its terms has been breached.
32. *an indication of the deadline by which the organization must meet the terms of the agreement*
33. The effective period of the Agreement is three (3) years, as indicated in paragraph 10 of the Agreement.
34. The Court concludes that the Agreement meets the requirements of subsection 715.34(1) Cr. C.
35. Additionally, the Agreement contains certain discretionary elements that are discussed below.

###### The discretionary content of the Agreement

1. Subsection 715.34(3) mentions elements that the parties *may* include in their Agreement, namely the following:

**(a)** an indication of the obligation for the organization to establish, implement or enhance compliance measures to address any deficiencies in the organization’s policies, standards or procedures — including those related to internal control procedures and employee training — that may have allowed the act or omission;

**(b)** an indication of the obligation for the organization to reimburse the prosecutor for any costs identified in the agreement that are related to its administration and that have or will be incurred by the prosecutor; and

**(c)** an indication of the fact that an independent monitor has been appointed, as selected with the prosecutor’s approval, to verify and report to the prosecutor on the organization’s compliance with the obligation referred to in paragraph (a), or any other obligation in the agreement identified by the prosecutor, as well as an indication of the organization’s obligations with respect to that monitor, including the obligations to cooperate with the monitor and pay the monitor’s costs.

1. In their Agreement, the Parties provided for several of these discretionary elements.

*Establishment and enhancements of compliance measures (paragraph 715.34(3)(a))*

1. The Organizations specifically undertake to establish and enhance their Integrity Program and the various compliance measures making up the program. They undertake to address any deficiencies in their policies, standards or procedures — including those related to internal control and employee training procedures — that may have contributed to the acts or omissions giving rise to the offences charged. As such, in paragraph 28 of the Agreement, several categories of compliance measures are listed. In particular, this list includes the disclosure of the Integrity Program to the employees, executives, officers, directors, agents, consultants and any person to whom such a disclosure must be made; internal control, auditing and reporting procedures; hiring control mechanisms by way of applicant integrity verifications, the substance of which reflects the position to be held by the applicant, as well as a conflict of interests verification for applicants where an appearance of conflict of interests is likely; systematic disciplinary action, where warranted, for failing to comply with the Integrity Program; compliance incentives; etc.
2. Furthermore, in paragraph 29 of the Agreement, the Organizations undertake to ensure that SNCLG develops and offers training sessions on the rules applicable to federal and Quebec suppliers under public procurement agreements, including the general principles under the laws, regulations and codes of conduct respecting procurement and ineligibility/suspension policies, and the reasonable expectations with respect to suppliers arising from the rules to which the contractors in question are subject. These training sessions will be mandatory for all Stakeholders (defined as being its employees, self-employed workers, third-party staff made available to SNCLG, officers and directors) involved in the decision-making process for obtaining public contracts or awarding the sub-contracts related thereto or who are legally required to take such training.
3. The Organizations also undertake to provide training sessions on post-employment measures and conflict of interest guidelines applicable when hiring public servants and former public servants, including the personnel of various federal and Quebec Crown corporations and members of their immediate families. These mandatory training sessions shall be offered to executives and the human resources staff involved in the hiring process in Canada or who are legally required to take such training.

*Reimbursement of the Prosecutor for the costs related to the administration of the agreement*

1. The costs incurred are related mainly to the appointment of an Independent Monitor. In paragraph 31 of the Agreement, the Organizations undertake to pay the costs for this.

*Appointment of an independent monitor (paragraph 715.34 (3)(c))*

1. In paragraph 30, the Agreement provides for the appointment of MtreMark Morrison and MtreSimon Seida of Blake, Cassels & Graydon LLP as Independent Monitor.
2. The Organizations undertake to ensure that SNCLG and all of its corporations cooperate with the Independent Monitor, for example by providing the Independent Monitor with the necessary access to information, documents, facilities, key personnel, officers and directors that fall within its mandate.
3. The Independent Monitor shall submit an initial report within three (3) months of the Agreement’s approval. The content of this report is provided for in paragraph 33 of the Agreement. In particular, this report will include a contemporaneous evaluation of the Integrity Program as regards the size, nature and complexity of the operations, regions and sectors in which SNCLG operates. It will also include recommendations to maintain or enhance this program.
4. As mentioned in the analysis of the elements of paragraph 715.34(1)(i), SNCLG shall submit three reports on the implementation of the Independent Monitor's recommendations. Within four and a half (4½) months of receiving each report, the Independent Monitor shall submit a report to the Prosecutor, the Organizations and SNCLG indicating, among other things, whether the actions or measures taken or to be taken by SNCLG described in the Implementation Report are satisfactory, whether the proposed efficiency implementation schedule is reasonable, whether amendments/additions/cancellation of a policy or procedure with respect to the Integrity Program maintain or enhance the efficiency of the latter, if the tests and examinations carried out by the Independent Monitor allow it to find that the various measures in place are effective or whether additional recommendations need to be made.
5. As for this last aspect, the Agreement provides that the Independent Monitor may review and perform independent tests on various components during the effective period of the Agreement. The components listed in paragraph 35 of the Agreement include follow-up on the training sessions and the continuing education of SNCLG’s Stakeholders regarding the code of conduct and their commitment to comply therewith; the implementation of the policies and procedures associated with the determination, identification and resolution of conflicts of interest or the efficacy of the reporting mechanisms.
6. The Independent Monitor will have a role to play when the order is issued pursuant to s. 715.4 Cr. C. declaring that the terms of the Agreement were met. In fact, for the purposes of that hearing, and within two (2) months following receipt of SNCLG’s Final Report, the Independent Monitor will send the Prosecutor, the Organizations and SNCLG a closing report indicating whether, in its opinion, SNCLG carried out the implementation and/or enhancement of the compliance measures required under this Agreement.

###### Measures to inform the victim

1. The Prosecutor took reasonable steps to inform the victim that a remediation agreement could be entered into after the Organizations accepted the offer to negotiate, in accordance with s. 715.36 Cr. C. In fact, on October 6, 2021, the Prosecutor notified the victim of the offer made to the Organizations, their acceptance and that a remediation agreement might be reached[[64]](#footnote-64).
2. The Prosecutor was also diligent in obtaining the Victim Impact Statement. This statement is dated April 14, 2022.[[65]](#footnote-65)
3. Once these preconditions have been met, it is appropriate to turn to the heart of the application for approval of the agreement, namely the analysis of the conditions under 715.37(6) Cr. C.

## Analysis of the conditions for approval of the Agreement

1. The *Criminal Code* provides that the Agreement must obtain the approval of the Court to come into force.[[66]](#footnote-66) For that, the Court must be convinced that the conditions provided in subsection 715.37(6) are met. This provision reads as follows:

The court must, by order, approve the agreement if it is satisfied that:

(a) the organization is charged with an offence to which the agreement applies;

(b) the agreement is in the public interest; and

(c) the terms of the agreement are fair, reasonable and proportionate to the gravity of the offence.

1. It is appropriate to verify whether these conditions are met here. In performing this exercise, the Court must strike a balance. On the one hand, if it only ratifies the Agreement as proposed by the Parties, it violates Parliament’s clear intention of ensuring that remediation agreements are checked by the Courts. The legislator, based on the American and British experience, favoured judicial oversight of remediation agreements. On the other hand, too much uncertainty could deter companies from resorting to remediation agreements in the future, especially in self-reporting scenarios[[67]](#footnote-67). This would contravene a major objective behind the introduction of remediation agreements into the legal arsenal for fighting economic crimes.
2. As proposed by the parties, a parallel can be drawn with the recording of guilty pleas for which the Supreme Court chose a stringent test in *R. v.* *Anthony-Cook*.[[68]](#footnote-68)In that judgment, the Supreme Court refers to the Martin Committee, which stated that the most important factor in the “ability to conclude resolution agreements, thereby deriving the benefits that such agreements bring, is that of certainty”.[[69]](#footnote-69) As the highest Court reminds us, if there is too much doubt, parties may choose instead to accept the risks of a trial.[[70]](#footnote-70)
3. Finally, the Court shall keep in mind that the Prosecutor took into consideration the public interest when it sent the Organizations an offer to negotiate.[[71]](#footnote-71)
4. The Court will therefore show deference in its analysis, while ensuring that the conditions set out in the *Criminal Code* are met.

###### Are the Organizations being charged with the offences contemplated by the Agreement?

1. From the outset, the first criterion poses no difficulty. The laying of information bearing number 500-01-223556-215 may be found in Schedule A of the Agreement. This information charges SNCL and SNCLI with the offences of fraud on the government (s. 121 Cr. C.), forgery (s. 366 Cr. C.), fraud (s. 380 Cr. C.) and their respective conspiracies (s. 465 Cr. C.), which occurred between September 1997 and March 2004, in Montreal. All these offences are covered in Schedule [1.1] of Part XXII.1.

###### Is the Agreement in the public interest?

1. In Part XXII.1 of the Cr. C., the legislator refers to the notion of public interest in two instances. Indeed, subsection 715.32(1) Cr. C. provides that the prosecutor may negotiate a remediation agreement with an organization charged with an offence only if certain conditions are met, including that it is in the public interest to do so.
2. To interpret paragraph 715.32(1)(c) Cr. C., in which this notion of public interest appears, Parliament has specified the factors to consider:

**(a)** the circumstances in which the act or omission that forms the basis of the offence was brought to the attention of investigative authorities;

**(b)** the nature and gravity of the act or omission and its impact on any victim;

**(c)** the degree of involvement of senior officers of the organization in the act or omission;

**(d)** whether the organization has taken disciplinary action, including termination of employment, against any person who was involved in the act or omission;

**(e)** whether the organization has made reparations or taken other measures to remedy the harm caused by the act or omission and to prevent the commission of similar acts or omissions;

**(f)** whether the organization has identified or expressed a willingness to identify any person involved in wrongdoing related to the act or omission;

**(g)** whether the organization — or any of its representatives — was convicted of an offence or sanctioned by a regulatory body, or whether it entered into a previous remediation agreement or other settlement, in Canada or elsewhere, for similar acts or omissions;

**(h)** whether the organization — or any of its representatives — is alleged to have committed any other offences, including those not listed in the schedule to this Part; and

**(i)** any other factor that the prosecutor considers relevant.

1. The legislator provides for a second check, this time by the Court, which must be convinced that the Agreement is in the public interest before approving it.[[72]](#footnote-72) While Parliament does not expressly refer to the factors of paragraph 715.32(1)(c) Cr. C. in this second step, the Court finds that they may be relevant to its analysis.
2. More generally, the objectives of introducing remediation agreements into Canadian law must also be considered. These objectives include encouraging voluntary disclosure and reducing the negative consequences of wrongdoing for individuals who are not responsible therefor, e.g., employees, customers, or retirees. This does not mean, however, that a remediation agreement could not be rejected by a court in spite of the consequences for third parties where this would be contrary to the public interest, for example, where the acts are particularly serious. In fact, under no circumstances should remediation agreements constitute a [translation] “free pass” for large or public companies that would be, as the well-known expression goes, “too big to fail.”

##### What about the Agreement reached by the Parties?

1. Without question, one of the elements to consider in this case is the impact of convictions on innocent third parties.
2. The two parties emphasize the impact that convictions would have on the Organizations’ ability to contract with public corporations in Canada and Quebec, with serious negative consequences for a large number of non-responsible third parties and, more broadly, the engineering industry in Quebec and Canada.
3. In its submissions, the Prosecutor details the legislative provisions applicable at both the provincial and federal levels that could cause disproportionate economic repercussions for the Organizations, but also, and more importantly, for non-responsible third parties:

[translation]

42. First of all, in Quebec, a conviction for any of the alleged offences makes the enterprise “ineligible for public contracts for five years as of the recording of the finding of guilty in the register of enterprises ineligible for public contractsˮ. This ineligibility applies to any contract with the government of Quebec, its sub-entities and agencies.

*Act respecting contracting by public bodies, CQLR c. C-65.1, section 21.1.*

43. Federally, the Organizations face the *Criminal Code* and the *Ineligibility and Suspension Policy* of Public Works and Government Services Canada (PWGSC).

44. Following a conviction on count 4, fraud (s. 380 Cr. C.), against Her Majesty, in this case a federal Crown corporation, or count 7, fraud on the government (s. 121 Cr. C.), section 750 Cr. C. imposes an inability to contract with “Her Majesty”. This incapacity is for an indefinite period, until an order of restoration is made by Cabinet, pursuant to subsections 750(4) and (5) Cr. C.

45. These convictions also result in an automatic determination of ineligibility for the same duration under the *Ineligibility and Suspension Policy* of the Government of Canada’s Integrity Regime, adopted under the *Financial Administration Act*, R.S.C. (1985), c. F-11. and applied by Public Services and Procurement Canada.

46. In addition, a conviction for a forgery offence under Count 1 would result in an ineligibility for contract awards from the federal government and its agencies for a period of 10 years, which may be reduced to five (5) years.

Government of Canada, *Ineligibility and Suspension Policy*: < <https://www.tpsgc-pwgsc.gc.ca/ci-if/politique-policy-eng.html>>.[[73]](#footnote-73)

[Emphasis added.]

1. The Organizations add that the laws or policies applicable in other Canadian provinces are likely to also have similar consequences.[[74]](#footnote-74)
2. These provisions could lead to repercussions on third parties, in particular the thousands of employees of the Organizations, SNCLG or even suppliers, or on the pension funds of thousands of employees.[[75]](#footnote-75)
3. Parliament opted to introduce remediation agreements in the *Criminal Code*, particularly with a view to limiting the impact on third parties not responsible for criminal acts over which they had no control. It is clear to the Court that in this case, entering into the Agreement satisfies this objective, which must have significant weight in the Court’s analysis of the public interest.
4. But our analysis of the public interest does not end there. Indeed, as stated above, this element, by itself, is not sufficient, since otherwise, it could serve as a carte blanche for large-scale companies employing thousands of people, or for example, pharmaceutical companies that are alone in producing a certain drug and could then brandish the negative consequences on their customers.
5. This is why the Court must consider all circumstances surrounding the Agreement, including the first factor set out by Parliament in 715.32(2) Cr. C., i.e., the circumstances in which the act or omission that resulted in the offense was brought to the attention of the investigating authorities.
6. Although this is not a case of self-reporting, the Organizations cooperated consistently with the authorities during the investigation. It is clear that the objective of remediation agreements is to encourage self-reporting, and that self-reporting would carry considerable weight in the balance. However, it is not a mandatory precondition retained by the legislator. Strong cooperation, as in the present case, can also work in favour of approving a remediation agreement.
7. In this case, the Organizations’ cooperation has been demonstrated in several ways. More specifically, it is appropriate to reproduce paragraph 36 of the parties’ admissions:

[translation]

36. the Organizations cooperated with the RCMP’s investigation into them, according to the following timeline:

36.1 In 2014, the Organizations voluntarily disclosed several documents to the RCMP that were related to the projects under investigation;

36.2 In 2018 and 2020, the Organizations cooperated during the execution of search warrants at their head office, in particular through logistical assistance, research and transportation of archives, as well as taking employee statements;

36.3 In 2020, following multiple requests, the Organizations voluntarily disclosed documents related to the investigation to the RCMP, including certain waivers of applicable confidentiality privileges;

36.4 In 2020, the Organizations offered the RCMP the assistance of specialized employees to help them understand their internal accounting systems.

36.5 On April 23, 2020, and May 7, 2020, the Organizations provided the RCMP with documentary evidence that significantly incriminated them, demonstrating their willingness to identify the participants in the offences.

36.6 On April 21, 2021, the Organizations voluntarily provided the RCMP with an internal investigation report, i.e., the "Compliance Investigations" (CI), which describes the procedures and findings of an internal investigation referred to as "Case Watch," concerning the facts underlying the offences charged.

36.7 Following the analysis of the report, the RCMP asked the Organizations for certain results of the internal investigation that were relevant to its investigation, in particular copies of the statements of the witnesses met and/or investigators’ notes, as well as emails retrieved by the Cl. During the summer of 2021, SNCL responded to requests with a series of voluntary disclosures.[[76]](#footnote-76)

1. The Organizations’ cooperation, in particular to identify the participants in the offences despite the incriminating nature of the evidence disclosed, is a significant consideration in the Court's analysis.
2. The measures taken by the Organizations to remedy the situation are also of significance in the Court’s analysis. In this case, the Organizations argue that [translation] “Since 2012, the Organizations’ ultimate parent company, SNCLG, fundamentally transformed its leadership, corporate culture and integrity program (including the various compliance measures thereof) so as to detect and reduce the risk of any wrongdoing on the part of any SNCLG affiliateˮ.[[77]](#footnote-77) The Organizations’ Integrity Program is also monitored by various law enforcement agencies as a result of criminal, penal and administrative investigations.[[78]](#footnote-78)
3. It is clear that since 2012, the Organizations have put in place measures to ensure that the disputed acts do not occur again. In 2012, [translation] " a redesigned Code of Ethics and Business Conduct was introduced, with annual training and certification, a supplier-run tip line, a review of the corporate policy with respect to representatives and sponsors. It introduced a complete set of new measures. The Ethics and Compliance Committee responsible for overseeing the treatment of allegations of misconduct was also created”.[[79]](#footnote-79) This program has evolved, particularly in light of the recommendations made by the various comptrollers of SNCL.[[80]](#footnote-80) In this regard, it should be noted, as the Organizations did in their representations, that SNCL has been subject to an independent monitor for ten years, an exceptional situation.
4. The Independent Monitor, appointed following the judgment by the Honourable Claude Leblond of the Court of Quebec on December 18, 2019, in the fraud case involving the Libyan authorities,[[81]](#footnote-81) noted in its initial report dated April 1, 2020, that since 2012, "SNC-Lavalin has expended considerable effort on the remediation of its anti-corruption compliance program and has transformed its culture of ethics and compliance. As further described below, our independent assessment is that these remediation efforts have culminated in the development of one of Canada’s leading anti-corruption compliance programs*ˮ.*[[82]](#footnote-82)
5. Without going into detail on all the measures included in the Integrity Program implemented by SNCL, some of them may be enumerated for illustrative purposes:
	* Implementation of a communications strategy on the importance of integrity, strengthening of communications at the management level, increase discussions on ethics and integrity;[[83]](#footnote-83)
	* Establishment of an Integrity Service with, in particular, quarterly presentations on updates to the Integrity Program, feedback on any alleged compliance violations received, presentation of requests for waivers of SNCL policies, procedures and controls that have been approved, payments to representatives and sponsors, etc.
	* Establishment of an Ethics and Compliance Committee that meets on a monthly basis and is responsible for disciplinary decisions related to misconduct or non-compliance with the rules, and for the approval of recommendations issued as a result of investigations, risk assessments and ongoing controls and testing.[[84]](#footnote-84)
	* Implementation of internal corruption risk assessments in global operations. The risk assessment process typically involves the creation of applicable risk scenarios, the selection of territories for in-depth review, questionnaires distributed to executives close to operations, interviews with company personnel supervising executives who have completed the questionnaires.[[85]](#footnote-85)
	* Implementation of fraud risk assessments, which are detailed examinations of certain SNCL activities or inspections of its construction sites.[[86]](#footnote-86)
	* Implementation of a compliance control framework to test and monitor the internal controls that make up the Integrity Program. Controls are sampled and tested by the review team to determine whether the Integrity Program is effectively implemented in practice.[[87]](#footnote-87)
	* Implementation of compliance due diligence at the beginning of a new business relationship with all third parties, including the business partners. Third parties are subject to SNCL's 360° integrity check tool which searches for information that is potentially harmful to the Company (for example if the third party has a history of corruption, collusion or fraud). A full procedure is provided based on the compliance due diligence score obtained. Important controls are detailed in the Integrity Program when the degree is characterized as in-depth.[[88]](#footnote-88)
	* Implementation of a comprehensive system of internal financial controls to reduce the risk of issuing payments linked to corruption or other improper purposes;[[89]](#footnote-89) etc.
6. The Court is satisfied that the Organizations have made serious efforts to prevent the reoccurrence of the alleged conduct. The monitoring and measures put in place since the events of the early 2000s attest to a fundamental change in the corporate culture.
7. Another important consideration in the Court's analysis is to look at the actions taken by the Organizations with respect to those who participated in the offence. It should be recalled that the offences charged stem from the actions xx xxx xxxxx xxx xxx xxxxxxx, who were the senior officers from SNCL and SNCLI from 1999 to 2004. xxxxx xxxxxxxxxx xxxx xxxxxxx xxxxxxx xx xxx xxxx xx xxx xxxxxxxxx xx xxx xxxxxxxxxxxx xxxx xxxxxx xx xxxx xxx xxxxxxxxxxx xxxxx xx xxxxxx xxxx x xxxxxxxxxxx xxxxxxxx xxxxx xxx xxxxxxxx xxxxx xxxxxx xxxx xxxxxx xx xxxx xxxxxx xxxx[[90]](#footnote-90). xxxxxxxxxxxxxx xx xxxxxx xxxxx xxxx xxx xxxxxxxxxx xxxxxxx xxxx xxxx xx xxx xxxxx xxxxxxxxx xxxxxxxxxx xxx xxxx xxxx xx xxxx xx xxxx xxxxxxxxxxx xx xxxxx. The cooperation of the Organizations in gathering evidence was highlighted by the Prosecutor. The Organizations assisted the Prosecutor in identifying the responsible individuals so that they could be brought to justice for the acts covered by the Agreement.
8. As regards judicial history, SNC-Lavalin Construction Inc., an affiliate of SNCLG, admitted its guilt for fraud against Libyan public authorities. The company was sentenced to $280 million with a three (3) year probation order and an independent monitor was appointed. On June 19, 2020, SNCL was the subject of a prohibition order under 34(2) and 34(2.1) of *the Competition Act* in relation to certain issues resulting from its past conduct.
9. At this time, the Organizations have not taken measures to repair the harm caused to the victim. However, that is the very purpose of the Agreement. During their arguments, the Organizations raised the fact that the victim had taken no steps to obtain compensation before receiving an invitation as part of the negotiation of the Agreement and that, according to them, the victim had never considered quantifying any losses whatsoever.
10. Before concluding the analysis of the public interest, it should be recalled that it is not for the Court to question the legitimacy of Parliament’s decision to introduce the remediation agreement system into the Canadian legal system. For some, the very notion of a remediation agreement is contrary to public interest.[[91]](#footnote-91) It should be noted, however, that these criticisms are directed more at the U.S. system, which differs significantly from the one in place in Canada. Above all, it is not the role of the Courts to render remediation agreements ineffective by adopting too strict an interpretation of the public interest. It is obviously necessary to respect Parliament’s choice and to interpret the notion of public interest, while bearing in mind, among other things, the objectives set out in s. 715.31 Cr. C. and the factors Parliament listed in s. 715.32(2) Cr. C.
11. The actions of which the Organizations are accused are serious. In addition to the identified victim, all citizens are victims of this type of crime when it affects public entities. The events occurred over a relatively long period of time (approximately three years), with a fairly elaborate mechanism.
12. However, in light of all the circumstances, the Court considers that the Agreement is in the public interest. The Agreement makes it possible to denounce the Organizations’ wrongdoing, while reducing the harm that criminal convictions would cause to third parties who have not engaged in wrongdoing. The Organizations have shown a strong degree of cooperation, thus allowing the responsible individuals to be subjected to the justice system. There have also been significant changes in the Organizations: the responsible persons are no longer part of the Organizations’ management and considerable effort has been put into developing measures to prevent similar events from reoccurring. The responsible individuals have been identified and have faced or will face justice.
13. It is therefore appropriate to turn to the last condition before concluding whether or not the Agreement should be approved, namely, whether the terms of the agreement are fair, reasonable and proportionate to the gravity of the offence.

###### Are the terms of the Agreement fair, reasonable and proportionate to the gravity of the offence?

1. The terms of the Agreement have been set forth above in the formal verification of the Agreement. It is now necessary to analyze their content to determine whether they are fair, reasonable and proportionate to the gravity of the offence.
2. It is enlightening to have an overview of the Agreement’s financial framework since the Agreement must be taken as a whole to determine whether its conditions are fair, reasonable and proportionate. The table prepared by the Prosecutor is useful to this end:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Penalty****715.31(b), 715.34(1)(f) Cr. C.** | **Forfeiture of property, benefits or advantages****715.34 (1)(e)Cr. C.** | **Reparations to the victim****715.34(1)(g),738Cr. C.** | **Victim surcharge** **715.34(1)(h),715.37 (5)Cr. C.** | **Total** |
| **Projected profit** | **Punitive factor**  |
| Projected profit for the completion of the Jacques Cartier Bridge refurbishment project, based on SNCL’s 50% interest in the consortium;**$5,300,000**+ | **350%** Multiplying factor on the base amount =**$24,180,181**Application of a cooperation credit of **25%** =**$18,135,135** | Profit realized by SNCL of $**1,748,694**,updated at a rate of 42.43% between2002 and 2021 =**$2,490,721** | Restitution based on the value of the bribe and its costs of $**2,345,230,** updated at a rate of 48.91%between 2000 and 2021=**$3,492,380** | 30% of the penalty =**$5,440,541** |  |
| SNCL’s separate projected profit for the completion of the project; |  |  |   |  |
| **$1,108,623**+$1 million performance bonus, based on SNCL’s 50% interest in the consortium | **Credit of $6,045,046** |  |  |  |
|  |  |  |  |
|  |  |  |  |
| **$500,000** |  |  |  |  |
| **$6,908,623** | **$18,135,135** | **$2,490,721** | **$3,492,380** | **$5,440,541** | **$29,558,777** |

1. To do its calculations, the Prosecutor obtained the accounting documentation for the Jacques Cartier Bridge refurbishment project during the negotiation of the Draft Agreement following requests made to the Organizations pursuant to paragraph 715.33(1)(e) Cr. C. The Prosecutor submitted this documentation to *the Forensic Accounting Management Group of Public Services and Procurement Canada,* whose services had been retained by the RCMP, responsible for investigating this file. A forensic accounting summary was then prepared.[[92]](#footnote-92)
2. It is appropriate to review each of the elements involved in arriving at a total amount of $29,558,777 payable by the Organizations.

#### The penalty

1. In its submissions, the Prosecutor explains in detail how the penalty amount of $18,135,135 was reached.
2. To summarize, the Prosecutor first determined the profit projected by the Organizations for performing the Jacques-Cartier bridge contract. The Prosecutor accepted this anticipated profit since, in its view, it corresponds to the purpose for which the offences were committed: this amount [translation] “accurately embodies the moral element of its authors, the directing minds of the Organizations, when they decided to bribe a government official, driven by the lure of a gain”.[[93]](#footnote-93) The fact that the profit made was actually lower should not be taken into consideration, as the acts of corruption are not diminished by the unforeseen events of the project. The Prosecutor cites *McNamara* with approval*,* in which the Court of Appeal for Ontario holds that “the fact that the contract did not work out as well as the conspirators expected is, in our judgment, of little consequence”.[[94]](#footnote-94) For the Prosecutor, the use of *projected* profit provides a more consistent proportionality between the desired gain and the payment of the bribe. It should indeed be noted that the profit made by the Organizations was significantly less than the projected profit, to the point that the bribe paid is higher than the profit made by the Organizations.
3. Second, the Prosecutor determined what is referred to as a punitive factor, which the parties established at 350% in this case. The Prosecutor then subtracts a 25% credit in light of the Organizations’ cooperation.
4. This way of calculating with factors is inspired by the sentencing frameworks of other jurisdictions. As such, in the United Kingdom, the “*Sentencing Guidelines*” provide for the multiplication of the damage caused by the offences of fraud, corruption or money laundering by a punitive factor linked to the degree of responsibility.[[95]](#footnote-95) Similarly, there are also guidelines in the United States establishing a method of calculation:

[translation]

In the United States, Chapter 8 of the “2018 Guidelines Manual” prescribes a range of fines through a five-step mathematical calculation depending on the type and scale of the offence. Section §8C2.4. of the 2018 Manual refers to the 2014 Manual for offences committed prior to November 1, 2015.

“Base offence level number” (§8C2.3. and §2C1.1.): number defined by the nature of the offence.

“Base level fine” (§8C2.4.): base amount of the fine according to the grids.

“Culpability score” (§8C2.5): number defined by objective seriousness and corporate profile.

“Minimum and maximum multiplier” (§8C2.6. and §8C2.7.): multiplier of the base fine between 0.05 and 4.00 depending on the “culpability score”.

“Determining the Fine Within the Range” (§8C2.8.): final determination of the fine according to the circumstantial factors, within the defined range.

*United States Sentencing Commission, Guidelines Manual, Chapter 2, (2018).*

*United States Sentencing Commission, Guidelines Manual, section §8C2.4, (2018).*

*United States Sentencing Commission, Guidelines Manual, Chapter 8 (Nov. 2014).*[[96]](#footnote-96)

1. While these methods are interesting, particularly in that they offer a higher degree of certainty, Parliament did not choose to adopt a mathematical method of calculation. Each State can have its own vision of the sentence and its own sentencing scales, and it is appropriate to focus instead on how Parliament and the case law have dealt with these issues.[[97]](#footnote-97)
2. In Part XXII.1 Cr. C., paragraph 715.31(b) Cr. C. provides that the remediation agreement regime aims to hold the organization accountable through “effective, proportionate and dissuasive penalties.” The Court agrees with the Organizations when they submit that the objectives, principles and factors set out in Part XXIII of the *Criminal* *Code*, and interpreted by the case law, govern the determination of a penalty respecting these features. It is particularly appropriate to reproduce s. 718.21 Cr. C., which provides the factors to consider when sentencing an organization:

**718.21** A court that imposes a sentence on an organization shall also take into consideration the following factors:

**(a)** any advantage realized by the organization as a result of the offence;

**(b)** the degree of planning involved in carrying out the offence and the duration and complexity of the offence;

**(c)** whether the organization has attempted to conceal its assets, or convert them, in order to show that it is not able to pay a fine or make restitution;

**(d)** the impact that the sentence would have on the economic viability of the organization and the continued employment of its employees;

**(e)** the cost to public authorities of the investigation and prosecution of the offence;

**(f)** any regulatory penalty imposed on the organization or one of its representatives in respect of the conduct that formed the basis of the offence;

**(g)** whether the organization was — or any of its representatives who were involved in the commission of the offence were — convicted of a similar offence or sanctioned by a regulatory body for similar conduct;

**(h)** any penalty imposed by the organization on a representative for their role in the commission of the offence;

**(i)** any restitution that the organization is ordered to make or any amount that the organization has paid to a victim of the offence; and

**(j)** any measures that the organization has taken to reduce the likelihood of it committing a subsequent offence.

1. Before analyzing these factors, some principles for determining a fine for an organization are worth recalling.
2. First, the sentence cannot be purely restitutive. It must serve as a deterrent and a denunciation.[[98]](#footnote-98) Unlawful profit can only be the starting point for the purpose of sentencing.[[99]](#footnote-99) It is essential that the fine not be seen as the cost of doing business:

60 The penalty imposed should also have a deterrent effect on others in that industry who may risk offending. [...] What will be a severe fine for one offender may be a pittance to another. The starting point for sentencing a corporate offender must be such that the fine imposed appears to be more than a licensing fee for illegal activity or the cost of doing business: *Cotton Felts; General Scrap Iron* & Metals; Van Waters&*Rogers.* The other side of this coin must be that, in the majority of cases, the sentence should not result in economic inviability: *United Keno Mines* at 50; see also s. 718.21(d) of the *Criminal Code,* R.S.C. 1985 c. VS‑46. The penalty must be more than a slap on the wrist but less than a fatal blow[[100]](#footnote-100).

[Emphasis added.]

1. The sentence must convey the message that crime does not pay. To this end, [translation] “the amount of the fine should be set at such a level that the cost of committing the offence exceeds the potential benefits, thereby encouraging the organization not to commit the offence in the future and deterring others from doing so”.[[101]](#footnote-101)
2. The Parties and the Court have no precedents to assist them in this exercise, since this is the first remediation agreement submitted to a Court in Canada. The Court may, however, draw from the corruption judgments submitted by the parties that the fines are substantially higher than the value of the bribes or considerations:
* *R. v.* *Griffiths Energy International,* [2013] A.J. no 412 (Alb. Q.B.): $9,000,000 penalty (plus $1,350,000 in compensation to the victim). The bribe was $2 million. The anticipated or obtained profit is not an issue in the decision.
* *R. v.* *Niko Resources Ltd,* (2011) 101 W.C.B. (2d) 118 (Alta. Q.B.): $8,260,000 penalty for a bribe of around $200,000. The projected or obtained profit is not indicated in the decision.
* *R. c.* *BPR Triax Inc.* (application for *certiorari* dismissed, 2016 QCCS 5754), 2017 QCCQ 4191: $100,000 fine for a $25,000 bribe. The criminal acts of the accused had no bearing on the award of a contract or the adoption of a resolution to its advantage, nor any impact on the amount or the terms of the contracts it obtained from the City.
* *R. c.* SNCLC,500-73-004261-158 (Leblond J.): $280,000,000 penalty for agent fees of $127,245,937. The gross profit was $235,258,769, the net profit was $154,152,761 and the anticipated profit was $260,270,000.
1. Regarding this last decision, the Prosecutor points out important distinctions with this case: the facts were spread over a period of ten years, the anticipated profit was $260,000,000, and revenues reached over $1 billion.
2. More generally, it is difficult to draw from these precedents a mathematical formula from which the Court could draw inspiration. In addition, in some judgments, it is a matter of a compromise having been reached by the parties, the particular details of which are not known.
3. It is therefore preferable to turn to the factors in s. 718.21 Cr. C.
4. In terms of the advantages received by the Organizations, in addition to the profit of $1,748,694 for the Jacques Cartier Bridge refurbishment contract, there are other advantages that are less easily quantifiable, such as the positive reputation in the infrastructure construction sector.
5. Regarding the degree of complexity of the planning related to the offence and of the offence itself, and the period during which it was committed, the scheme uses consultant contracts charged to construction projects abroad. This is a sophisticated scheme whereby the Organizations prepared false commercial agent agreements with a consulting firm used to provide intermediary services to third party beneficiaries. Fictitious fee payments are transferred to Swiss accounts. As to its duration, the scheme lasted from October 2000 to October 2003.
6. However, there is no evidence that the Organizations attempted to conceal or convert assets to prove themselves to be unable to pay a fine or make restitution.
7. As to the effect of the penalty on the Organizations’ economic viability and employee retention, this factor has already been addressed as part of the public interest to approve the Agreement.
8. With regard to the costs borne by public bodies in the context of investigations and prosecutions relating to the offence, it should be noted that the RCMP carried out a long investigation from 2015 to 2021, incurring significant costs, in particular due to forensic accounting expert reports.
9. The Organizations and their agents have not received a penalty for the actions leading to the offences. Several senior officers of SNCLG and its subsidiaries have been convicted of criminal offences for similar actions. SNC-Lavalin Construction Inc. pleaded guilty of fraud in 2019.
10. With regard to the Organizations imposing penalties on their agents for their role in the commission of the offence, xxxx xxxx xxxxxxxx xxxxxxx xxx xxxxxxx xx x xxxxxxx xxxx xx xxxxxxxxxxxx xxxxxx xxxx xx xxxxxxxxxx xxxxxxxxx xxx xxx xxxxxxxx xxxxx xxxx xx xxxxx xxxxxxxx xxxxx xx xxx xxxxxxx xx xxx xxxxxxxx xxxx xxxxxxx xx xxx xxxx xx xxx xxxxxxxxxxxxx. However, the Organizations’ cooperation in identifying the persons responsible can be taken into account at this stage.
11. In terms of restitution or compensation to the victim, the Organizations have not yet made any, but the Agreement provides for this.
12. Finally, with regard to the Organizations’ adoption of measures to reduce the likelihood that they would commit other offences, the new arsenal of measures put in place by the Organizations was analyzed above.
13. In addition to these factors, the Organizations’ degree of cooperation, as presented above, should be taken into consideration. It is necessary for cooperation to have such an impact as to encourage future organizations to self-report or cooperate fully and quickly when informed of the facts.
14. In view of all the representations of the parties, the Court finds that the proposed penalty fulfills its purpose of serving as a deterrent. It is not purely restitutive and cannot be seen merely as the cost of doing business. All relevant considerations were properly weighed by the parties. The Court considers that, in this case, the Parties, who drew inspiration from the British method, reached a reasonable result.

#### Forfeiture of property, benefit or advantage

1. Pursuant to 715.34(1)(e)(i) Cr. C., the Agreement provides for the forfeiture of an amount of $2,490,721 as property, benefit or advantage that was obtained or derives directly or indirectly from the act or omission.
2. The terms of Part XXll.1 Cr. C. echo the forfeiture of proceeds of crime regime in Part XII.2 Cr. C. In this last part, subsection 462.37(3) Cr. C. provides recourse to a compensatory fine if it is impossible to forfeit the property that constitutes the proceeds of crime.[[102]](#footnote-102)
3. In their written submissions, the Parties rely on two different methods to determine the amount of the compensatory fine.
4. The Prosecutor considers that, in this case, the most appropriate approach to determine the value of the fine in lieu of the proceeds of crime is that which refers to [translation] “the value of the property possessed or controlled at any time” by the Organizations. At no time did the Organizations possess or control the consortium's overall profit.
5. The SMDB-2 consortium earned $110,069,715 in income from the client and to do so, spent $107,639,014 to generate an actual profit reported on an accounting basis of $2,430,701. Following the distribution between partners, SOCODEC, the construction subsidiary of SNCL received, in its own right, 50% of this profit, i.e., the amount of $1,215,351.[[103]](#footnote-103) In the final distribution, SOCODEC also received an amount of $533,343.24 as [translation] “interest to partners,” in addition to the profit for a total of $1,748,694.
6. As for the Organizations, in their written submissions of March 23, 2022, they rely on the notion of profit margin from which the offender has benefited in connection with its criminal activity. According to them, this profit margin method is an index that is more appropriate for and suitable to the situation of an organization.[[104]](#footnote-104)
7. On March 31, 2022, the Supreme Court rendered *Vallières*.[[105]](#footnote-105)In that judgment, the Supreme Court considered that the compensatory fine is equivalent to the value of the property, and cannot be limited solely to the profit margin of the offender. The method chosen by the Organizations is therefore no longer available.
8. Questioned on the impact of this judgment on the amount of the compensatory fine provided for in the Agreement, the Parties agreed at the hearing that there was none. In this case, both methods of calculation yield the same result.
9. The Court considers that for the purposes of the approval of the Agreement, it is the concept of property that has been “possessed or controlled” by the Organizations that applies[[106]](#footnote-106).
10. The Court is also convinced by the Prosecutor’s demonstration that it is appropriate to take into consideration only the profit made by the Organizations in the benefit obtained by them, and not that of the entire group, over which they had no control. It is useful to repeat the reasoning submitted by the Prosecutor in whole, with which the Court agrees:

[translation]

The SMBD-2 group is a joint venture separate from the entities that make it up and owns its own patrimony.

A joint venture is thus formed where businesses choose to become partners and to cooperate in a project by each investing resources and by sharing any profits from the project. A separate partnership is then created until, among other possibilities, the project is completed, and the partners can be held liable for one another’s undertakings and debts: arts. 2253 to 2255 C.C.Q.

*Churchill Falls (Labrador) Corp. v.* *Hydro-Québec,* 2018 SCC 46 at para. 61, Gascon J., diss. [Emphasis added.]

[translation]

A limited partnership, like any other partnership, has its own patrimony which, so long as it is sufficient, is separate from the patrimony of the persons that make it up; it then has its own entity, without, however, being a legal person within the meaning of the Act.

*Laval (Ville de)* *c.* *Polyclinique médicale Fabreville, s.e.c*., 2007 QCCA 426 atpara. 24, Brossard, Delisle, Thibault, JJ.A.

The documentary evidence shows that the SMBD-2 group owns and controls a bank account separate from the entities that make it up.

The partners specify in the joint-venture agreement that the [translation] “funds, property and other assets“ are [translation] “held by the Consortium on behalf of the Parties“ and [translation] “the payments arising from execution of the Contract are deposited on behalf of the Consortium into the account opened in the bank designated by the Management Committee”.

AR-12 - Docld\_4437-SMBD Agreement-Nov. 2, 2000, clauses 8.5, 9.1.

The partners also establish that any transactions in bank account 1092998 of the SMBD-2 group require the signatures of two authorized persons, identified in two groups. The first group consists of SOCODEC employees while the second group is made up of representatives of the partners DeMathieu & Bard and Montacier.

There is no evidence to the effect that the directing minds of the two other members of the group had knowledge of the charged offences. In addition, the accounting documentary evidence confirms that these partner corporations actually provided the goods and services for which they were remunerated.

Finally, the cheques drawn at the end of the project for the distribution of profits corroborate compliance with this procedure.

AR-13 - DoclD 4485 - Letter opening a bank account dated November 15, 2000.

AR-23 - Docld 4502 - Proof of payments to partners.[[107]](#footnote-107)

1. The Parties also agreed that the amount should also reflect 42.43% inflation between 2002 and 2021. The updated total is $2,490,721.

#### Reparations to the victim

1. Section 715.34(1)(g) provides that the Agreement must contain a reference to any reparations for the harm caused to the victims that the organization is required to make in their regard, including any compensation referred to in paragraphs 738(1)(a) and (b) Cr. C. Paragraph (a) is relevant here and allows the Court to order the Organizations to pay the victim "an amount not exceeding the replacement value of the property as of the date the order is imposed, less the value of any part of the property that is returned to that person as of the date it is returned, where the amount is readily ascertainable”.
2. The victim provided a statement on April 14, 2022.[[108]](#footnote-108) This statement was accompanied by 45 paragraphs of written submissions. Of these 45 paragraphs, two paragraphs directly addressed the economic harm suffered by the victim.
3. The Organizations objected to the Victim Impact Statement, since, in their opinion, the said statement went beyond describing the economic impact suffered by the victim.
4. The victim and the Organizations finally agreed on content that was read at the hearing and it is only the said content that the Court considers admissible. In any event, the Court would have set aside any of the victim’s general remarks that go beyond the description of its own damages.[[109]](#footnote-109)
5. The victim assesses its economic loss based on the established amount of bribes paid. According to the victim, this amount is the starting point for calculating its damages. The assessment should also take into account various factors including, in particular, the costs generated by this breach of the arm's length principle in awarding public contracts that has, among other things, the potential effect of discouraging certain bidders from participating in calls for tenders.
6. The victim was informed that the Prosecutor had analyzed its economic loss. Although the results of the analysis were not shared with the victim, said victim indicated in writing that it relied on it.
7. According to the case law, if there is a serious dispute as to the determination of the actual amount of the loss, restitution should not be ordered, because the criminal courts should not replace the civil courts.[[110]](#footnote-110) The question of determining this amount in corruption cases is delicate. Where the entity has not been able to benefit from free competition in the call for tender due to corruption, the damage is that it was deprived of the best price coming from the lowest compliant bidder.[[111]](#footnote-111)
8. The parties recognize the difficulty of establishing the loss suffered by the victim. They agreed that the minimum amount of the loss incurred by the victim is the amount of the bribes in favour of Michel Fournier, i.e., $2,231,343, in addition to $113,887 for the intermediary, for a total of $2,345,230. This amount is adjusted for inflation at a rate of 48.91% between 2000 and 2021, to reach $3,492,380.
9. The Prosecutor acknowledges that based on *Michaud*, [translation] “the rigging of calls for tenders causes harm in regard to obtaining the best price due to competition,” but this value cannot be easily determined in the circumstances.[[112]](#footnote-112)
10. In the context of the Agreement, the parties having reached an agreement with which the victim is satisfied, the Court approves the method adopted by the parties to establish the reparation to the victim. Given the absence of serious disagreement on the assessment of the victim's prejudice, given the victim’s representations to the effect that it relied on the Prosecutor's analysis, and given the Agreement taken as a whole, the measure appears to be fair and equitable to the victim.

#### Victim surcharge

1. Subsection 715.37(5) Cr. C. expressly provides the amount of the victim surcharge, that is, thirty percent (30%) or such other percentage as the prosecutor deems appropriate in the circumstances.
2. In the circumstances, the Parties considered that it was not necessary to deviate from the planned amount, which amounts to a victim surcharge of $5,440,541.

# CONCLUSION

1. In addition to the financial conditions analyzed above, the framework of the Agreement includes measures to maintain and improve compliance measures, and the appointment of an independent monitor even though the Organizations have already been monitored for ten (10) years. Taken as a whole, the Court finds that the terms of the agreement are fair, reasonable and proportionate to the gravity of the offences.
2. Despite the seriousness of the charges, the Agreement puts in place the measures necessary to prevent such behaviour from recurring. The financial provisions are substantial enough to denounce wrongdoing and hold the Organizations accountable. In addition, the victim’s harm is adequately addressed.
3. For these reasons, the Court:
4. **GRANTS** the application for an order approving the Amended Remediation Agreement, pursuant to section 715.37 Cr. C.
5. **APPROVES** the Amended Remediation Agreement as is, according to the terms and conditions set out therein, including the schedules to the Remediation Agreement.

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|  |
|  |

Mtre Francis Pilotte and

Mtre Patrice Peltier-Rivest

Counsel for the Prosecutor

Mtre François Fontaine

Mtre Charles-Antoine Péladeau

Counsel for the Accused

SNC-Lavalin Inc. and

SNC-Lavalin International Inc.

Mtre Stéphane Eljarrat, Osler, Hoskin & Harcourt, LLP

Counsel for the Victim, The Jacques Cartier and Champlain Bridges Incorporated.

Mtre Simon Seida and Mtre Mark Morrison

Blake Cassels and Graydon, S.E.N.C.R.L.

As Independent Monitors

DATES: March 15, April 6, April 27, May 10 and May 11, 2022

113 Schedule C: Reports Calendar and Schedule D are appended to this judgment.

# ANNEXE A

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| --- | --- |
| **CANADA** | **S U P E R I O R C O U R T** |
| **PROVINCE OF QuEbec** | (Criminal Division) |
| **DISTRICT OF MONTREAL** |  |
|  |  |
| **Sup. Ct. No.: 500-36-010199-225****CQ No.: 500-01-223556-215****RCMP No.: 2013‐1438587**  | **Her Majesty the Queen** |
|  |  |
|  | PROSECUTOR |
|  |  |
|  | v. |
|  |  |
|  | **SNC-Lavalin Inc.****SNC-Lavalin International Inc.** |
|  |  |
|  | ACCUSED |
|  |  |

**AMENDED REMEDIATION AGREEMENT**

**Part XXII.1 of the *Criminal Code* (Cr.C*.*)**

SNC-Lavalin Inc. (**SNCL)** and SNC-Lavalin International Inc. (**SNCLI**) (collectively, the **Organizations**), through their undersigned representatives pursuant to an authorization granted by their Board of Directors and the Directeur des poursuites criminelles et pénales (**Prosecutor**), in his capacity as lawful Deputy Attorney General and legitimate substitute of the Attorney General, declare that they have agreed on the conditions of a remediation agreement (**Agreement**).

The terms and conditions of this Agreement are as follows:

# ORGANIZATIONS’ STATEMENT OF FACTS AND ADMISSION OF RESPONSIBILITY FOR THE ACTS FORMING THE BASIS OF THE ALLEGED OFFENCES

1. As regards to information number 500-01-223556-215, **Schedule A** (**Alleged** **Offences**), the Organizations acknowledge that the Statement of Facts (**Statement of Facts**), **Schedule B**, relating to the offences they are alleged to have committed is true and accurate and constitutes a fair representation of the information of which they are aware [715.34(1)(a) Cr. C.].
2. The Organizations undertake not to make or condone any public statement that contradicts the Statement of Facts, whether made by the Organizations themselves or by any corporation belonging to SNC-Lavalin Group Inc. (**SNCLG**) or their respective representatives, or by any former employee, with the exception of representations made in the context of legal proceedings or before a court of law [715.34(1)(a) Cr. C.].
3. The Prosecutor shall give the Organizations written notice should it determine that a public statement referred to in the above paragraph has been made, and the Organizations undertake to publicly correct or deny the said statement within **five** **(5) full legal days** after receipt of such notice.
4. The Organizations agree to consult the Prosecutor before issuing any press release or other written public statement in respect of the Agreement to allow the Prosecutor to determine whether the text adequately reflects the Agreement, and the Prosecutor may not refuse such a statement being made without reasonable grounds. If the Organizations believe they have a legal obligation to issue such a statement within a period of time that does not allow for such a consultation, they shall inform the Prosecutor of the circumstances and applicable mandatory provisions as soon as possible.
5. The Organizations admit that they are responsible for the acts or omissions described in the Statement of Facts that form the basis of the Alleged Offences [715.34(1)(b) Cr. C.].
6. The Organizations acknowledge that the Agreement has been made in good faith, that, to the best of their knowledge, the information they have provided at the Prosecutor’s request during the negotiation of the Agreement is accurate and complete, and that they shall continue to provide such information to the Prosecutor throughout the Agreement’s Effective Period, as that expression is defined in Section 10 of this Agreement [715.34 (1)(k) Cr. C.].
7. The Organizations acknowledge that the Prosecutor may use the information disclosed to him during the Agreement’s negotiation for the purposes of any proceedings already instituted or to come, provided the information pre-dates the negotiations and subject to any legally recognized privilege that may relate thereto [715.34(1)(l) Cr. C.].
8. No admission, confession or statement accepting responsibility for a given act or omission made by the Organizations as a result of the Agreement is admissible in evidence against those Organizations in any civil or criminal proceedings related to that act or omission, with the exception of those admissions, confessions or statements contained in the Statement of Facts and admission of responsibility referred to in paragraphs 715.34(1)(a) or (b) if the Agreement is approved by the Court [715.34(2) Cr. C.].

# AGREEMENT’S APPROVAL AND EFFECTIVE PERIOD

1. As soon as possible following the execution date hereof, the Prosecutor undertakes to apply to the Superior Court of Québec (**Court**) in writing for approval, in accordance with subsection 715.37(1) of the *Criminal Code*.
2. This Agreement shall come into effect as of the date on which the Court issues an approval order pursuant to subsection 715.37(6) Cr. C. and shall remain in effect for a period of **three (3) years** (**Agreement’s Effective Period**).

# AGREEMENT’S LEGAL EFFECTS ON THE PROCEEDINGS [715.34(1)(j) Cr. C.]

1. As soon as practicable after the Court approves the Agreement, the Prosecutor shall direct the clerk or other proper officer of the Court to make an entry on the record no. 500-01-223556-215 to the effect that the proceedings against the Organizations in respect of any Alleged Offence are stayed by that direction and that entry must be made immediately, after which time the proceedings shall be stayed accordingly [715.37(7) Cr. C.].
2. As part of the public disclosure of this Agreement that SNCLG is required to make pursuant to its obligations under the securities legislation, the press release that the Organizations undertake will be posted by SNCLG on the [www.sedar.com](http://www.sedar.com) website and contain the following information:
3. The financial elements of the Agreement, and the respective timetables;
4. The fact that an Independent Monitor was appointed, its mandate, and the term for which it was appointed;
5. The Agreement’s legal effects, namely that the proceedings will be stayed once the Agreement is approved and may be discontinued upon expiry of the Agreement’s Effective Period if all conditions are met; and
6. A hyperlink leading to the approval judgment.
7. No other proceedings may be initiated against the Organizations for the same Alleged Offences during the Agreement’s Effective Period [715.37(8) Cr. C.].
8. If, following an application by the Prosecutor, the Court is convinced that one of the conditions of the Agreement has not been met and, as a result, an order to terminate the Agreement is made, the stayed proceedings may be recommenced, without a new information or a new indictment, as the case may be, by the Prosecutor giving notice of the recommencement to the clerk of the court in which the stay of the proceedings was entered [715.39(1) and (2) Cr. C.].
9. As soon as practicable after expiry of the Agreement’s Effective Period, the Prosecutor shall file a written application with the Court declaring, where applicable, that the terms of the Agreement were met. If the Court is satisfied thereof, it must issue an order declaring that the terms were met, resulting in the immediate stay of the proceedings against the Organizations relating to the Alleged Offences. The proceedings shall then be deemed never to have been commenced and no other proceedings may be initiated for the same offences [715.4 Cr. C.].
10. This Agreement does not grant immunity against proceedings for acts or omissions that are neither directly nor indirectly related to the facts associated with the Alleged Offences, whether to the Organizations or any affiliate of SNCLG, or its current or former employees.

# ORGANIZATIONS’ FINANCIAL OBLIGATIONS

1. The total amount of the financial obligations contracted by the Organizations stands at $29,558,777, as detailed at greater length below.

## FORFEITURE OF PROPERTY, BENEFITS OR ADVANTAGE

1. For the purposes of this Agreement, the Organizations and the Prosecutor agree that the amount of $2,490,721 corresponds to the property, benefit or advantage that the Organizations obtained or that were derived directly or indirectly from the acts or omissions indicated in the Statement of Facts and that are attributable to them [715.34(1)(e)(ii) Cr. C.].
2. Within **thirty (30) days** following the Agreement’s approval by the Court, the Organizations undertake to forfeit to Her Majesty in right of Quebec the amount of $2,490,721, to be disposed of as the Attorney General directs, in accordance with the *Act respecting the forfeiture, administration and appropriation of proceeds and instruments of unlawful activity*, CQLR c. C-52.2.

## PAYMENT OF A PENALTY

1. For the purposes of this Agreement, the Organizations and Prosecutor agree that the amount of $18,135,135 represents a penalty that is effective, proportionate and dissuasive within the meaning of 715.31(b) Cr. C., which amount is established in accordance with the applicable common law principles as well as the principles defined in Part XXIII of the *Criminal Code*. [715.31(b), 715.34(1)(f) Cr. C.].
2. The Organizations undertake to pay $18,135,135 to the Treasurer of the province of Québec, namely an amount equivalent to the basic amount of $6,908,623 based on the profit anticipated by the Organizations for the project in the context of which the Alleged Offences were committed, multiplied by a punitive factor of 350% based on the weighing of the aggravating and mitigating circumstances, to which a 25% credit, deemed fair under the circumstances, is applied as consideration for the cooperation of the Organizations and SNCLG in the investigation:

Basic amount: $6,908,623

Punitive factor: 350%

Cooperation credit: 25%

TOTAL $18,135,135

1. The Organizations undertake to pay the penalty in six (6) equal instalments of $3,022,522.50, namely:
2. A first instalment no later than June 30, 2023;
3. A second instalment no later than September 30, 2023;
4. A third instalment no later than December 31, 2023;
5. A fourth instalment no later than June 30, 2024;
6. A fifth instalment no later than September 30, 2024; et
7. A sixth instalment no later than December 31, 2024.

## REPARATIONS TO THE VICTIM

1. The Organizations undertake to pay $3,492,380 in reparations to the Crown corporation *The Jacques Cartier and Champlain Bridges Incorporated*, the victim, in respect of the acts or omissions indicated in the Statement of Facts [715.34(1)(g) Cr. C.].
2. Within **thirty (30) days** following the Agreement’s approval by the Court, the Organizations undertake to pay $3,492,380 to *The Jacques Cartier and Champlain Bridges Incorporated*.

## VICTIM SURCHARGE

1. The Organizations undertake to pay to the Treasurer of the province of Québec a victim surcharge of $5,440,541, representing thirty percent (30%) of the penalty set forth in Section 20 of this Agreement, payable in six (6) equal instalments of $906,756.83 on the same due dates as the penalty instalments provided for in Section 22 of this Agreement, in accordance with *Order in Council respecting the time limit to pay the victim surcharge*, *Criminal Code*, c CCR, r. 1.02. [715.34(1)(h) Cr. C.].

## BREACH AND DEDUCTION

1. The Organizations undertake to give written notice to the Royal Canadian Mounted Police and, more specifically, to the Lead Investigator/Manager of the Sensitive and International Investigation Team and to the Prosecutor, of the payments made pursuant to Sections 18 to 25. Failure to make payments in accordance with Sections 18 to 25 shall constitute a breach of this Agreement’s terms within the meaning of Section 49 hereof.
2. The Organizations undertake not to deduct, for income tax purposes, the costs of the payments referred to in Sections 18 to 25 of this Agreement [715.34(1)(n) Cr. C.].

# FOLLOW-UP ON COMPLIANCE MEASURES

## MAINTENANCE AND ENHANCEMENT OF INTEGRITY PROGRAM

1. The Organizations undertake to ensure that SNCLG – whose integrity measures apply to the Organizations – maintains and continuously enhances its Integrity Program and the various compliance measures making up the program (collectively, the **Integrity Program)** and, where applicable, addresses any deficiencies in its policies, standards or procedures — including those related to internal controls and employee training procedures — that may have allowed the acts or omissions giving rise to the Alleged Offences [715.34(3)(a) Cr. C.]. The compliance measures are divided into the following categories:
2. The commitment and support of SNCLG’s management;
3. An assessment of the risks of non-compliance;
4. The maintenance and enhancement of the Integrity Program’s policies and procedures;
5. The communication of the Integrity Program to the employees, executives, officers, directors, agents, consultants and any person to whom such a disclosure must be made;
6. The compliance measure training for employees, executives, officers, directors, agents, consultants and any person to whom such training must be given;
7. Internal control, audit and reporting procedures;
8. Hiring control mechanisms by way of applicant integrity verifications the substance of which reflects the position to be held by the applicant as well as a conflict of interests verification for applicants where an appearance of conflict of interests is likely;
9. Systematic disciplinary action, where warranted, for failing to comply with the Integrity Program;
10. Measures to promote compliance;
11. An evaluation of the Integrity Program; and
12. An internal accounting control system ensuring fair and accurate bookkeeping.
13. The Organizations undertake to ensure that SNCLG develops and offers training sessions on:
14. The rules applicable to suppliers under federal and Quebec public procurement, including the general principles under the laws, regulations and codes of conduct respecting procurement and ineligibility/suspension policies, and the reasonable expectations with respect to suppliers arising from the rules to which the relevent clients are subject. SNCLG shall offer these mandatory training sessions to all Stakeholders (defined as being its employees, self-employed workers, third-party staff made available to SNCLG, officers and directors) involved in the decision-making process for obtaining public contracts or awarding sub-contracts related thereto or who are legally required to take such training.
15. The post-employment mesures and conflict of interest guidelines applicable when hiring public servants and former public servants, including the personnel of various federal and Quebec Crown corporations and members of their immediate families. SNCLG shall offer these mandatory training sessions to executives and human resources staff involved in the hiring process in Canada or who are legally required to take such training.

## INDEPENDENT MONITOR

1. The Organizations and the Prosecutor agree to appoint Mtres Mark Morrison and Simon Seidafrom BLAKE, CASSELS & GRAYDON LLP as Independent Monitor (**Independent Monitor**) [715.34(3)(c) Cr. C.].
2. The Organizations undertake to ensure that SNCLG and any other SNCLG corporation cooperate with the Independent Monitor in the performance of their duties, grant them the necessary access to information, documents, recordings, resources, facilities and/or key personnel, officers and directors who fall within the purview of the Independent Monitor’s mandate and that SNCLG pays their costs.
3. Within **three (3) months** following the Court’s approval of the Agreement, the Independent Monitor shall submit an initial report (**Independent Monitor’s Initial Report**) to the Prosecutor, the Organizations and SNCLG.
4. The Independent Monitor’s Initial Report shall contain, among other things:
5. A full description of the work it has carried out, taking into consideration the work it previously carried out in the context of previous mandates;
6. A contemporaneous evaluation of SNCLG’s Integrity Program in light of the size, nature and complexity of the operations, regions and sectors in which it operates;
7. Their recommendations for maintaining or, where necessary, enhancing SNCLG’s Integrity Program.
8. Throughout the Agreement’s Effective Period, within **four and a half (4½) months** following receipt of each of SNCLG’s Implementation Reports, as defined in Section 38 of this Agreement, the Independent Monitor shall submit a report (**Independent Monitor’s Follow-Up Report**) to the Prosecutor, the Organizations and SNCLG indicating whether, in their opinion:
9. The actions and/or measures taken or to be taken by SNCLG to carry out the recommendations formulated in the Independent Monitor’s Initial Report or in any other subsequent report of the Independent Monitor, as these are described in SNCLG’s Implementation Report, are effectively satisfactory;
10. The implementation schedule proposed by SNCLG is reasonable;
11. The changes to the schedule proposed by SNCLG, if any, are problematic;
12. The amendments to, or the addition or cancellation of, a policy or procedure of SNCLG’s Integrity Program maintain or enhance the Integrity Program’s efficiency; and
13. The findings of the examinations and tests listed in Sections 35 and following allow it to conclude that the various measures implemented are effective or whether additional recommendations are required.
14. Throughout the Agreement’s Effective Period, the Independent Monitor shall continue to examine and conduct independent tests on each of the following components; to that end, the Independent Monitor shall determine, at its discretion, which particular aspect(s) of each of these components it will test:
15. The follow-up on the training sessions listed in Section 29, as well as the continuing education of SNCLG’s Stakeholders (within the meaning of Subsection 29(a) of this Agreement) regarding the code of conduct and their commitment to complying therewith;
16. The implementation of the policies and procedures associated with the determination, identification and resolution of conflicts of interest;
17. The pre-employment probity verification;
18. The approval of new foreign commercial representatives after the Agreement’s execution;
19. The hiring process, in Canada, for existing and former public servants, including the staff of various federal and Quebec Crown corporations and members of their immediate families;
20. SNCLG’s documentation of the applications for exemption from the policies and procedures; and
21. The efficacy of the reporting mechanisms.
22. For purposes of the hearing provided for in section 715.4 Cr. C. regarding the Court’s issuance of an order declaring that the terms of this Agreement have been met, the Independent Monitor shall, within the **two (2) months** following receipt of SNCLG’s Final Report, as defined in Section 40 of this Agreement, send a report (**Independent Monitor’s Closing Report**) to the Prosecutor, the Organizations and SNCLG indicating whether, in their opinion, SNCLG carried out the maintainance and/or enhancement of the compliance measures required under this Agreement.

1. Throughout the Agreement’s Effective Period, the Independent Monitor shall make itself available for the purposes of freely discussing with and answering the questions of the Prosecutor regarding its mandate. The Independent Monitor shall also send the Prosecutor such documents as he may require that shall have been obtained or created within the context of its mandate after having given notice to the Organizations and SNCLG so as to allow them to examine the said documents and mutually agree with the Prosecutor on whatever measures may be necessary, where applicable, to preserve the privileged and confidential nature of the documents.

## ORGANIZATIONS’ REPORTS

1. Throughout the Agreement’s Effective Period, the Organizations undertake to ensure that SNCLG submits three (3) reports on the implementation of the Independent Monitors’ recommendations to the Prosecutor and the Independent Monitors, signed by the CEO or Chief Integrity Officer of SNCLG (**SNCLG’s Implementation Reports**) [715.34(1)(i) Cr. C.].
2. The first report shall be submitted within **six (6) months** of the Agreement’s approval by the Court, namely **three (3) months** following the Independent Monitors’ Initial Report, the second report shall be submitted in 2023, within **fifteen (15) months**  of the date of the Court’s approval, and the third report shall be submitted in 2024, within **twenty-four (24) months** of the date of the Court’s approval.
3. The Organizations undertake to ensure that SNCLG submits a final report (**SNCLG’s Final Report**) **four (4) months** prior to the expiry of the Agreement’s Effective Period.
4. The reports shall render account on:
5. the Integrity Program, including the fundamental elements listed in Section 28 of this Agreement;
6. the implementation of the compliance measures and efforts made to implement this Agreement and comply with the conditions thereof;
7. the implementation of the recommendations made in the Independent Monitor’s Initial Report and in any other subsequent report of the Independent Monitor providing, for each, other than those previously confirmed by the Independent Monitor as having been met, either: (i) confirmation that the recommendation was satisfied, along with a description of the actions and/or measures taken to satisfy it, or (ii) a description of the actions and/or measures that were implemented and those that will be implemented, as the case may be, along with the schedule proposed by SNCLG to that end.
8. To ensure that the compliance measures are followed up on efficiently and continuously throughout the Agreement’s Effective Period, it is agreed that the Independent Monitors’ Initial Report, SNCLG’s Implementation Reports, the Independent Monitors’ Follow-Up Report, SNCLG’s Final Report and the Independent Monitors’ Closing Report shall be submitted on the dates provided for in **Schedule C** (**Report Schedule**).

## COOPERATION DURING THE AGREEMENT’S EFFECTIVE PERIOD

1. Throughout the Agreement’s Effective Period, the Organizations undertake to preserve such documents as are relevant for demonstrating compliance with the Agreement’s requirements and to make such documents available to the Independent Monitor and the Prosecutor at their request. The Organizations undertake to ensure that SNCLG honours this obligation.
2. Throughout the Agreement’s Effective Period, the Organizations undertake to disclose to the Prosecutor, on a confidential basis, the existence of any criminal or penal investigation in Canada or elsewhere respecting the offences subject to the Schedule to Part XXII.1 (or, if elsewhere, similar offences which, had they been committed in Canada, would have constituted criminal offences under the Schedule to Part XXII.1) that targets the Organizations or any affiliates of SNCLG and their current or former executive officers for acts or omission commited within the context of their duties, and this from the moment they were informed thereof.
3. The Organizations acknowledge that all acts or omissions committed throughout the Agreement’s Effective Period by the Organizations and in respect of which a public prosecutor in Canada files criminal charges under the Schedule to Part XXII.1 shall constitute a breach of the Agreement’s terms.
4. The Organizations acknowledge their obligation to disclose to the Prosecutor any other information that they become aware of or that may be obtained through reasonable efforts after the Agreement has been entered into and that will assist in identifying any person involved in the acts or omissions, or in any wrongdoing related to the acts or omissions relating to the Alleged Offences (715.34(1)(c) Cr. C.).
5. The Organizations acknowledge their obligation to cooperate in any investigation, prosecution or other proceeding, in Canada or elsewhere, following the Prosecutor’s request, – resulting from the acts or omissions relating to the Alleged Offences, including by providing informations or testimonies (715.34(1)(d) Cr. C.).

# MODIFICATION AND TERMINATION OF AGREEMENT

1. At all times throughout the Agreement’s Effective Period, the Prosecutor may ask the Court to modify the Agreement in accordance with section 715.38 of the *Criminal Code*.
2. At all times throughout the Agreement’s Effective Period, the Prosecutor may ask the Court to terminate the Agreement in the event that one of its terms has been breached in accordance with section 715.39 of the *Criminal Code*.
3. Prior to filing an application to terminate the Agreement, the Prosecutor shall give the Organizations a written notice providing sufficient details of the alleged breach and specifically identifying the terms breached by the Organizations so as to allow them, within **thirty (30) days** following receipt of such written notice, to explain the circumstances of the alleged breach and to propose, where applicable, a corrective measures plan to remedy the breach.
4. If the terms hereof are met throughout the Agreement’s Effective Period, the Prosecutor shall file a written application, as soon as practicable following expiry of the Agreement, requesting that the Court issue an order declaring that the terms of the Agreement were met, resulting in the immediate stay of the proceedings against the Organizations, in which case they shall be deemed never to have been commenced against the Organizations for the Alleged Offences [715.4 Cr. C.].
5. At all times throughout the Agreement’s Effective Period, the Organizations undertake to inform the Prosecutor as soon as practicable should any of them file proceedings to liquidate, whether or not voluntarily, in which case they shall first pay the balance of expenses payable under Chapter IV of the Agreement.
6. The terms, conditions, and obligations of this Agreement, as they relate to the Organizations, shall survive a reorganization of the Organizations' corporate structure and be fully binding upon any organization which is a successor in interest or an assignee to all or substantially all of the assets of the Organizations or shares of SNCLG, except to the extent that such successor or assignee is not controlled by, has no control over or is not under common control with SNCLG or any of its affiliates, in which case the terms, conditions, and obligations of this Agreement shall cease to apply to the relevant assets or shares.

# FINAL PROVISIONS

1. The Agreement consists of this Agreement and its **Schedule A** [translation] “Alleged Offences”, **Schedule B** [translation] “Statement of Facts” and **Schedule C** [translation] “Reports Calendar”, \***Schedule D** [translation] “Methods of Payments” and no modification, amendment or addition shall be valid without the Court’s approval in accordance with section 715.38 of the *Criminal Code*.
2. The signatory of the Organizations is fully authorized by resolution of their Board of Directors to execute this Agreement and represents that he or she has the authority to bind the Organizations.
3. Any notices or information required hereunder shall be in writing and delivered by electronic mail with receipt or sent by registered mail, postage paid, as follows:

If the recipient is the Prosecutor:

To the attention of: Directeur des poursuites criminelles et pénales
Bureau de la grande criminalité et des affaires spéciales
393 St-Jacques Street, Suite 600
Montréal, Québec H2Y 1N9
Fax: 514 904-4130

patrice.peltier-rivest@dpcp.gouv.qc.ca

francis.pilotte@dpcp.gouv.qc.ca

If the recipients are the Organizations:

To the attention of: The Office of the General Counsel
SNC-Lavalin Group Inc.
455 René-Lévesque Blvd. West
Montréal, Québec H2Z 1Z3
Fax: 514 866-5057

Charlene.Ripley@snclavalin.com

With copy to Norton Rose Fulbright Canada, to the attention of

Mtre François Fontaine Ad.E. (francois.fontaine@nortonrosefulbright.com)

If the recipient is the Independent Monitor:

To the attention of: Mtres Mark Morisson and Simon Seida
Blake, Cassels & Graydon LLP
1 Place Ville Marie, Suite 3000
Montréal, Québec H3B 4N8

Fax: 514 982-4099

mark.morrison@blakes.com

simon.seida@blakes.com

If the recipient is the Royal Canadian Mounted Police:

To the attention of: Royal Canadian Mounted Police

Sensitive and International Investigation Team – International Corruption
155 McArthur Avenue
Ottawa, Ontario K1A 0R4

Guy-Michel.Nkili@rcmp-grc.gc.ca

[*Signature page to follow.*]

IN WITNESS WHEREOF, THE PARTIES HAVE SIGNED THIS REMEDIATION AGREEMENT ON THE DATES AND AT THE PLACES INDICATED BELOW:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Montréal, this 25th day of February 2022 |  |  | Montréal, this 25th day of February 2022 |
| Per: | Mtre Charlene Ripley Executive Vice-President and General Counsel Duly authorized representative ofSNC-Lavalin Inc. |  | Per: | Mtre Charlene Ripley Executive Vice-President and General Counsel Duly authorized representative ofSNC-Lavalin International Inc. |

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| --- | --- | --- | --- | --- |
|  | Montréal, this 25th day of February 2022 |  |  | Montréal, this 25th day of February 2022 |
| Per: | Mtre François Fontaine, Ad.E (AF4749)Norton Rose Fulbright Canada LLPCounsel for SNC-Lavalin Inc. and SNC-Lavalin International Inc. |  | Per: | Mtre Charles-Antoine Péladeau (AP0LV7)Norton Rose Fulbright Canada LLPCounsel for SNC-Lavalin Inc. and SNC-Lavalin International Inc. |

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|  | Montréal, this 25th day of February 2022 |  |  | Montréal, this 25th day of February 2022 |
| Per: | Mtre Patrice Peltier-Rivest (AZ6139)Associate Chief ProsecutorDirecteur des poursuites criminelles et pénalesBureau de la grande criminalité et des affaires spéciales |  | Per: | Mtre Francis Pilotte (AP00H4)Criminal and Penal Prosecutions AttorneyDirecteur des poursuites criminelles et pénalesBureau de la grande criminalité et des affaires spéciales |

Schedule A

[NOT translatED] “Alleged Offences”

Schedule B

[NOT translatED] “Statement of Facts”

Schedule C

[translation] “Reports Calendar”

|  |  |
| --- | --- |
| **CANADA****PROVINCE OF QUÉBEC****DISTRICT OF MONTRÉAL** | **S U P E R I O R C O U R T**(Criminal Division) |
| **Sup. Ct. No.: 500-36-010199-225** **CQ No.: 500-01-223556-215** **RCMP No.: 2013-1438587** | **Her Majesty the Queen** PROSECUTORv.**SNC-Lavalin Inc.****SNC-Lavalin International Inc.**   ACCUSED |

**REMEDIATION AGREEMENT**

**- SCHEDULE C -**

**REPORTS CALENDAR**

*Should an order be issued approving the Draft Remediation Agreement dated between May 10 and 13, 2022, the calendar for filing reports pursuant to paragraphs 32, 34, 36, 39 and 40 of the Draft Agreement shall be spread over the following dates:*

|  |  |
| --- | --- |
| **REPORT(S)** | **DATE** |
| *Independent Monitor’s Initial Report* | August 15, 2022 |
| *SNCLG’s 1st Implementation Report*  | November 15, 2022 |
| *Independent Monitor’s 1st Follow-Up Report* | March 31, 2023 |
| *SNCLG’s 2nd Implementation Report*  | August 15, 2023 |
| *Independent Monitor’s 2nd Follow-Up Report* | January 2, 2024 |
| *SNCLG’s 3rd Implementation Report* | May 15, 2024 |
| *Independent Monitor’s 3rd Follow-Up Report*  | October 1, 2024 |
| *SNCLG’s Final Report*  | January 15, 2025 |
| *Independent Monitor’s Closing Report* | March 14, 2025 |

Schedule D

[translation] “Methods of Payments”

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| --- | --- |
| **CANADA****PROVINCE OF QUÉBEC****DISTRICT OF MONTRÉAL** | **S U P E R I O R C O U R T**(Criminal Division) |
| **Sup. Ct. No.: 500-36-010199-225** **CQ No.: 500-01-223556-215**  | **Her Majesty the Queen** PROSECUTORv.**SNC-Lavalin Inc.****SNC-Lavalin International Inc.**   ACCUSED |

**REMEDIATION AGREEMENT**

**- SCHEDULE D -**

**METHODS OF PAYMENTS**

1. **PENALTY under sections 715.31(b) and 715.34(1)(f) Cr. C.:**
	1. The Accused pay the Treasurer of the province of Québec an eighteen million, one hundred and thirty-five thousand, one hundred and thirty-five dollar ($18,135,135) penalty in six (6) equal electronic instalments of three million, twenty-two thousand, five hundred and twenty-two dollars and fifty cents ($3,022,522.50) each, as per the instructions provided to that end by the Bureau des Amendes et Infractions, by contacting Ms. Louise Leblond, Director, Service des plaidoyers et paiements, at 1200 route de l'Église, 6th Floor, Québec City, Québec G1V 4X1 (email: louise.leblond@justice.gouv.qc.ca, telephone: 418 644-2330, extension 21076, cellphone: 418 575-5135), based on the following schedule:
		1. A first instalment no later than June 30, 2023;
		2. A second instalment no later than September 30, 2023;
		3. A third instalment no later than December 31, 2023;
		4. A fourth instalment no later than June 30, 2024;
		5. A fifth instalment no later than September 30, 2024; and
		6. A sixth instalment no later than December 31, 2024;
2. **VICTIM SURCHARGE pursuant to sections 715.34(1)(h) and 715.37(5) Cr. C.:**

**[2]** The Accused pay the Treasurer of the province of Québec a five million, four hundred and forty thousand, five hundred and forty-one dollar ($5,440,541) victim surcharge in six (6) equal electronic instalments of nine hundred and six thousand, seven hundred and fifty-six dollars and eighty-three cents ($906,756.83) each, as per the instructions provided to that end by the Bureau des Amendes et Infractions, by contacting Ms. Louise Leblond, Director, Service des plaidoyers et paiements, at 1200 route de l'Église, 6th Floor, Québec City, Québec G1V 4X1 (email: louise.leblond@justice.gouv.qc.ca, telephone: 418 644-2330, extension 21076, cellphone: 418 575-5135), based on the following schedule:

* + 1. A first instalment no later than June 30, 2023;
		2. A second instalment no later than September 30, 2023;
		3. A third instalment no later than December 31, 2023;
		4. A fourth instalment no later than June 30, 2024;
		5. A fifth instalment no later than September 30, 2024; and
		6. A sixth instalment no later than December 31, 2024;

**Ill**. **FORFEITURE OF PROPERTY pursuant to sections 715.34(1)(e)(ii) and 462.37 Cr. C.:**

**[3]** The Accused remit and pay to the ATTORNEY-GENERAL OF QUÉBEC, represented by the Directeur des poursuites criminelles et pénales, the amount of two million, four hundred and ninety thousand, seven hundred and twenty-one dollars ($2,490,721) within thirty (30) days of the date on which the court approves the Remediation Agreement, and this by electronic payment, as per the instructions provided to that end by the DCPP, by contacting Mtre Danielle Fréchette, Service de la gestion des biens, at 2828 boulevard Laurier, Tower 1, Suite 500, Québec City, Québec G1V 089 (email: danielle.frechette@dpcp.gouv.qc.ca; telephone: 514 348-4684; fax: 418 643 7522);

**IV. REPARATIONS TO THE VICTIM pursuant to sections 715.34(1)(g) and 738 Cr. C.:**

**[4]** The Accused pay *The Jacques Cartier and Champlain Bridges Incorporated* three million, four hundred and ninety-two thousand, three hundred and eighty dollars ($3,492,380) in restitution within thirty (30) days of the date on which the court approves the Remediation Agreement, and this by electronic payment to the transitional account of the Directeur des poursuites criminelles et pénales, as per the instructions provided to that end by the DCPP, by contacting Mtre Danielle Fréchette, Service de la gestion des biens, at 2828 boulevard Laurier, Tower 1, Suite 500, Québec City, Québec G1V 089 (email: danielle.frechette@dpcp.gouv.qc.ca; telephone: 514 348-4684; fax: 418 643 7522);

**[5]** The ATTORNEY-GENERAL OF QUÉBEC, represented by the Directeur des poursuites criminelles et pénales, shall remit the amount of three million, four hundred and ninety-two thousand, three hundred and eighty dollars ($3,492,380) to *The* *Jacques Cartier and Champlain Bridges Incorporated*, sent to the attention of its president, Ms. Catherine Lavoie, at 500-1225 St Charles Street West, Longueuil, Québec J4K 0B9, within 30 days of the deposit of the said amount in the transitional account;

Montréal, March 29, 2022 Montréal, March 29, 2022

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|  |  |  |
| Mtre Francis Pilotte (AP00H4)Mtre Patrice Peltier-Rivest (AZ6139) Counsel for the Prosecutor Directeur des poursuites criminelles et pénales  |  | Mtre François Fontaine, Ad. E. (AF4749)Mtre Charles-Antoine Péladeau (AP0LV7) Counsel for SNC Lavalin Inc. and SNC-Lavalin International Inc. |

1. Book of Exhibits B, Tab 1. The Draft Agreement is appended to this judgment as Schedule A. [↑](#footnote-ref-1)
2. Book of Exhibits B, Tab 3. [↑](#footnote-ref-2)
3. Book of Exhibits B, Tab 4. [↑](#footnote-ref-3)
4. Book of Exhibits B, Tab 5. [↑](#footnote-ref-4)
5. Book of Exhibits B, Tab 2. [↑](#footnote-ref-5)
6. Book of Exhibits B, Tab 6. [↑](#footnote-ref-6)
7. *Union Carbide Canada Inc. v.* *Bombardier Inc.,* 2014 SCC 35 at para. 32, Wagner J.; *Sable Offshore Energy Inc. v.* *Ameron International Corp.,* 2013 SCC 37 at paras. 2, 12–13, 17–18, Abella J.; *PGQ c. Groupe Hexagone,* 2018 QCCA 2129 at paras. 45–50, 94; In criminal law: *R. v. Delchev,* 2015 ONCA 381 at paras. 26–31. [↑](#footnote-ref-7)
8. Books of Exhibits A and C. [↑](#footnote-ref-8)
9. Book of Exhibits B. [↑](#footnote-ref-9)
10. *Crime and Courts Act 2013* (UK), 2013, c. 22, Schedule 17, art. 7 and 8. [↑](#footnote-ref-10)
11. Book of Exhibits K, transcripts of the March 15, 2022, hearing *in camera*. [↑](#footnote-ref-11)
12. Books of Exhibits D and G: Prosecutor’s submissions for the approval of a remediation agreement; Books of Exhibits I and J: Accused’s submissions for the approval of a remediation agreement. [↑](#footnote-ref-12)
13. Book of Exhibits E, volume I; Book of Exhibits F, volume 2. [↑](#footnote-ref-13)
14. Book of Exhibits N. [↑](#footnote-ref-14)
15. Book of Exhibits (volume 2), Exhibit F, Tab AR-40 [translation] “List of amended admissions”. [↑](#footnote-ref-15)
16. Book of Exhibits Q: Prosecutor’s application. [↑](#footnote-ref-16)
17. Books of Exhibits R and S: Submissions of the accused. [↑](#footnote-ref-17)
18. Book of Exhibits L, transcripts of the April 6, 2022, hearings *in camera*. [↑](#footnote-ref-18)
19. Book of Exhibits T. [↑](#footnote-ref-19)
20. Book of Exhibits M. [↑](#footnote-ref-20)
21. Books of Exhibits V and W. [↑](#footnote-ref-21)
22. May 6, 2022 Publication, Broadcasting and Transmission Prohibition Order. [↑](#footnote-ref-22)
23. The Parties also agreed to issue press releases, such that on May 6, 2022, after the markets closed, separate press releases were issued to the media simultaneously indicating, among other things, that the Parties had agreed to a deal, which would be submitted to the Court at the public hearings on May 10, 11 and 12, 2022. [↑](#footnote-ref-23)
24. Temporary and partial publication, broadcasting and transmission prohibition order (Public Order No. 4 dated May 10, 2022). [↑](#footnote-ref-24)
25. Section 7(4), Schedule 17 to the *Crime and Courts Act 2013*. [↑](#footnote-ref-25)
26. R-5 - Detailed Notice of Offer to Negotiate a Remediation Agreement at 5, para. 7. [↑](#footnote-ref-26)
27. *Sable Offshore Energy Inc. v.* *Ameron International Corp.,* 2013 SCC 37 at paras. 17–18. [↑](#footnote-ref-27)
28. Anonymity and Confidentiality Order and Order of Entry into the Court Ledger dated March 15, 2022. [↑](#footnote-ref-28)
29. Sealing Order and *In Camera* Order dated March 15, 2022. [↑](#footnote-ref-29)
30. *Sable Offshore Energy Inc. v.* *Ameron International Corp.,* 2013 SCC 37. [↑](#footnote-ref-30)
31. *Sable Offshore Energy Inc. v.* *Ameron International Corp.* at paras. 2, 17, Abella J. [↑](#footnote-ref-31)
32. Order ending the *in camera* order and lifting the seal dated May 10, 2022 (Public Order No. 3). [↑](#footnote-ref-32)
33. *R. v*. *Mentuck,* 2001 SCC 76 (CanLII), [2001] 3 SCR 442 at para. 32, lacobucci J. at 7. [↑](#footnote-ref-33)
34. Temporary and Partial Publication, Broadcasting and Transmission Prohibition Order (Public Order No. 5). [↑](#footnote-ref-34)
35. Temporary and Partial Order Prohibiting the Publication, Broadcasting and Transmission of Certain Information (Public Order No. 6 dated May 12, 2022). The redacted and contextualized Statement of Facts is attached to this judgment as Schedule B. [↑](#footnote-ref-35)
36. GOVERNMENT OF CANADA, *Expanding Canada’s Toolkit to Address to Corporate Wrongdoing* - *Discussion Paper for Public Consultation: The deferred prosecution agreement stream discussion guide,* 2017, Gatineau, Public Services and Procurement Canada at 5. [↑](#footnote-ref-36)
37. *Crime and Courts Act 2013* (UK), 2013, c. 22, Schedule 17. [↑](#footnote-ref-37)
38. GOVERNMENT OF CANADA, *Expanding Canada’s Toolkit to Address Corporate Wrongdoing – Discussion Paper for Public Consultation: The deferred prosecution agreement stream discussion guide,* 2017, Gatineau, Public Services and Procurement Canada at 5. France adopted the “convention judiciaire d’intérêt public” [judicial agreement in the public interest] under Loi no 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique [*Act 2016-1691 dated December 9, 2016 relating to transparency, the fight against corruption and the modernization of economic life]*, JORF, December 10, 2016, no. 0287. [↑](#footnote-ref-38)
39. GOVERNMENT OF CANADA, *Expanding Canada’s Toolkit to Address Corporate Wrongdoing – Discussion Paper for Public Consultation: The deferred prosecution agreement stream discussion guide,* 2017, Gatineau, Public Services and Procurement Canada at 4. [↑](#footnote-ref-39)
40. GOVERNMENT OF CANADA, *Expanding Canada’s Toolkit to Address Corporate Wrongdoing – Discussion Paper for Public Consultation: The deferred prosecution agreement stream discussion guide,* 2017, Gatineau, Public Services and Procurement Canada at 6. [↑](#footnote-ref-40)
41. GOVERNMENT OF CANADA, *Expanding Canada’s Toolkit to Address Corporate Wrongdoing – Discussion Paper for Public Consultation: The deferred prosecution agreement stream discussion guide,* 2017, Gatineau, Public Services and Procurement Canada at 6. [↑](#footnote-ref-41)
42. GOVERNMENT OF CANADA, *Expanding Canada’s Toolkit to Address Corporate Wrongdoing* - *What We Heard*: *February 22, 2018,* 2018, Gatineau, Government of Canada at 4. [↑](#footnote-ref-42)
43. *An Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures,* S.C. 2018, c. 12. [↑](#footnote-ref-43)
44. *An Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures,* S.C. 2018, c. 12, s. 409. [↑](#footnote-ref-44)
45. GOVERNMENT OF CANADA, *Expanding Canada’s Toolkit to Address Corporate Wrongdoing* - *What We Heard*: *February 22, 2018,* 2018, Gatineau, Government of Canadaat15*.* [↑](#footnote-ref-45)
46. Polly SPRENGER, *Deferred Prosecution Agreements: The law and practice of negotiated corporate criminal penalties,* (London: Thomson Reuters, 2015) at 24. Internal quotations refer to DEPARTMENT OF JUSTICE (UK), *Deferred Prosecution Agreements: Government response to the consultation on a new enforcement tool to deal with economic crime committed by commercial organizations*, (London: The Stationery Office Ltd., 2012). [↑](#footnote-ref-46)
47. Serious Fraud Office and Standard Bank PLC, no. U20150854, November 30, 2015 at para. 2. [↑](#footnote-ref-47)
48. “*Accord de réparation*”in the French version. [↑](#footnote-ref-48)
49. Section 715.3 Cr. C. [↑](#footnote-ref-49)
50. Section 715.37 Cr. C. [↑](#footnote-ref-50)
51. Section 715.38 Cr. C. [↑](#footnote-ref-51)
52. Section 715.39 Cr. C. [↑](#footnote-ref-52)
53. Section 715.4 Cr. C. [↑](#footnote-ref-53)
54. Section 715.42(3)(c) Cr. C. [↑](#footnote-ref-54)
55. Section 715.32(2)(b) Cr. C. [↑](#footnote-ref-55)
56. Section 715.34(1)(g) Cr. C. [↑](#footnote-ref-56)
57. Section 715.36 Cr. C. [↑](#footnote-ref-57)
58. Sections 715.42(3)(a) and (b) Cr. C. [↑](#footnote-ref-58)
59. CQLR, c. C-52.2. [↑](#footnote-ref-59)
60. The timeline is as follows: [translation] “within thirty (30) days following the date on which the court approves the Remediation Agreement" (Book of Exhibits B, Tab R-1 [translation] “Draft Remediation Agreement between Her Majesty the Queen and SNC-Lavalin Inc. and SNC-Lavalin International Inc. (amended)”, Schedule D [translation] “Methods of Payments” at para. 3). [↑](#footnote-ref-60)
61. The timeline is as follows: June 30, 2023, September 30, 2023, December 31, 2023, June 30, 2024, September 30, 2024, December 31, 2024 (Book of Exhibits B, Tab R-1 [translation] “Draft Remediation Agreement between Her Majesty the Queen and SNC-Lavalin Inc. and SNC-Lavalin International Inc. (amended)”, Schedule D [translation] “Methods of Payments” at para. 1). [↑](#footnote-ref-61)
62. The timeline is as follows: [translation] “within thirty (30) days of the date on which the remediation agreement is approved by the Court” (Book of Exhibits B, Tab R-1 [translation] “Draft Remediation Agreement between Her Majesty the Queen and SNC-Lavalin Inc. and SNC-Lavalin International Inc.(amended)”, Schedule D [translation] “Methods of Payments” at para. 4). [↑](#footnote-ref-62)
63. The timeline is as follows: June 30, 2023, September 30, 2023, December 31, 2023, June 30, 2024, September 30, 2024, December 31, 2024 (Book of Exhibits, Tab R-1 [translation] “Draft Remediation Agreement between Her Majesty the Queen and SNC-Lavalin Inc. and SNC-Lavalin International Inc. (amended)”, Schedule D, [translation] “Methods of Payments” at para. 2). [↑](#footnote-ref-63)
64. Book of Exhibits B, tab R-7, [translation] "Notice to victims 715.36 Cr. C." [↑](#footnote-ref-64)
65. Victim Impact Statement and signed observations dated April 14, 2022, Book of Exhibits P. [↑](#footnote-ref-65)
66. Section 715.37(2) Cr. C. [↑](#footnote-ref-66)
67. Amissi M. Manirabona, “Do we need prosecution agreements in Canada,” (2016) 50 *R.J.T.* 651 at 687. [↑](#footnote-ref-67)
68. *R. v.* *Anthony Cook,* 2016 SCC 43 at paras. 35–45. [↑](#footnote-ref-68)
69. *R. v.* *Anthony Cook,* 2016 SCC 43 at para. 37. [↑](#footnote-ref-69)
70. *R. v.* *Anthony Cook,* 2016 SCC 43 at para. 41. [↑](#footnote-ref-70)
71. *R. v.* *Power,* [1994] 1 SCR 601; *R. v.* *Anthony-Cook,* 2016 SCC 43 at para. 44; s. 715.32(1)(c) Cr. C. [↑](#footnote-ref-71)
72. Section 715.37(6)(b) Cr. C. [↑](#footnote-ref-72)
73. Prosecutor’s submissions for the approval of a remediation agreement dated March 22, 2022, Exhibit D, paras. 42 to 46. [↑](#footnote-ref-73)
74. Organizations’ submissions for the approval of a Remediation Agreement, Exhibit I, para. 37. [↑](#footnote-ref-74)
75. Book of Exhibits (volume 1), Exhibit E, tab AR-1 "Groupe SNC-Lavalin Inc. REQ 2022"; Prosecutor’s submissions for the approval of a Remediation Agreement dated March 22, 2022, Exhibit D, para. 49. [↑](#footnote-ref-75)
76. Book of Exhibits (volume 2), Exhibit F, tab AR-40, [translation] "List of Amended Admissions." [↑](#footnote-ref-76)
77. Organizations’ submissions for the approval of a Remediation Agreement, Exhibit I at para. 42. [↑](#footnote-ref-77)
78. Prosecutor’s submissions for the approval of a Remediation Agreement dated Match 22, 2022, Exhibit D at para. 50. [↑](#footnote-ref-78)
79. Book of Exhibits (volume 2), Exhibit F, tab AR-28, [translation] "Integrity Program," at 1. [↑](#footnote-ref-79)
80. Book of Exhibits (volume 2), Exhibit F, tab AR-28, [translation] "Integrity Program," at 1 [↑](#footnote-ref-80)
81. *R. c. SNC-Lavalin Construction Inc.*, C.Q., 500-73-004261-158, December 18, 2019, Leblond J. [↑](#footnote-ref-81)
82. Book of Exhibits (volume 2), Exhibit F, tab AR-33, “Initial Monitor’s Report” (April 2020) at 1. [↑](#footnote-ref-82)
83. Book of Exhibits (volume 2), Exhibit F, tab AR-28, [translation] “Integrity Program,” at 2. [↑](#footnote-ref-83)
84. Book of Exhibits (volume 2), Exhibit F, tab AR-28, [translation] "Integrity Program," at 4. [↑](#footnote-ref-84)
85. Book of Exhibits (volume 2), Exhibit F, tab AR-28, [translation] "Integrity Program," at 6–8. [↑](#footnote-ref-85)
86. Book of Exhibits (volume 2), Exhibit F, tab AR-28, [translation] "Integrity Program," at 8. [↑](#footnote-ref-86)
87. Book of Exhibits (volume 2), Exhibit F, tab AR-28, “Integrity Program,” at 8–9. [↑](#footnote-ref-87)
88. Book of Exhibits (volume 2), Exhibit F, tab AR-28, “Integrity Program,” at 15–17. [↑](#footnote-ref-88)
89. Book of Exhibits (volume 2), Exhibit F, tab AR-28, “Integrity Program,” at 20. [↑](#footnote-ref-89)
90. xxxx xx xxxxxxxx xxxxxxxxxxx xxxxxxx xx xxx xxxxxx xxxxxxxxxxx xxxxxxx xxxxx xxxxxxx xxxx xxxxxx xxxxx xxxxxxxx xxxxxxxx xxx xxxxxxxxxxxxxxxxx xxxxx xxxxxxx xxxxxxx xxxx xxxxxx xxxxxxx xxxxxxxxxxxx xxxxxx [↑](#footnote-ref-90)
91. See in particular David M. Uhlmann, “Deferred prosecution and non-prosecution agreements and the erosion of corporate criminal liability,” (2013) 72 *Md. L.* 1295; Peter R. Reilly, “Justice deferred is justice denied: we must end our failed experiment in deferring corporate criminal prosecutions,” 2015 *BYU L. Rev.* 307. [↑](#footnote-ref-91)
92. The Prosecutor’s submissions for the approval of a remediation agreement dated March 22, 2022, Exhibit D at paras. 74–76; Book of Exhibits (volume 2), Exhibit F, Tab AR-25 [translation] “Summary of the results of the forensic accounting review of documents submitted by SNC-Lavalin Inc. to the RCMP in connection with the negotiation of a remediation agreement.” [↑](#footnote-ref-92)
93. Prosecutor’s submissions for the approval of a remediation agreement dated March 22, 2022, Exhibit D, para. 101. [↑](#footnote-ref-93)
94. R. *v.* *McNamara*, (1981) 56 C.C.C. (2d) 516 (Ont. C.A.), p. 523. [↑](#footnote-ref-94)
95. SENTENCING COUNCIL (UK), *Sentencing Guidelines, "Corporate offenders : fraud, bribery and money laundering*": <https://www.sentencingcouncil.org.uk/offences/crown-court/item/corporate-offenders-fraud-bribery-and-money-laundering/> [↑](#footnote-ref-95)
96. Prosecutor’s submissions for the approval of a remediation agreement dated March 22, 2022, Exhibit D at para. 93. [↑](#footnote-ref-96)
97. *R. v.* *Karigar,* 2014 ONSC 3093, para. 16; *R. v.* *Griffiths Energy International,* [2013] A.J. no. 412, para. 23; *R. v.* *Nika Resources Ltd.* (2011), 101 W.C.B. (2d) 118 (Alta. Q.B.), para. 9. [↑](#footnote-ref-97)
98. *R. c. Pétroles Global inc.*, 2015 QCCS 1618 at para. 99. See also *R. v. McNamara*, (1981) 56 C.C.C. (2d) 516 (Ont. C.A.) at 527. [↑](#footnote-ref-98)
99. *R. c. Pétroles Global inc.*, 2015 QCCS 1618 at para. 55. [↑](#footnote-ref-99)
100. *R. v. Terroco Industries Limited,* 2005 ABCA 141 at para. 60. [↑](#footnote-ref-100)
101. *R. v. Pétroles Global inc.*, 2015 QCCS 1618 at para. 52. [↑](#footnote-ref-101)
102. R. *v. Lavigne*, 2006 SCC 10 at para. 35. [↑](#footnote-ref-102)
103. Book of Exhibits (volume 2), Exhibit F, tab AR-25, [translation] "Summary of the results of the forensic accounting review of documents submitted by SNC-Lavalin Inc. to the RCMP in connection with the negotiations for a remediation agreement,” at 7–8 [↑](#footnote-ref-103)
104. The Organizations’ submissions for the approval of a Remediation Agreement, Exhibit I at paras. 86–88. [↑](#footnote-ref-104)
105. *R. v. Vallières*, 2022 SCC 10. [↑](#footnote-ref-105)
106. Definition of “property” in section 2 Cr. C., taken up in *R. v. Vallières*, 2022 SCC 10 at para. 29. See also *R. v. Vallières*, 2022 SCC 10 at paras. 36, 38. [↑](#footnote-ref-106)
107. Prosecutor’s submissions for the approval of a remediation agreement dated March 22, 2022, Exhibit D at paras. 157–162. See also Organizations’ submissions for the approval of a Remediation Agreement, Exhibit 1 at paras. 91–94. See also, Organizations’ submissions for the approval of a Remediation Agreement, Exhibit 1, at paras. 91–95. [↑](#footnote-ref-107)
108. Victim Impact Statement and signed submissions dated April 14, 2022, Exhibit P. [↑](#footnote-ref-108)
109. *R. v. Dillon*, 2022 SKCA 17 at paras. 20–26. [↑](#footnote-ref-109)
110. *R. v.* *Zelenski,* [1978] 2 S.C.R. 940 at 963; *R. c.* *Simoneau,* 2017 QCCA 1382 at paras. 35–37. [↑](#footnote-ref-110)
111. *Michaud c. R.*, 2018 QCCA 1804, citing *Directeur des poursuites criminelles et pénales* *c.* *Michaud,* 2015 QCCQ 7768 (appeals on guilt and sentence dismissed, 2018 QCCA 1802 and 2018 QCCA 1804; leave to appeal refused, SCC, 2-05-2019, no. 38497) at para. 378. [↑](#footnote-ref-111)
112. Prosecutor’s submissions for the approval of a remediation agreement dated March 22, 2022, Exhibit D at para. 176. [↑](#footnote-ref-112)