

Deputy First Minister to release legal advice on Judicial Review to Harassment committee

The Committee on the Scottish Government Handling of Harassment Complaints meets at 10am this morning to hear evidence from James Wolffe QC, Lord Advocate, Scottish Government, David Harvie, Crown Agent, and Alex Prentice QC, Principal Crown Counsel, Crown Office and Procurator Fiscal Service (COPFS). Later today they are promised copies of legal advice to the government from just over two years ago.

The Deputy First Minister, John Swinney, has been under increased pressure to release the government's written legal advice on the matter of the Judicial Review which the government lost against former First Minister, Alex Salmond, which as Mr Swinney says in a letter to the Convener, Linda Fabiani, is a first and could set a precedent. An important part of legal advice is its confidential status.

Mr Wolffe is a member of the Scottish Cabinet as well as the head of the prosecution service, Mr Harvie is a Solicitor Advocate and joined the Crown Office and Procurator Fiscal Service, following a spell in private practice, in 1996. Alex Prentice was the prosecutor in the Alex Salmond criminal trial. It is this case when Mr Salmond was tried on 14 counts of sexual assault of varying degrees which has led to this parliamentary inquiry.

This is however no ordinary matter any longer, given the high profile nature of the matters complained about, and the failure of the government in the Judicial Review which found in Alex Salmond's favour. The cost to the government was £630,000 paid to Mr Salmond for costs and expenses. Party politics and personal animosity are also now in play. Far from being old friends, the current First Minister, Nicola Sturgeon, and her predecessor now appear to be in opposing camps with apparently opposing versions of events. Thus far, Ms Sturgeon has stood by the Head of the Civil Service the Permanent Secretary, Leslie Evans, and her Chief of Staff Liz Lloyd. Quite how far that loyalty will extend when the dust settles, we shall have to wait and see.

Mr Swinney has written to the Convener advising that the government will release copies of legal advice to the committee on Tuesday afternoon. His letter is copied below.

In his evidence to the committee last Friday, Mr Salmond accused the government anew of a conspiracy against him. Andy Wightman MSP asked about a statement in Mr Salmond's written submission which read: "We have a witness precognition (statement) which recounts that in late November 2018 a Special Adviser told the witness that the Government knew they would lose the Judicial Review but that they would 'get him' in the criminal case."

Mr Salmond explained that if the criminal trial had proceeded apace then the civil case – the judicial review – would have

been stayed pending the outcome of the criminal matter. He said: "Many people seemed to invest a great deal of hope that the criminal case would ride to the rescue, like the cavalry over the hill, and that somehow the civil case would never be heard. Given that they were in a situation in which they had a high degree of expectation that they were about to calamitously lose a civil case, that was obviously a pressing concern for many people."

Mr Salmond was acquitted of all charges against him on 23 March 2020 at the High Court in Edinburgh.

You can watch proceedings of the Harassment Committee live [here](#). The remit of the committee is to "consider and report on the actions of the First Minister, Scottish Government officials and special advisers in dealing with complaints about Alex Salmond, former First Minister, considered under the Scottish Government's "Handling of harassment complaints involving current or former ministers" procedure and actions in relation to the Scottish Ministerial Code".

Scottish Conservative leader Douglas Ross MP said: "The legal advice that John Swinney claimed would exonerate the government actually confirms what everyone suspected.

"The government knew of the fatal flaw in their case months before conceding but went on to waste £500,000 of taxpayers' money anyway.

"Recklessly continuing with the judicial review when it was doomed would clearly be a breach of the Ministerial Code. The public deserve to know exactly what mistakes were made.

"John Swinney is not getting away with releasing only the evidence he wants us to see. We will press ahead with the Vote of No Confidence until all the legal advice is published.

"I'd like to thank other opposition parties for supporting Scottish Conservative moves to have the legal advice released

for a third time. The government must be held to account and by uniting behind our motion, we will ensure the will of the Scottish Parliament is respected.”



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