

The Empire Club Presents



THE HONOURABLE DAVID LAMETTI

MINISTER OF JUSTICE AND
ATTORNEY GENERAL
OF CANADA

Welcome Address, by Kent Emerson, Associate Vice President at the Municipal Property Assessment Corporation and President of the Empire Club of Canada

February 28, 2019

Good afternoon, ladies and gentlemen. From the Imperial Room at the Royal York Hotel in downtown Toronto, welcome, to the Empire Club of Canada.

For those of you just joining us through either our web-cast or our podcast, welcome, to the meeting.

Today we present the Honourable David Lametti, Minister of Justice and Attorney General.

HEAD TABLE

Distinguished Guest Speaker:

The Honourable David Lametti, Minister of Justice and Attorney General of Canada

Guests:

Ms. Georgina Blanas, Executive Director, Private Capital Markets Association of Canada; Director, Empire Club of Canada

Mr. Daniel Brock, Partner, Fasken Martineau DuMoulin LLP

Mr. John A. Campion, Partner, Gardiner Roberts LLP; Past President, Empire Club of Canada

Mr. Harry Dahme, Partner, Gowling WLG

Mr. Nicholas Daube, Director of Policy, Office of the Minister of Justice and Attorney General of Canada

Ms. Julia Shin Doi, General Counsel, Board of Governors, Ryerson University

Mr. Alim Lalani, Associate General Counsel, Waste Connections Canada

The Empire Club of Canada has had a long tradition of hearing from Canada's Justice Minister. The first instance was in 1921, nearly 100 years ago, from Attorney General and Justice Minister Charles Doherty in the government of Prime Minister Borden. The intent of his speech was to argue for the need for an international criminal court. Doherty said, at the time, "I think it still remains true that there is one thing more precious than humanity, one thing which the hearts of men feel that they cannot do without, one thing that is more absolutely necessary than peace, and that is justice." He went on to say that "Peace is a continued existence of stable justice."

For Doherty, justice was the fundamental principle that underscored his support for the international court.

One hundred years later, in the interest of justice, we are having a meeting of the Empire Club to listen to our newly sworn in attorney general. Not to overstate the obvious, but I do think it is fair to say today's guest was appointed at a challenging time. Attorney General Lametti, because of that, Canadians are especially interested in hearing from you, today, making your presence here especially relevant.

Last week, in front of the Standing Committee on Justice and Human Rights, you talked about the role of the attorney general and preserving something that Canadians put the highest importance on, which is the rule of law.

I was glad to learn from your team that you intend to address some of the issues here, today, to support what has become a national discussion on this issue. It has continued to play out through developments in the Committee yesterday and from the words of our prime minister last night.

Fundamentally, because it will be your job to stand up on behalf of Canadians going forward, we are interested to know what your beliefs are, what your plan is, and what fundamental principles you hold as you make important decisions for Canadians in the times ahead. After all, you are empowered to stand up for the interests of Canadians to have the last say on extradition matters and matters protecting the rights of Canadians as listed in the Charter of Rights and Freedoms. Let us face it, the world is changing. When US National Security Advisor, John Bolton, is out there saying

the International Court of Justice is ineffective and partisan, it really makes you look at the 1921 Empire Club speech by a former attorney general and, number one, you think that the speech is very relevant today, and, number two, you see how many of today's concerns south of the border around international law are cropping up, flying in the face of what we assumed were permanent institutions of agreed principles from our post-war alliances. In its place, we have confronted new challenges. Our new attorney general will confront unforeseen challenges. Minister, that is why Canadians know the incredible relevance and importance of your role. With that context, let us get started. Today's speaker comes to politics as a full professor in the Faculty of Law at McGill University, specializing in property, intellectual property as well as private and comparative law. He was also a member of McGill University's Quebec Research Centre of Private and Comparative Law and the co-founder and member of the McGill Centre for Intellectual Property Policy. He served as the Associate Dean of the Faculty of Law at McGill University from 2008 to 2011. He is fluent in French, English and Italian. In addition to his responsibilities as professor, Minister Lametti was a member of McGill University's Senate and a Governor of the Quebec's Bar. He was also a competitive soccer coach in two Montreal leagues for six years and a member and president of the governing board of his children's school. Minister Lametti holds a Bachelor of Arts in Economics and Political Science from the University of Toronto; a Bachelor of Civil Law

and Bachelor of Laws from McGill University; a Master of Laws from Yale Law School; and a Doctor of Philosophy in Law from Oxford University. Prior to starting his doctoral studies in law, he served as a law clerk to Justice Peter de-Carteret Cory of the Supreme Court of Canada. Minister Lametti served as a parliamentary secretary from 2015 until 2019, when he was appointed Minister of Justice and Attorney General of Canada.

Minister Lametti and his wife Geneviève have three children: André, Gabrielle, and Dominique.

Please, welcome, Canada's Attorney General and Minister of Justice, the Honourable David Lametti.

The Honourable David Lametti

Thank you so much for that kind and perhaps overly long welcome. I would like to begin by acknowledging that the land that we gather on today is the traditional territory of the Wendat, the Anishnabeg, the Haudenosaunee and the Mississaugas of the New Credit First Nation.

Chief Justice Strathy, distinguished guests—I do not want to miss anyone else, so I am just going to leave it at distinguished guests, friends, and I am very moved by the number of old friends and new friends that are in the room from every stage of my life, from my home town all the way to my university studies. There are some of my former

students here, at least one former research assistant here.

Thank you. Thanks to all of you for coming. What is the curse about living in interesting times? I will admit that the first few weeks on the job have been eventful, but I am proud to speak to you today as Minister of Justice and Attorney General of Canada. Again, I thank you for coming and for the warm welcome.

I know many of you have been following the news out of Ottawa, and I do want to spend some time on those issues today. First, though, I want to take a few minutes to tell you a bit about who I am and what I believe in. I think it is important for Canadians to understand the values and the considerations that will inform the way I approach my responsibilities in this role. That includes some serious questions that have arisen in my first weeks.

Growing up, it is safe to say that I never expected that one day I would become Canada's justice minister.

My parents were Italian immigrants. They were in their early twenties when they came to Canada shortly after the Second World War, far from their family and from everything familiar. They eventually settled in Port Colborne, Southwestern Ontario, which is where I was born.

Port Colborne, like lots of places, small towns in Ontario, has changed a lot since I was a kid. At the time, it was a small industrial town where families on my block had at least one person working at either one of the steel mills in the Niagara Peninsula, at the flour mill, or at the nickel refinery. My dad was a home builder. He died young, at the

age of 49. My mother worked at a number of jobs as she raised me and my three older brothers on her own.

[Remarks in French.] Leur histoire témoigne de sacrifices générationnels. En effet, ils se sont sacrifiés pour que leurs enfants puissent avoir une vie meilleure que la leur.

Ils sont venus ici, convaincus que le Canada était un endroit où leurs sacrifices ne seraient pas vains.

They taught me the importance of hard work, getting an education, the values of inclusion and kindness, which instilled in me the conviction that there really is no contradiction between being a good person and a successful one.

I cannot overstate the gratitude I feel towards my parents for the opportunities that they made possible for me.

Not everyone is so lucky. I left home to go to the University of Toronto at St. Michael's College—table is over there—just up the way, just up University Ave. I loved my time at St. Mike's. It was special, even unique, to be studying politics in Canada at the time. Our Constitution was being patriated by Pierre Trudeau's Liberal government.

The debate was unfolding in front of me. As a student in my early twenties, I was witness to the pivot point in Canadian constitutional and legal history, and it was thrilling.

You can say that I am a child of the Charter. It was born as I was finding my way intellectually. As I watched the final signing ceremony on that windy day on Parliament Hill, I knew that our country had accomplished a great thing and was moving into a new era. For me the Charter was an affirmation of the many values that I had and held as I grew up.

Here was a document that affirmed that Canada was a place where each individual would have a right to pursue his or her version of the good life.

No matter where you came from or who you are, our collective aspiration is that you should have a right to the Charter's protections, including the right to make your voice heard. These rights should never be taken for granted.

The debates I have witnessed and the vision of what this country should be were a large part of the reason why I went to study law. After I graduated from the University of Toronto, I headed down the 401 to continue my studies in the law faculty at McGill University. It was a conscious choice that I made to study in a part of the country that I did not know well at the time and that spoke a different language. It was also the home of my favourite hockey team having grown up in Niagara as a Habs fan surrounded by Sabres and Leafs fans. I still find it hard to admit that the Leafs are a good hockey team.

[Remarks in French.] Les quatre années j'ai passées à McGill et l'année au cours de laquelle j'ai ensuite travaillé comme auxiliaire juridique à la Cour suprême du Canada n'ont fait que renforcer chez moi le désir de tirer parti des possibilités qui m'avaient été offertes et ainsi de mettre de l'avant les convictions dont j'ai parlé un peu plus tôt.

L'hors de mon passage à l'Université McGill, et dans la carde de mon travail à titre auxiliaire judiciaire à la Cour Suprême du Canada de la fin de mes études universitaire,

j'ai rencontré deux de mes mentors : Rod MacDonald, président de la Commission du droit du Canada et doyen de la faculté de droit de l'Université McGill, et le juge Peter Cory, pour qui j'ai travaillé comme auxiliaire juridique.

These two exceptional men [*Roderick Madonald and Peter Cory*] were role models for me. They embodied a deeply ethical approach to the law and drummed into me the importance of equality as a central value of our justice system. They were also paragons of kindness. More than anything, though, what stood out with both of them was their absolute commitment to treating people around them with respect and giving these people the tools and freedom to grow and, once again, make their voices and ideas heard.

For the better part of two decades, I carried these values into my work as a professor in the Law Faculty at McGill.

I am proud to see many of my students rise to important jobs in the legal profession, including a few in my own office and around the caucus and cabinet table. The ones who have made me proudest, though, are the ones who have chosen to use the tools that a legal education provides to give back to their chosen communities. In doing so, they are recognizing the reality that not everyone has access to the kinds of opportunities that all Canadians deserve.

All of these experiences have not just given me a passion for the law; they have also reinforced the importance, for me, for living in a country where as Canadians, we can pursue our own version of the good life in all of the many

forms that it takes. It is also these values that motivated me in my desire to run for public office. I loved teaching at McGill—do not get me wrong—but I am someone, one of many, who entered into politics in 2015 because I believed that the previous government undermined and, in some cases, actively threatened many of our core Canadian values that are reflected in the Charter of Rights and our independent courts.

I believe now, as I did then, that you cannot take anything for granted. There are forces in the world that would seek to undermine the values that we hold dear. As Canadians, we must actively work to ensure that these values continue to thrive.

Over the past four years, those are precisely the kinds of values and principles that Justin Trudeau and our government have fought for. We have provided progressive, forward-looking government that has not been afraid to embrace transformational change. That reality should not be forgotten amid the din of the current news cycle about which I would like to say a few words.

Three weeks ago, allegations began appearing in the *Globe and Mail* concerning ongoing proceedings involving SNC-Lavalin and the previous attorney general's interactions with the prime minister and others concerning those proceedings. Until Jody Wilson-Raybould's testimony yesterday, those allegations remained generally uncertain and based at least in part on anonymous accounts.

Nevertheless, by the time I appeared a week ago before

the Standing Committee on Justice to speak to these issues, it had become clear that the Canadian public deserved the chance to understand the events at issue. It is, after all, a pillar of our democracy that Canadians have confidence in the proper administration and oversight of our justice system. As Attorney General, I believe it is my role to do everything that I can do to preserve this confidence. For that reason, in my testimony at the Committee, I committed to doing my part to provide Canadians with the transparency they deserve. At the same time, I insisted that any discussion should not undermine the rule of law, the right to a fair hearing in active cases and the integrity of the position of the director of public prosecutions. This meant any responsible review must account for the fact that SNC-Lavalin is currently engaged in two legal proceedings. In other words, despite the opposition's claims to the contrary, we must recognize that transparency can only happen if we approach the conversations in a considered and responsible manner.

How did our government respond? We took the exceptional step of removing all obstacles that would prevent a former attorney general from speaking to matters that occurred under her tenure, including waiving solicitor-client privilege and cabinet confidence. Without question, her testimony was an important step towards achieving transparency.

The Justice Committee and the ethics commissioner will move forward in this process, hearing the perspectives of various individuals. As they do so, I intend to maintain my

commitment to transparency while ensuring the integrity of the rule of law.

[Remarks in French.] J'ai débuté mes remarques en essayant de décrire le genre de personne que je suis et les valeurs que j'ai définies.

Que ce soit dans les quartiers populaires de Port Colborne, en soutenant le juge Cory à la Cour suprême ou en aidant mes étudiants à explorer des idées nouvelles et complexes à la faculté de droit de McGill, je m'engage pour un Canada où nous pouvons débattre ouvertement nos vues dans le cadre de l'état de droit.

Whatever one's opinions on what is being said before the Standing Committee on Justice, the fact that important witnesses are being heard on a matter of significant public interest is a positive thing.

Before I leave this particular topic, there is one more point I would like to make. The current news agenda has generated a great deal of commentary about the role of the attorney general, one of the two roles I perform as a member of cabinet in addition to being Minister of Justice.

There is no person who is capable of doing these two jobs alone, whether that is the job of the attorney general, the prime minister or the clerk of the privy council.

In fact, just like the world outside politics, each of us is made stronger by talking to each other and coming to better understandings together. It is important to remember that while the attorney general sits at a certain distance from his or her cabinet colleagues, in Canada, unlike in oth-

er countries, he does not work in isolation from them or the important experiences or considerations that those colleagues bring to the table. I believe that these discussions can improve the quality of decision making. The attorney general is not an island, even in circumstances where a final decision rests with him or her.

There can be no question as to the significance of Canada's attorney general in safeguarding the rule of law, nor should we leave any doubt as to our government's commitment to the role that the attorney general must play.

I spoke earlier of our government's willingness to embrace change, and I believe we have a good story to tell on that score, despite what is in the news right now. I want to spend some time on what our government has done so far.

Our government passed legislation to create a legal framework for medical assistance in dying in response to the Supreme Court's decision in Carter. This issue is complex; it is emotional; and it is deeply, deeply personal.

Our legislation struck a balance between giving autonomy to those who seek medically assisted dying and still protecting the vulnerable.

[Remarks in French.] De plus, notre gouvernement a adopté la loi légalisant et réglementant strictement le cannabis. Le ciel ne nous est pas tombé sur la tête.

La légalisation incarne l'acceptation du Canada tel qu'elle est maintenant. S'il y a une initiative qui définit le changement transformationnel, c'est bien celui-là.

En même temps que nous avons légalisé le cannabis

et avons assujéti sa consommation à une réglementation stricte, nous avons adopté une loi visant à moderniser les lois canadiennes sur la conduite avec facultés affaiblies.

Ces changements ont été les plus importants dans ce domaine depuis la fin des années 1960. Non seulement rendront-ils nos routes plus sécuritaires, mais ils sauveront aussi des vies.

Nous avons mis à jour le droit en matière d'agression sexuelle pour la première fois depuis une génération, conformément à notre engagement à faire en sorte que les victimes d'agression sexuelle et de violence fondée sur le sexe soient traitées avec compassion et respect.

Ces changements clarifient et renforcent le droit en ce qui concerne le consentement, l'admissibilité de la preuve et la représentation juridique pour la victime qui dépose une plainte. Nous sommes déterminés à mener des consultations soutenues avec les intervenants à ce sujet.

For the first time in decades, we are proposing significant upgrades to family law to ensure they are squarely focused on promoting the best interests of the child. That legislation, Bill C-78, is now in the Senate. I will do everything in my power to get that bill over the finish line. I feel the same way about Bill C-75, our reforms to the criminal justice system designed to address court delays. This important legislation is also before the Senate, and I am looking forward to seeing it debated and passed. There are other legislative changes that speak to our values. We believe that Canadians should be free to be who they are. That inspired

our government to pass ground-breaking legislation that adds gender identity and expression as prohibited grounds for discrimination under the Canadian Human Rights Act. That same legislation also added gender identity and expression to the list of distinguishing characteristics of an “identifiable group” protected by the hate speech provisions of the Criminal Code.

[Remarks in French.] En tant que Montréalais originaire de l’Ontario, je voulais souligner une initiative qui revêt pour moi une très grande importance. Notre gouvernement a rétabli le Programme de contestation judiciaire, que le gouvernement précédent avait annulé.

We are not just working to transform and modernize our laws. We now have a process for appointing judges that is transparent, inclusive and accountable to Canadians.

At the Superior Court level, more than 260 judges have been appointed since November 2015. There are more coming soon. These exceptional jurists represent the diversity that strengthens Canada. Of these judges, 55% are women; eight are Indigenous; 22 are members of visible minority communities; 12 have self-identified as LGBTQ2S; and three have self-identified as having disabilities.

These appointments underline our government’s commitment to reshape the bench to better reflect Canada as it is today.

[Remarks in French.] Le Canada est aujourd’hui un pays remarquable. Mais pour les peuples autochtones, le Canada d’aujourd’hui exige encore du travail. Beaucoup

de travail. Notre gouvernement est déterminé à transformer en profondeur sa relation avec les peuples autochtones.

Today, we have taken another important step in that journey towards reconciliation. This morning, my colleague, Minister Seamus O'Regan, Minister of Indigenous Services, introduced a new bill on Indigenous child and family services. This proposed legislation was co-developed with First Nations, Inuit and Métis partners, and would affirm Indigenous peoples' inherent right to exercise jurisdiction over child and family services. It contains principles that would guide how services are delivered to Indigenous children in jurisdictions and regions of the country while aiming to reduce what my colleague, Jane Philpott, has described as a humanitarian crisis of our time, the number of Indigenous children in care. This is a groundbreaking bill, affirming a Section 35 right in legislation as opposed to waiting for a court to do it. I cannot overstate the importance.

My department, Justice Canada, has been doing its part as well to contribute to renewed Crown-Indigenous relationships based on rights, respect, cooperation and partnership. These include releasing the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples and the attorney general's Directive on Civil Litigation Involving Indigenous Peoples.

There is so much more to do. It is a source of national shame that Indigenous people are overrepresented in the criminal justice system, both as victims and offenders. The statistics are appalling. The rate of violent victim-

ization among Indigenous people in Canada is more than double that of non-Indigenous people. The overall rate of violent victimization among Indigenous women is close to triple that of non-Indigenous women. These figures and the tragic reality that they illustrate are unacceptable and must change.

In practical terms, for my part, that means continuing to work with our Indigenous partners on bail reform, which is addressed in C-75. That legislation also tackles administration of justice offences. As many of us know, these offences can function as a vulnerable individual's entry into the revolving door of the criminal justice system. More broadly, I know that restorative justice is a priority for our Indigenous partners, and I want you to know that it is a priority for me as well. The goal of all of these measures is to transform how Indigenous peoples experience the criminal justice system. That is where we have been, where we are and where we are going. At the heart of all of that policy rests a principled core that guides the work we do. Canadians must have confidence that their institutions act in the public interest. Those institutions must act as our necessary checks and balances. Public prosecutors must exercise their discretion independently and free from political or partisan consideration. Public servants must be free to provide fulsome and frank advice that is non-partisan in nature.

The conflict of interest and ethics commissioner must fulfill his independent role that was given to him by Parliament. Judicial independence must be safeguarded.

This is the essential vision of the country that I have defended and promoted through my working life, one informed by the places I have come from, by the people who have influenced me, and the fundamental laws which govern our great country.

It is a vision of Canada that I commit to doing my best to uphold for as long as I have the privilege of serving in this position.

Thank you very much for inviting me to speak today, and I look forward to taking some questions.

Questions & Answers

KE: Thank you so much. For the question period today, I am going to ask all of you to look at your tables.

There are cards on each table. I am going to ask individuals to fill them out. If you want to be anonymous, that is fine. If you want to put your name and your corporation, that would be also helpful.

I am going to kick it off, though. I am going to ask a question. We talked about how this is a challenging time. Given this opportunity to get to know you, how do you deal with challenging times, whether it is now or other times in your life when you have met challenges? What goes through your mind, and how do you personally deal with those kinds of things?

DL: Thank you for the question first of all. It seems easy, but it is harder than it looks. I try to go back to the things I alluded to in my speech: The values my parents taught me; the values that I learned from people like Rod Macdonald and Peter Cory; my family.

And my kids are sometimes the best sounding point for what might be right or wrong. I also turn to my wife, obviously; my faith, I am a person of faith, but quietly so; and all of these things; and the principles that have been inculcated in me throughout, which a number of you share, because you have been at those institutions and places with me. You go back to that all the time. You use it as your North Star. I will add one last thing. Duncan Boswell will smile when I say this, but we learned about kindness from Peter Cory, and we learned about having a sense of humour and the value of a good cookie at an appropriate moment in discussing a difficult point. I think I learned from Justice Cory to treat the people who you work with respectfully and kindly. When it gets tough—and we have had some tough days; I see members of my team around the room—being surrounded by people whom you like and with whom you like to work and whom you trust and who are kind to you and to whom you are kind in return, is fundamental, absolutely fundamental.

KE: That is a great answer. Thank you for that. I have a question here. This is from Colin Stevenson. In light

of recent events, is it time to split the office of AG and the Minister of Justice? That is a good question.

DL: It is a good question. You may have read the op-ed piece by my friend, Adam Dodek, in the *Globe and Mail* about a week ago, roughly, maybe a few days, a few less. We have not done that in Canada. The two roles are distinct. As you know, the attorney general has a more neutral role, if you will, in providing legal counsel to the government. I have done a fair bit of that in the last week and in overseeing elements of the judiciary. The minister of justice is the person who takes care of the administration of justice and is, in a sense, more of a political actor as a full member—they are both full members of cabinet, but *[the attorney general is]* a member of cabinet, part of the cabinet decision-making process. We have chosen in Canada not to split the two. The obvious comparator is the UK where the attorney general is not a full member of cabinet, in a sense, and has a more independent status. We have a prosecution service in Canada, to which we have delegated authority for prosecutions in order to maintain the independence of that office. There is a law that many of you are learning about very quickly over the course of the past week, in which the parameters of that delegation or the parameters in which that delegation may be overridden or ‘directed’, for a better word. They are there, and it is meant to preserve the

independence of that function. In a sense, we have responded, in part, by hiving off the prosecution service and giving it an independence status. That being said, there are challenges, and you have to try to distinguish your hats and know when you are wearing your minister of justice hat or when you have to put on your attorney general hat. One thing that is uncontested in all of the testimony you have heard so far over the past week is nobody has questioned the ultimate right of the attorney general to be a final decision-maker on certain kinds of issues. There are other associated questions about the kinds of discussions that might go into informing that, but we all agree the attorney general has that role. There are good arguments to split it. There is also 150 years of the position working in Canada.

The kinds of issues we have seen this week do not happen all the time. Maybe that is indicative that the system can work.

KE: Will you be addressing the mandatory minimums, some of which have been ruled unconstitutional?

These were not addressed in Bill C-75 and add to court time. This is from Lori Anne Thomas.

DL: Thank you, Lori Anne. As part of my mandate, moving forward, I do plan to look at mandatory minimums. I cannot promise an outcome just yet, but my predecessor promised that when they were not included in C-75, she would move forward with them, and I in-

tend to respect that. I think it is important to look at that. And, obviously, the Supreme Court has given us a number of different indicia of how we ought to move forward.

KE: Thank you so much, Minister. I would like to ask Harry from Gowling to come up and give the thank to the minister. Thank you, Harry, for coming to the stage.

**Note of Appreciation, by Mr. Harry Dahme,
Partner, Gowling WLG**

I and sort of debating in the context of the events of the last week what we could say to thank David for coming today. What I was sort of reminded of was through his introductory remarks how many of the politicians that we have, enter politics for the reason of doing the right thing, that they are motivated by doing the right thing and that is really what they want to achieve throughout their public career.

I think what you have heard today from David is that he is still motivated by that. That is what is guiding his decisions as attorney general. I think we should thank David for his commitment to doing that. If you could please join me in thanking David for all of that.

Concluding Remarks, by Kent Emerson

We have a number of events coming up, ladies and gentlemen. We have the Women's Day Panel on March 5th, featuring the Honourable Mary Ng.

We have Mayor John Tory on March 20th, and we have confirmed the Honourable Vid Fedeli on March 28th—many events coming up. Check our website.

I appreciate everyone coming today. For our sponsors, again, Waste Connections and Fasken, thank you, again.

Ladies and gentlemen, the meeting is adjourned.