

# Stephen Jarislowsky On SNC Governance and DPA: In the wake of scandals, SNC shareholders should have the right to vote on the sale of the 407 shares

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*Stephen Jarislowsky (a former director of SNC and current director of FAIR Canada) has written a personal note where he calls on the Board of SNC-Lavalin to have a shareholder vote on the sale of the 407 shares. He also asks: why is the government reluctant to negotiate a settlement?*

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Having served as a director of SNC Inc and its successor SNC-Lavalin from 1975 until 1996, I have maintained a strong interest in the company, and have been highly perturbed by the scandals it has undergone during the last decade. SNC, during my terms on the Board of Directors, was probably the company I was most proud of being associated with, among the 25 board memberships I took on during my career. It was, in those years, well-managed first by Camille Dagenais and then later by Guy St-Pierre, both men of high ethics and superb leaders.

After I retired, the company kept growing, but the board was not as effective. Loose controls and tough budgets led to cheating to earn bonuses. Jacques Lamarre, who was a strong project manager during his time, did not work well with his board, and the board in turn did not fulfill its

function. The results under Jacques' successor led to the Libya scandal that occurred over 7 years ago.

In the years following this, the company cleaned house under a revised board. Punishment was exacted upon the worst offenders, but many were only fired and not pursued, and the directors escaped punishment entirely, although they too had a duty to know what was going on. Many good people left, and many are still leaving, finding work with competitors or in different careers. The company itself was never exonerated, and though the board initially cleaned house, they never succeeded in attracting strong new directors or management, in spite of mergers with other firms which have not impressed me.

In recent months, the company has claimed political centre stage in Ottawa due to the government's ineptness. Despite the passing of new legislation, common in advanced economies, that uses fines instead of criminal prosecution in order to preserve the jobs of the majority of employees, who were not involved in the criminal activities, SNC-Lavalin was ordered to face criminal charges by a minister with good intentions, yet little experience.

To date, this error has not been reversed, a situation I have difficulty understanding. After all, individual people are guilty of crimes, not shareholders nor loyal employees. To fine the shareholders doubly, when they had no impact on poor decisions, makes little sense to me.

Management, yes. A deficient board, yes. And obviously the actual culprits should be punished. However, to destroy a great worldwide company serves no one, especially if that company could be rebuilt based on ethics, governance and talented people. To kill it harms the employees, the communities, the clients, the suppliers, the shareholders – in effect, the whole country.

Now, to compound the problem, this week the Board of Directors announced the sale, to an Ontario pension fund, of 10% of Toronto's 407 highway, out of the 16.5% held on a 13% after-tax basis. The proceeds will

be used to pay off loans to the Caisse de Dépôt du Québec, as well as rebuild the balance sheet of the engineering division, and other smaller purposes.

Despite the fact that the 407 assets represent some 80% of the company's current market valuation, the board failed to hold a vote to ask SNC-Lavalin shareholders whether they agreed with this sale. The 10% alone of the 407 represents just under 50% of that same figure. It was probably fixed at this level to make it more palatable, as it is under 50%, but this sum is still some 2.5 times the valuation of the entire engineering company! In addition, the engineering company is relatively poorly managed, as confirmed by recent operating results – despite the forecast by its current president, made several years ago, that the company would, by this time, be earning some \$5 per share. Instead he ended up with losses.

In effect, SNC-Lavalin as valued today is not an engineering company. The investment asset in the 407 at some 80% of market value is one of the finest investments that I know, as it is quasi government-guaranteed, plus enjoys the full growth of the traffic around Toronto, including the development of further roads and maintenance connected to the 407. The asset has the quality of a government bond, plus profits from the growth of the transportation revenues as the traffic on the road increases, or as the road is widened or expanded. This, according to my estimates as a security analyst, indicates that the asset should grow in value and income by some 7% – and so would double in ten years.

Why would one not remain invested in such a superb asset after having suffered in the market as a result of the dishonesty and its aftermath?

I doubt that the engineering company can be rebuilt, since it has lost its best people and faces a long criminal trial which may go on for years. This, in turn, will accentuate the difficulty in recruiting new people of high quality. Then there's the problem of customers shying away because of the scandals, and not even the Caisse de Dépôt seems willing to lend more

money. In fact, the Caisse wants to be repaid the money it advanced for SNC to buy additional engineering consulting assets (Atkins). The board of SNC-Lavalin is seemingly content to deny shareholders the chance to retain a top-quality investment. Instead, with this 407 sale, shareholders are forced by its own board to gamble on rescuing a now near-worthless asset, a deal that strikes me as cruel and Machiavellian.

The Board's decision regarding the 407 in my opinion lacks ethics and goes counter to fiduciary exercise of responsibility. At the very least in this case, a free vote by the shareholders should be mandatory before the 10% sale of the 407 is permitted even if current law permits it. The business community as well as the securities commissions should stand up against this possible betrayal of the rights of shareholders and allow just such a free vote before permitting this transaction. If this 10% money is entirely wasted, which may well become the case – since it will be a Herculean task to rebuild SNC-Lavalin Engineering – the shareholders may end up with next to no value, as against the current value of \$27 per share, located solely in the 407 asset.

17 total views, 1 view today