



**Remarks of the Honourable Michael A. Ballantyne,
Minister of Justice for the Northwest Territories**

at the Western Workshop, Yellowknife

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Politicians usually have some trepidation about addressing judges. I am reminded of a former federal Minister of Justice, who once joked that his second least favourite job was appointing judges, and that his least favourite job was dealing with them afterwards. I don't agree with that sentiment myself, but I use it as an example of stereotyping even within the justice system itself. I will touch on this later in my speech.

This was an educational program for judges, and based on the opinions of people I respect, it is the best program for judges in the country right now. All of you, participants and faculty alike, have much to be proud of. With high achievement comes expectation for even higher achievement in the future. I don't envy your task in this, given the demands on your time in the existing system and the expectations of the public for change in the future.

At the end of your long and demanding week filled with workshops, speeches, presentations, and panels, I wanted to reflect on where we are, where we have come from and where we are going. I say "we" in the sense of the - quote - "justice system" as it is commonly described by most Canadians, a description which sometimes seems to include the judicial, executive and legislative branches of government.

Politicians in Canada are elected by voters in geographically-defined constituencies. Our tenure is subject to the conventions of responsible government and confidence. We may be chosen on the basis of the political views we express publicly. If we are lucky (or unlucky) enough to be chosen for Cabinet, we are assigned portfolios for which we may have no experience or training. We are often shifted about at irregular periods with little regard for the goals we set and have perhaps left unaccomplished. We are removed by voters at pleasure.

Judges in Canada are not elected but rather are appointed, following a discreet if not secret process. It is the lack of publicly- expressed political views which is often an asset for appointment. You are sometimes assigned to geographically-defined constituencies or regions with which you have no connection. While there is no explicit guarantee of your independence in the written Constitution, it is nonetheless secure in Canada and your tenure is permanent. Apart from a law degree, judicial office has no specific educational prerequisites. Like politicians, you are assigned duties for which you may have no specific experience or formal training.

Both judges and politicians are, however, working in an environment of dramatic social change. The demands for equality by women and by aboriginal

peoples are just two compelling examples of the need for change.

If the justice system is roughly composed of laws, procedures and people, it is clear that the stereotypes, the biases and the racism, which Madame Justice McLachlin spoke of on Monday, are present in varying degrees in all three components - laws, procedures and people.

What can we do about the problems? Simplistically, we can change the laws, we can apply the procedures without biases or stereotypes and we can educate the people. And over time, we can fill the ranks in the system with those reflecting the broad spectrum of our society. Your sessions this week have given you and me ample food for thought on all three aspects.

But remembering the rubric that justice must not only be done but it must also seem (or be seen) to be done, how do we respond to an increasingly demanding public, seeking greater efforts, more broadly-based, with quicker results? Clearly, legislatures, not courts, are the traditional instruments of radical change. Even with the new powers given courts under the Charter to strike down laws, courts cannot generally rewrite them. On the other hand, legislatures can not only rewrite the laws, they can, theoretically at least, make most of them immune to Charter scrutiny by use of the section 33 override.

But in a time of fundamental rethinking of core societal values, should courts or legislatures respond rapidly or radically to the real and perceived evils? As always, the answer is, yes and no.

Robert Bolt's play "A Man For All Seasons" contains a dialogue between the imprisoned Sir Thomas More, and his son-in-law Roper about laws and evils. Roper is exasperated with More's stubborn refusal to ignore the law and recognize the marriage of Henry the VIIIth to Ann Boleyn. I would like to quote a brief passage, with apologies for the non-gender-neutral language:

Roper: So now you'd give the devil benefit of law!

More: Yes. What would you do? Cut a great road through the law to get after the devil?

Roper: I'd cut down every law in England to do that!

More: Oh? And when the last law was down, and the devil turned round on you - where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast - Man's laws, not God's - And if you cut them down - and you're just the man to

the effectiveness of any of the range of sentences in achieving these objectives. Nonetheless, there are other objectives to be served by imprisonment in certain cases.

Whether the community justice experiences in aboriginal communities have broader potential for other communities is unknown, but I will give my strong support to aboriginal community justice initiatives, designed by and with these communities, in the hope that we all may learn from them.

The Honourable Kim Campbell has said on a number of occasions that she believes in an "inclusive" justice system that is flexible, sensitive and creative enough that all Canadians can find their place in it, without the need to establish separate justice systems for aboriginal peoples. The subject of aboriginal rights including self-government, is far too complex for an after-dinner speech, but I will say that in the Northwest Territories we have an opportunity to create an "inclusive" system, but the "includers" and the "included" may be the other way round.

My travels both in the Territories and amongst American tribal governments and courts encourages me that even without constitutional amendment, we can institute aboriginal and community justice approaches, and can find solutions to legal and procedural problems, and at the same time meet requirements of the Charter of Rights as well as the rights of victims.

The major focus of my remarks has been on aboriginal peoples in the justice system. But you will know that we have also launched the first government-based gender equality review of the justice system by any province or territory in Canada. This project, led by Special Advisor Katherine Peterson, is a recognition of the major concerns over the treatment of women in the justice system and the need for change. It is premature to predict her ultimate conclusions and recommendations, however, I am aware that she has discussed with my Advisory Committee on Aboriginal Justice the problems of aboriginal women, and the extent to which their very culture and identity has been defined by others, whether by non-natives or by aboriginal men. Aboriginal justice initiatives at the community level must meet the challenge of ensuring the protection and proper participation of women, and I will look to the Special Advisor and the Advisory Committee for advice and recommendations in this crucial area.

I think we are all concerned about the increase in violence against women across this country. I strongly support the call for creation of a Royal Commission to try to discover what sort of sickness is consuming our society. I am frightened for the future of my daughters.

Individual judges and communities have shown leadership and flexibility and governments must encourage and broaden the scope of these initiatives through consultative, legislative and financial support.

I would like to add to Madame Justice MacLachlin's comments about stereotyping and apply them to the various components within the justice system itself. Structural and philosophical differences and obstacles within and amongst the various components of the justice system serve to frustrate its objectives. Attitudes of politicians towards judges, and vice versa, attitudes of prosecutors and defence counsel, and attitudes of police, all often jealously protect their turf. It was best expressed to me once as being too many titles and too many ties.

How do we cut through the maze of the justice bureaucracy? I've come to the view that our courts must be unified. I also believe that we should seriously consider the continued usefulness of preliminary inquiries as we approach the era of full disclosure of Crown cases to the defence. Any financial savings could go into other areas of the justice system, such as victims services.

We must respect a fundamental principle of the justice system - that of independence of the judiciary, but we cannot hide behind that principle in squarely and honestly dealing with the issue of accountability in the broad sense to the public we serve.

The challenge for all of us, as we approach the end of the millennium is to provide a justice system that is based on fairness, equality and common sense. Keith Spicer, in his report released yesterday, described the North as having an almost-ungraspable potential.

As you leave Yellowknife, and return home, I hope you will agree that these words apply equally to the justice system.