



## **The Empire Club Presents**

### **HONOURABLE YASIR NAQVI, ATTORNEY GENERAL OF ONTARIO**

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February 21, 2017

#### **Welcome Address, by Paul Fogolin, Vice President of the Ontario Retirement Communities Association and President of the Empire Club of Canada**

Hope you enjoyed your lunch. From the Arcadian Court in downtown Toronto, welcome, once again, to the 113th season of the Empire Club of Canada. For those of you just joining us through either our broadcast on Rogers TV, our podcast or webcast, welcome, to the meeting.

Before our distinguished speaker is introduced today, it gives me great pleasure to introduce our Head Table Guests. I would ask that each Head Table Guest rise as

their name is called. Usually, this is when I say refrain from applauding, but we do not do that this year, so, clap away as much as possible for every guest. Show them the love.

#### **HEAD TABLE**

##### **Distinguished Guest Speaker:**

Honourable Yasir Naqvi, Attorney General of Ontario

##### **Guests:**

Mr. Thomas Chanzy, Vice President, Public Affairs, Ontario Trillium Foundation;  
Director, Empire Club of Canada

Mr. Stephen Chedas, Legal Counsel, Carpenters' District Council

Mr. Sunil Kapur, Partner, McCarthy Tetrault

Mr. David Leonard, Chief Executive Officer, McCarthy Tetrault

Mr. Gord McGuire, Partner, Adair Barristers LLP; Director, Empire Club of  
Canada

Ms. Debbie Oakley, Executive Director, Innocence Canada

Ms. Paula Osmok, Executive Director, John Howard Society of Ontario

Mr. Paul Schabas, Treasurer, Law Society of Upper Canada

Mr. Awi Sinha, Partner, McCarthy Tetrault.

Once again, my name is Paul Fogolin. In my day job, I am the Vice President of the Ontario Retirement Communities Association and your President this year at the Empire Club of Canada.

Ladies and gentlemen, your Head Table for today.

On October of 1986, we had the pleasure of hosting the late Ian Scott here, at the Empire Club. As Ontario's Attorney General, at the time, he began his remarks by acknowledging that this province and, indeed, this country,

has long enjoyed one of the finest criminal justice systems in the world. He focused the remainder of his speech, however, on his efforts to work towards evolving the justice system to meet the expectations of a public that had grown disenfranchised and dissatisfied, and I quote, “Increasingly, the average citizen has begun to believe that the present system fails in its ability to perform legal functions in a satisfactory way. Many believe police investigations to be lengthy, unproductive and sometimes oppressive. Others believe the trial process to be long, too expensive and unfairly delayed. These delays are largely a product of a growing complexity and length of criminal trials.”

The justice system has evolved significantly in the years since Minister Scott’s remarks, but there is still much to be done. Our guest of honour today is working hard to continue in the legacy of Minister Scott and those who would come after.

Today, Minister Naqvi will be addressing an issue that has been making headlines across the country in recent months as the growing list of serious criminal cases have been thrown out by the courts due to delays in the system. The landmark decision of the Supreme Court of Canada in *R. v. Jordan* is having a profound impact on our justice system. We look forward to hearing what Ontario is doing to confront the challenge, and what more the Attorney General thinks should be done as we look towards the future.

A first-generation Canadian, Yasir and his family

arrived in Canada in 1988 after the Pakistani government imprisoned his father for leading a pro-democracy march. With an upbringing deeply rooted in the values of democracy, social justice and compassion, Yasir feels it is important to be involved in the community and to give back.

His passion to serve his community resulted in him being elected as MPP in October of 2007. He would be re-elected in 2011 and, once again, in 2014.

Currently serving as Attorney General and the Government House Leader—and, by the way, it is the first day back for the House session, so this is very impressive to have him here—he last served as Minister of Community Safety and Correctional Services and, before that, as Minister of Labour.

Perhaps, most importantly, Yasir is the proud father of two adorable children, Rafi and Elliana, and husband to Christine McMillan.

Ladies and gentlemen, please, join me in giving a very warm welcome to Ontario’s Attorney General, the Honourable Yasir Naqvi.

### **The Honourable Yasir Naqvi**

Well, thanks, Paul. That was a very kind introduction. I really, really appreciate it. I want to thank all of you for being here today.

Before I start, I do want to recognize the presence of my colleague, our new MPP from Ottawa–Vanier, Nathalie

Des Rosiers, who is the former dean of the Faculty of Law at the University of Ottawa, my alma mater. Nathalie, thank you for being here. And I would be remiss to also thank my very good friend, the former Attorney General of Ontario, Chris Bentley, for his presence as well. Thank you, Chris for being here. I hope Chris does not think, “I could have given that speech back then.” We made progress, Chris.

Thank you to the Empire Club for providing this forum to ministers like me. We can speak our mind on the issues that are top of mind for people we serve. That is why I am here today. I want to talk about a serious challenge to our justice system. It is one I know we can overcome, but, right now, this challenge is having a very direct impact on people’s lives.

First, let me tell you why I deeply value and believe in our justice system. As you heard, my family and I came to Canada 29 years ago. We moved to Niagara Falls, Ontario. When you are a newcomer, you are hungry for knowledge about your new home, and you want to play a part in making it even better, so, the first two cards that my family and I signed up for were a library card and a Liberal Party membership card. The first card was the gateway to learning about our new community, and that is what I did at the library. And it was free! Remember, my teenage wallet had only two things in it. Neither of them was cash, but my parents knew that it would be time well spent, and we would gain valuable knowledge. That knowledge is what led to

the second card, the Liberal Party membership. It was a pathway to contributing to the future of our society. And, for my family, this was profound because we were finally in a country where it was not illegal to join a political party.

As many of you may know, my father had been in prison in Pakistan. He took part in a political rally, the movement for the restoration of democracy. When I was ten, I hugged him goodbye at the door. We knew he might not come home that day, and he did not for nine months. He was arrested and sent to prison hundreds of miles away. Of course, my family and I missed him dearly at that time. I do not think there was a single Friday we missed visiting him.

His crime was seeking the people’s right to vote. For this, he was jailed. So, we came to Canada, where my family could pursue a passion for political activity. In fact, my father and brother also run for office as NDP candidates. Yes, I am the red sheep of the family. Let me tell you, at our family dinners, the biryani comes with a side of politics. The food is spicy; the debates get even hotter. Yes, some of them are NDP, but they are family, and I cannot give up on them, and they will not give up on me. In fact, those respectful differences are what make Ontario great: You can be the person you are with the people you love; you belong in a community that welcomes all and that values all contributions.

As the Attorney General of Ontario, I feel a pro-

found sense of pride and responsibility as the Administrator of Justice in one of the world's great civil societies. Here, justice is independent of government and served in trust with citizens. The *Charter of Rights and Freedoms* protects individual rights. Our rigorous system of appeals up to the Supreme Court of Canada ensure the rights are upheld. So, it is with humility and respect that, as Attorney General, I speak today about the impact of recent Supreme Court decisions on the administration of criminal justice in Ontario.

Many of you, I know, are familiar with the *Jordan* decision. It is a gamechanger. The Supreme Court's majority decision set out a new and clearly defined framework for protecting the constitutionally guaranteed right to be tried within a reasonable time under Section 11(b) of the *Charter of Rights and Freedoms*. For the first time, we now have a numerical presumptive ceiling on Provincial Court cases of 18 months, and a ceiling of 30 months for Superior Court cases. When cases exceed these thresholds, judges may order a stay of proceedings and charges may be dismissed. Wherever possible, crown attorneys will rebut the argument of unreasonable delay by citing delay costs by the defence in exceptional circumstances to prevent cases from being stayed. This can be a challenge, however.

Under the *Jordan* framework, courts will no longer consider whether delay has caused actual prejudice to the accused. Prejudice is not presumed by the passage of time. Courts will no longer distinguish between the most serious cas-

es, such as murder, and less serious cases in determining whether to issue a stay.

In recent weeks and months, Ontarians have been reading media stories about judges citing this ceiling and granting stays of proceedings. This has affected a murder case in Ontario. It has affected a case of sexual assault on a child. Another case involved assault against an infant. These stays of proceedings have caused some real, emotional pain and community anger. Another case involved a young person who died in a correctional facility, so the presumptive ceilings are not just impacting the accused; we *all* feel it. It impacts trust and confidence in the administration of justice.

Let me be clear. The Supreme Court, in its wisdom, has ruled on an issue that clearly needed to be addressed. The pace of criminal justice system is too slow. Criminal cases are taking too long. Prompt justice is a Charter right. Our criminal courts are bottlenecked. Daily dockets are jammed. Early trial dates are hard to come by. Lengthy delays are hard on victims and families. Delays leave everyone involved in a kind of limbo. Lengthy delays do not fulfil the right to prompt justice called for in the *Charter*. Delays give the public a sense of dysfunction in the courts. This erodes public trust.

The Supreme Court spoke on the issue, as it is their right and obligation to do. I quote, "All the parties were operating within the culture of complacency towards delay

that has pervaded the criminal justice system in recent years. Broader structural and procedural changes, in addition to day-to-day efforts are required to maintain the public's confidence by delivering justice in a timely manner." I agree, it is time for reform. It is time for change. The Supreme Court made it clear that the bar, the courts and governments can no longer operate business as usual, and complacency will not be tolerated. That is why, in Ontario, since *Jordan*, we have been taking action. We have made new investments and strengthened day-to-day action to complete trials. We are looking at broad procedural changes to make the system more efficient. I will talk about these in a moment.

First, when I look at how the *Jordan* decision is being applied, I have two questions, as Attorney General. One, what has been the impact of *Jordan* on Ontario's criminal justice system so far? When the Supreme Court released its judgment eight months ago, there were already thousands of cases in the system that were at or very close to the new presumptive ceiling. For those cases already in the system, *Jordan* was like changing the rules of the game in the middle of the third period, except criminal justice is much more serious than hockey. That is why, in its majority ruling, the Supreme Court went out of its way to recognize that there must be a transition period for cases already in the system. During this transition period, the courts said, and I quote, "There are a variety of reasons to apply the framework contextually and flexibly for cases currently in the system, one

being that it is not fair to strictly judge participants in the criminal justice system against standards of which they had no notice. The system is going to need time to adjust to the new rules." However, I am concerned that the court's guidance is not being applied evenly across Ontario or across Canada. Instead, we are already seeing some of the most serious and challenging cases in our system affected. These cases had no ability to adjust when the rules were changed. As a result, a Supreme Court decision that rightfully sought to create clarity and restore faith in the system may, in fact, be having the reverse effect thus far.

My second question is this: How did the *Jordan* decision impact the people, in particular, victims, in this province? As Attorney General, I am acutely aware of the pain and sadness that is caused when a case is stayed. Unfortunately, we have all had occasion to hear too many of these stories in recent months. Families of victims have shown up in court for the start of a trial. This is already a highly emotional and potentially traumatic event. Their trauma is then deepened when it is announced that there will be no trial at all. Victims, families, witnesses in the community are now dealing with a whole new set of emotions. It is my sincere hope those families affected can find peace. They may never feel a true sense of justice. There will be no testimony in court. No verdict will be rendered. Importantly, the accused is also denied their day in court. This is not building trust; it is eroding trust. This is not reducing the

impact on victims and families; it is re-victimizing. To ask the public to understand such a legality is, frankly, asking a lot. I feel this acutely, not only because it happened during my time as Attorney General, but because it has happened in my own community of Ottawa.

Ontario is, of course, responding to the *Jordan* challenge. The judiciary, crowns, the defence, bar, Legal Aid, our hard-working core staff are coming together to identify, triage and resolve as many cases as quickly as possible. Charges laid today, in Ontario, will be prosecuted with an understanding of the ceilings set by the Supreme Court. We are also adding people. This is meant to keep the number of stays of proceedings as low as possible. We are appointing 13 new judges to the Bench of the Ontario Court of Justice. We are adding 32 assistant crown attorneys to our ranks. We are providing funding to Legal Aid Ontario for 16 duty counsel. We are increasing support with 26 new courtroom staff. For the last three years, we have increased access for Legal Aid by 6% and will be doing so, again, this year. We are ensuring that cases are resolved faster by having more assistant crown attorneys working on them, and more judges to hear them and more accused with legal representation.

We also need to ensure time and resources can be dedicated to the most serious cases by dealing more efficiently with the less serious cases at the front end of the system. The Minister of the Attorney General is implementing new measures to administer bail more efficiently in Ontar-

io. Vulnerable, low-risk people in our correctional facilities should be out in the community on bail. Too often they are not because they lack the right supports. A disproportionate number of them are Indigenous or racialized or have complex mental health needs. In fact, remaining in custody can impact their income or interrupts care and other supports. Holding them in jail places a huge financial burden on the entire justice system. At the same time, high-risk accused who should be in correctional facilities until their trial are waiting too long for their day in court.

We are falling through on a comprehensive plan to enhance public safety and make the justice system work better. We are getting the right people in the right places to support faster, more effective bail decisions. This means high-volume courts will have bail vetters specially trained and empowered crowns who can ensure timely informed bail decisions. We are also embedding experienced crown attorneys in police stations to provide early advice on bail in cases concerning vulnerable accused. We are putting more duty counsel in correctional facilities to move low-risk people to a bail hearing sooner. Expanded bail verification and supervision will get more people safely and quickly released into the community.

A new Indigenous bail and remand program will be run by Indigenous service providers. It allows low-risk accused to remain in their communities while awaiting trial, including remote communities. There will be more ideas

to come. We have also appointed three prominent legal experts to offer their expertise on reforming Crown policies on bail: former Chief Justice Brian Lennox, former Deputy Attorney General; Crown Attorney Murray Segal, who is here with us today; and Deputy Crown Attorney Lori Montague.

These measures are all in the spirit of the Supreme Court majority's concluding statement in the *Jordan* decision, which said, "Ultimately, all participants in the justice system must work in concert to achieve speedier trials. After all, everyone stands to benefit from these efforts. Timely trials are possible. More than that, they are constitutionally required." Of course, in our federation, all participants in the justice system should include the federal government. They have a role in meeting obligations that are constitutionally required.

The Senate Committee on Legal and Constitutional Affairs has made very valuable contributions to understanding issues around trial delays. They have been clear that federal action is needed. The Supreme Court in *Jordan* was clear on this point as well.

I have three requests to the Federal Minister of Justice. First, fill the 11 vacancies on the Superior Court Bench in Ontario. This was a problem before the *Jordan* decision. It is absolutely critical now. At a time of great need, we are losing hundreds of hours of judicial time every month across the Superior Court of Justice due to these lingering vacancies. Senator George Baker, the senate committee

deputy chair, put it this way: "The combination of an excessive number of vacancies, along with the deadlines set by the Supreme Court has created the perfect storm. The government must act quickly to fill these vacancies in order to maintain public confidence in the justice system."

Yet, simply adding resources to the system will not address all of the delay issues. We need to make bold changes to speed up and simplify the criminal court process. That is why I wrote to the Federal Minister of Justice today and set out my second request, which is to pursue some very specific changes to the criminal court as part of the minister's forthcoming criminal justice review. It is our view that the long-held rationales for preliminary inquiries simply no longer exist. I have, therefore, asked the minister to consider Criminal Code reforms that will significantly curtail the use of preliminary inquiries in criminal cases destined for the Superior Court. Third, the Minister of Justice should convene a special meeting at the earliest opportunity with provincial and territorial attorney generals to discuss the *Jordan* decision and its implications for criminal justice in Canada.

Let us be honest, there will be more stays of proceedings. Many applications are before courts across Canada. The Supreme Court minority in the *Jordan* decision said that the new framework and transition provisions will not avoid the risk of many stays of judicial proceedings. Collectively, we need to reassure Canadians that we

are working to ensure this does not happen. A national meeting will send a clear message to victims, their families and all Canadians. That message is, “We hear you; we know this is unacceptable. We are acting on it. The justice system in Canada can do better.”

As Attorney General, I want to ensure Ontarians that we will do everything possible in this province to avoid stays of proceedings, especially, in serious cases. We have some questions about *Jordan* and its application. The long-term impact of the decision is not yet fully clear. We do know one thing: Action is needed. We need to ensure justice is delivered more efficiently and promptly. We need people in the justice system working more effectively together, seeing cases involving murder and other serious offences stayed, seeing added pain brought up on victims and families, seeing the frustration in communities and the eroding trust in society, these all remind us that justice delayed is, indeed, justice denied, not just for some, but for us all. This is among the fundamental principles that hold our great society together. Ontarians must feel confident that prompt and proper justice will be served, and that is what we will do.

Thank you very much for your time.

**Note of Appreciation, by Mr. Thomas Chanzy, Vice President, Public Affairs, Ontario Trillium Foundation; Director, Empire Club of Canada**

Thank you, Paul. Mr. Naqvi, distinguished guests, my name is Thomas Chanzy, and I have the privilege of being a Director at the Empire Club of Canada, in addition to my day job as Vice President of Public Affairs at the Ontario Trillium Foundation. And that means that I am one of the very few non-lawyers in this room, and I speak French. Needless to say, I think your remarks will be special.

I will start by thanking all of you for joining us today to listen to our Attorney General and learn from him about the important challenges he is tackling every day to improve our justice system.

Mr. Naqvi, we have known each other for a long time—many years—and it is my pleasure and also an honour to thank you on behalf of the Empire Club of Canada and today’s attendees for your time and your insights on the state of our criminal justice system.

The monumental decision of the Supreme Court of Canada in the *Jordan* case is shaping a new future to our justice system. We thank you for shedding light on what you believe needs to be done to address the challenges the judicial system faces. As you highlighted, we know it is not working for everyone. This is not the time to assign blame or figure out whose fault it is. The time has come to act, and



I want to thank you for your remarks today. Your work is of the utmost importance, and we thank you for dedication and compassion. Ontario has a powerful voice, and I am sure I speak for everyone here when I say we are greatly looking forward to seeing what you and your government do to ensure that we, as Canadians and Ontarians—specially the most vulnerable among us—enjoy the benefits of a fair and just society.

Merci beaucoup tous les Ontariens, Canadiens.  
Merci.

### **Concluding Remarks, by Paul Fogolin**

Merci, Thomas. I will spare you my French, do not worry.

A sincere thank you to our generous sponsors. As a not-for-profit club, we simply could not host these important lunches without sponsors. I want to give a very generous thank you to McCarthy Tetrault and our VIP sponsor today, the Carpenters' Union. Let us give them a round of applause, please.

I would also like to thank the *National Post*, as our print media sponsor, and Rogers TV, as our broadcast partner. We would also like to thank mediaevents.ca, Canada's online event space for live webcasting today's event to thousands of viewers around the world.

Although our Club has been around since 1903, we have moved into the 21<sup>st</sup> century, and we are active on social media. We actually have a Snapchat account now, which I do not even know how to use, but others do. Please, check out our website. On our program today, you can see that we have Facebook, LinkedIn and Instagram accounts.

Finally, we have a very exciting lineup coming up in March and April. Please, join us for these events. Our next event is on March 2<sup>nd</sup>: Dr. Eric Hoskins, Ontario's Minister of Health, will be speaking at the Intercontinental Hotel. On March 7<sup>th</sup>, we will have Christopher Wein, who is the President of Great Gulf Developments, in conversation with Jennifer Keesmat, Toronto's City Planner, on the

future of communities. Finally, on March 9<sup>th</sup>, we have a panel on doing business with the new America, something everybody is interested in. Speakers will be members of the auto sector, the finance sector and the agriculture sector.

Thank you so much for attending. As Thomas said, we really appreciate your participation in our events. Have a wonderful afternoon. This meeting is now adjourned.