



NOVA SCOTIA
Justice

Speaking Notes

Hon. Michael G. Baker, Q.C.
Minister of Justice

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Check Against Delivery

Thank you Adam (Church)

Good afternoon.

It's nice to be back.

Although I must be honest.

When I graduated law school 25 years ago this May, my focus was on going somewhere...anywhere...that did not involve me being in a classroom or library!

And while 25 years may seem like quite a while, I can tell you that I remember like it was yesterday - Law Hour.

I remember listening to the federal Justice Minister John Crosbie and then-professor, later Newfoundland Liberal Leader Leo Barr, engage in a brilliant, entertaining debate about the law, politics and life, and I can ensure you that you unfortunately will not get that today.

What you will get is something which will help you relax and rest because it is terrible weather outside and therefore not a good day to out for lunch.

I also remember the anxiety over getting articles. Super Saturday isn't far off.

But on the good news front, be assured that whatever you land for a job offer, that it will be as good as you decide to make it.

I remember my experience as a student.

I had arranged to complete my articles (because in my day you could do 3 months between second and third year) when my principal called me in October of my third year to say he had taken a job at the Public Prosecution Service and I was on my own.

The good news is I landed a job with a small 3-person firm in Chester and spent 19 fantastic years there and made some great friends.

This also allowed me to dabble in my other passion - politics.

It's a real pleasure to join you this year for Dal Law Hour.

I know Dianna Ginn couldn't be here, but I want to extend my thanks to your Associate Dean and the Law Hour committee for the opportunity to be here.

My remarks will be short.

First, I'm here to re-assure you today that there is...and will continue to be...a strong demand for talented young lawyers.

Whether you end up working for yourself, in the corporate world, or in the public sector, you

have valuable skills that will be sought after at many levels.

I want to reinforce that, because I know at times you can be so focused on what you need to do next, that it's easy to lose sight of the big picture.

Since 1999 I've had the privilege of serving in our cabinet, in several portfolios.

I believe that in itself has given me a rare perspective on the law and its relevance to Nova Scotians.

And if I didn't know this in 1999, I certainly know it now.

There is a delicate dance underway as the law evolves in Canada.

A waltz that has the federal government as one of the partners.

And us as the other.

And sometimes the courts as a third.

From time to time, we each take the lead.

And from time to time, someone's toes might get stepped on.

But we keep on dancing.

We're partners on the dance floor because of split jurisdictions.

A good example is the national debate over same-sex marriages.

Marriage is a federal issue, clearly spelled out in the constitution as such.

But the solemnization of marriage is a provincial responsibility, under the Solemnization of Marriages Act.

And long before the federal government brought in draft legislation to define marriage, or sought a reference ruling from the Supreme Court, it was our government that introduced the Domestic Partnerships Act to make sure same-sex couples received equal benefits under the law.

We were one of the very first jurisdictions in North America to allow two adults to voluntarily assume all the civil rights of a married couple, regardless of gender.

I guess that's an example of us taking the lead.

It's also interesting to speculate where the debate would have ended, had other provincial jurisdictions taken a similar view

We've also changed the language in the civil ceremony manual to make sure it includes language appropriate to same-sex couples.

As you might imagine, the justice portfolio carries with it some controversial files, and this is one of them.

This and Sunday shopping are probably the two that generate the most correspondence. I should probably include the federal gun registry on that list.

Our message on same-sex marriages has been consistent from day one.

Whatever the form of the law that ultimately passes Parliament, if it does, we will respect it.

The Supreme Court of Nova Scotia, last fall, issued a ruling that paves the way for same-sex marriages in this province.

We respect that ruling.

Some have asked, why didn't you oppose it, or fight it in court?

The plain answer is, the federal government didn't want to oppose the application and it is an area of federal jurisdiction.

Seven provinces and one territory have had similar court rulings, and the federal government's own draft legislation would change the definition of marriage.

And the Supreme Court has pretty much given its blessing, saying the proposed bill does not contravene the Charter.

So we will follow this over the winter and spring, but the ball is clearly in Ottawa's court.

I see where Minister Cotler has every intention of introducing the bill in early February, with the hope that it passes before the House rises in June.

Let's take another high-profile issue...aboriginal and treaty rights.

The federal government has constitutional responsibility...but the practical effect of negotiations and discussions touches on many areas of provincial interest.

Hunting. Logging. Oil and gas, just to name a few.

We've made significant progress here in Nova Scotia toward a framework agreement.

The Office of Aboriginal Affairs is responsible for leading treaty-related negotiations on behalf of the provincial government.

In June of 2002, Nova Scotia, the federal government and the Mi'kmaq signed an umbrella agreement which commits the parties to work together in good faith to resolve issues of mutual concern.

A major component of the umbrella agreement is the start of a broad negotiation process to consider constitutionally protected rights of the Mi'kmaq with respect to treaty rights, aboriginal rights and Mi'kmaq assertions of aboriginal title.

In late 2003, we began discussions about a "Framework Agreement".

Simply put, a framework agreement creates a road map of how parties will move forward to resolve outstanding issues regarding Aboriginal and treaty rights.

Why are we doing this?

Over the past thirty years, courts in Nova Scotia and Canada have recognized the existence and validity of Aboriginal and treaty rights.

The courts have tried to clarify the nature and extent of these rights, but often with little success.

They have consistently encouraged governments and First Nations to approach questions of Aboriginal and treaty rights through negotiations rather than litigation.

Go back to 1999 when the Supreme Court of Canada in the Donald Marshall Jr case confirmed the existence of Mi'kmaq rights as outlined in the Treaties of 1760-61.

The Supreme Court did not define how these rights were to be implemented, but instead encouraged the parties to negotiate a resolution in a fair and equitable manner.

Negotiations will help us come up with creative solutions to some very complicated questions about how the interests and rights of the Mi'kmaq and the governments of Canada and Nova Scotia can be addressed.

And from your vantage point, I'll bet that many of you see the opportunities, as this aspect of the law continues to evolve.

So, I've listed same-sex marriage, and aboriginal and treaty-related issues as two examples of split jurisdictions.

Here's a third - criminal matters involving youth.

I'm flying to Ottawa next week to meet with federal Justice Minister Irwin Cotler.

Nova Scotia, with support from other provinces, wants tougher criminal code sanctions against those who steal motor vehicles.

Along with our police partners, we say the evidence shows that motor vehicle theft is dangerous.

It should not be viewed as a property offence.

It should be seen as a violent offence.

And it should be purely indictable in the Criminal Code with tough penalties.

In cases where youth are charged, I believe the Crown should be able to ask the judge to keep the youth in custody pending a trial and sentencing.

The federal Youth Criminal Justice Act should have that provision.

So here you have two pieces of federal legislation...the Criminal Code and Youth Criminal Justice Act.

But we administer and pay for the courts and correctional services.

And the Nova Scotia Public Prosecution Service represents the Crown at criminal proceedings.

So we're back to the delicate dance again.

- How can Ottawa help us improve public safety in Nova Scotia?
- What steps can we take on our own?
- Where there are disagreements, how can we come to practical solutions?
- How can governments at both levels respond when the public is outraged over apparent injustices?

Those are valid questions that put demands on lawmakers.

We need to use our understanding of the law...and connect that directly to what the public expects of us.

The justice system does not belong to the Bench and Bar anymore than the health care system should serve the interests of doctors and nurses.

They must both serve the interests of society.

And without either, the public would be at great risk.

Nova Scotians want...and we, as a government, are committed to ... ensuring that our streets and communities are safe.

That we're succeeding in our plan.

That our justice system is balanced and fair.

That an accused person has a right to a fair trial, and a system that promotes rehabilitation also protects victims and provides "justice" to victims and society.

If there is a theme, or lesson, to this, I think it's straightforward.

The evolution of law will be shaped by those of you who are passionate about change.

Passionate about what the law can do to support our fundamental rights and freedom.

And the law will be shaped by those who recognize that in the real world, you don't just find one couple out there on the dance floor. There are many.

Public policy is just that - public.

With organizations large and small holding interests and positions that require legal interpretation.

And on any given issue, some are for it, some aren't. Some could care less.

As your clients advance their positions, they'll be relying on you to keep them current on marine law...taxation law...environmental law...aboriginal law...wherever your expertise lies.

That happens every day in government.

And this is where I put a plug in for government's law firm.

The Legal Services division within the Department of Justice is a full service law firm.

Their 64 lawyers work for departments and agencies of all sizes...from Health and Transportation and Public Works...to Acadian Affairs to the Halifax Children's Aid Society and the Film Development Corporation.

They provide legal services on civil matters comparable to those offered by any private firm, while the Public Prosecution Service has jurisdiction over criminal proceedings.

I hope that in the not-too-distant future some of you will serve in one of those capacities.

I can assure you, you won't be bored!

Or maybe you'll be standing on the floor of Province House, introducing a bill or debating a motion.

Or flying to Ottawa to lobby for legislative changes to improve public safety.

In closing, I guess my best advice is pretty simple.

Be ready for anything when you step out on the dance floor.

And be prepared for change.

I remember when I graduated from law school in May of 1980, there was no Matrimonial Property Act, no Small Claims Court, no Charter of Rights and Freedoms, no land registration system, not to mention the Internet!

You will need to change and adapt, bad news for those who are tired of the books -it only gets better.

And I know, as do people around the world, that Dal Law School has a reputation that few, if any, can match, for preparing its students for the opportunities that await you.

The training, the instruction and the contacts you make here will stand you in good stead.

I would ask you to look around the room here today and at your classmates not here.

Among them is probably a deputy minister, a judge, a dozen Q.C.'s.

An equal number of government lawyers, both civil and prosecutors, and quite possibly a justice minister.

I know because when I sat here in 1980, all those people were in the room with me.

Yes, the law can be serious. But you'll be kept humble.

Back in 1999, little did I know, that as Minister, it would fall on me to be responsible for that most famous piece of Nova Scotia legislation, the Tartan Act, which I'm sure you're all familiar with.

Or that Sunday shopping and the Retail Business Uniform Closing Day Act would fall into my lap.

I can tell you that constituents don't often walk up to me in the grocery store to talk about the notwithstanding clause.

But before we held the plebiscite, they were none too shy about cornering me in the produce section to give me an earful about Sunday shopping. For and against.

Let's just say that I've had to learn, as you will, to be flexible and a good listener!.

But I know that if you've come this far, you're ready for what the profession has to offer. And I wish you all the best.

I think the best part of Law Hour is the Q and A session, so I'd like to open the floor to any questions you might have during our remaining time.

Thank you very much for your kind attention.