



**JOHN TAIT MEMORIAL  
LECTURE IN LAW AND  
PUBLIC POLICY**

**TWENTY-FIRST CENTURY  
ETHICS: THE CHALLENGE**





**John Tait Memorial Lecture  
in Law and Public Policy**

# Twenty-first Century Ethics: the Challenge

delivered at

The National Gallery of Canada  
Sussex Drive  
Ottawa, Ontario

Tuesday, December 4<sup>th</sup>, 2001

by

**The Rt. Hon. Kim Campbell**

Former Prime Minister of Canada  
and Minister of Justice,  
Visiting Professor at the  
John F. Kennedy School of  
Government, Harvard University





# Mary Dawson

**G**ood evening, ladies and gentlemen. We are very pleased to have such distinguished guests this evening. We have representatives from the Supreme Court of Canada, from the Senate, from our finest universities, and from a wide variety of federal departments.

I would also like to thank our guests who have travelled from McGill University to be here, and to extend a warm welcome to John Tait's wife, Sonia Plourde, his mother and father, and his brother, David. I believe his sister, Pam, is here as well. All of them have kindly joined us this evening.

I am Mary Dawson. I am an associate deputy minister in the Department of Justice. This evening, I have the great pleasure of welcoming you to the second John Tait Memorial Lecture, presented by the Department of Justice and McGill University, Mr. Tait's alma mater.

Tonight, we are honoured to welcome the Right Honourable Kim Campbell as our guest speaker. She will be sharing her thoughts on the challenges of twenty-first century ethics. I know that we are all looking forward to that presentation.

But first, I would like to introduce Peter Leuprecht, the Dean of the Faculty of Law of McGill University, who will

speak to us about the man whom we commemorate this evening, John Tait. Ladies and gentlemen, Dean Leuprecht.

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National Gallery of Canada  
Dec. 4, 2001

## **PRINCIPALS:**

Mary Dawson, Associate Deputy Minister,  
Department of Justice  
Morris Rosenberg, Deputy Minister,  
Department of Justice  
Peter Leuprecht, Dean, Law Faculty,  
McGill University

## **Lecturer:**

The Rt. Hon. Kim Campbell, Visiting  
Professor, John F. Kennedy School of  
Government, Harvard





## Peter Leuprecht

**D**istinguished guests, ladies and gentlemen, it is a great honour and pleasure for me to be present at, and involved in, this second John Tait Memorial Lecture, the first one to be held here in Ottawa.

This event brings together two institutions that mean a lot to me: the Department of Justice, which was largely responsible for attracting me to this country, and the Law Faculty of McGill University, which is responsible for my staying here much longer than I had intended.

Let me already, at this stage, express my warmest thanks to all those who have made tonight's event possible: our friends and colleagues from the Department of Justice, and, on the McGill side, my dear friend and colleague, Professor Stephen Scott.

We have gathered here, once again, to pay tribute to the memory of John Tait. In this assembly, I am one of the few who did not have the privilege of knowing John Tait personally.

However, I have heard and read so much about him that, somehow, I feel as if I had known him, and I think I can imagine what kind of a person he was and what he stood for.

John Tait was obviously a man of great intelligence and wisdom. He had strong principles and was an outstanding public servant. Four words characterize

his unfortunately too-short life: public service, values, and ethics. The motto of his life was public service, service to the community and the common good, based on values and ethics.

One of the main and lasting elements of his legacy is the Tait Report on Public Service Values and Ethics, very appropriately entitled "A Strong Foundation."

This is, in fact, what is urgently needed by our society. It needs values and solid ethics to serve as the basis of our actions in service to the community and to the commonweal.

We must not succumb to the simplistic slogans of those preaching the withdrawal of the state, who promote the minimal state, and who scoff at the idea of public service. If we are not vigilant, the state and the public service run the risk of being, paradoxically, victims and artisans of their own demise.

As far as the University is concerned, it would fail in its mission if it were reduced to a simple instrument of professional training. It must be, and remain, the site of education in the widest and noblest sense of the term, a place where ethics must occupy a central seat.

The Right Honourable Kim Campbell will speak to us shortly about the challenges posed by ethics in the twenty-first century. John Tait reflected deeply



on the question of ethics in the public service, and he would certainly have appreciated the fact that this evening has ethics as its theme.

At McGill, we are reflecting seriously on ethics in fields like medicine, biogenetics, and the environment. We have instituted a new chair for ethics in communication, and our Law Faculty's goal is to teach not only the law, but also, and above all, to teach what is and what should be before and behind, above and below the law and its practice.

Together, we, the federal Department of Justice, which John Tait so brilliantly served, and the McGill University Law Faculty, from which he was graduated, wish to honour the memory of John Tait.

I am convinced that the best way of doing this, the way that John Tait would have wished it, is to display and practise the values and ethics that inspired his life's work.

Despite his early death, John Tait can and must remain a guide and a source of inspiration for us. Thank you.



## Mary Dawson

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**T**hank you, Dean Leuprecht. At this point, it would have been my pleasure to introduce the Honourable Anne McLellan, Minister of Justice and Attorney General of Canada. However, Minister McLellan has asked me to extend her regrets. She very much wanted to be here this evening, but urgent business in the House of Commons has prevented her from joining us. I am sure Ms. Campbell can relate to that. I will now read you the Minister's remarks.

"Good evening, ladies and gentlemen. We are all delighted that the Right Honourable Kim Campbell accepted our invitation to be the keynote speaker.

"We also have in the audience, among so many others, members of the judiciary, senators, members of Parliament, deans of law faculties, the Clerk of the Privy Council, and deputy ministers who are eagerly awaiting Ms. Campbell's presentation.

"As many of you will know, tonight's lecture represents the second in what we hope will become a long and venerable tradition, a tradition to honour the memory of a great public servant, lawyer, colleague, citizen, and friend to so many.

"The late John C. Tait, a man of unparalleled intellect and integrity, had an illustrious career spanning a quarter-century in the federal government. From 1988 to 1995, he served as Deputy Minister of the Department of Justice.

"For three of those years, he served our honoured guest speaker. I am sure that this former minister and attorney general has a few memories of her days working side by side with her deputy on difficult files like gun control and sexual assault. Many of you, too, I am sure, nurture fond recollections of this extraordinary man.

"Tonight, the Right Honourable Kim Campbell will speak to us about a subject that interested John Tait greatly: ethics. As we move into the twenty-first century, does the task of ensuring ethics become easier or harder? In this information age, with a more engaged and informed public, are we finding a clarification or a blurring of ethical boundaries?

"These are some of the questions that have preoccupied our distinguished guest speaker during a career that has taken her from school board government through provincial politics to the federal government and the Prime Minister's Office. In short



order, we will hear her thoughts on the challenges of ethics in the twenty-first century.

“I do, however, want to take a moment to pay tribute to the organizers of this event, Peter Leuprecht and the Faculty of Law at McGill University, in collaboration with the hard-working people of my department.

“I should point out that McGill, along with Oxford and Princeton, is one of the fine institutions where John Tait studied. It is, therefore, fitting that McGill join the Department of Justice to sponsor this annual lecture in his memory.

“If we can take any guidance from last year’s lecture and from the experiences of tonight’s speaker, I know that we can look forward to a stimulating and thought-provoking evening. And now, it is with great pleasure that I introduce this evening’s speaker, the former Prime Minister of Canada, the Right Honourable Kim Campbell.”



## Kim Campbell

I always put my watch up when I speak and then I forget to look at it, but it makes the audience more comfortable.

Ladies and gentlemen, it is a great pleasure for me to be with you this evening to honour our friend, John Tait. I apologize for not speaking French as often as I used to, but I am living in the United States, where no one speaks French, except my Los Angeles hairdresser, who is from Montreal.

As for me, I speak French like a Vancouverite, and that is why I love flying on Air Canada. It gives me a chance to settle back in my seat and hear French being spoken properly again.

You can see how terrible my French has become, but it is a great pleasure to be here, so forgive me if I am not as practised as I was in my days as Minister of Justice.

First of all, I do want to say a very special hello to Sonia Plourde and to John's family, his parents, and his brother and sister. His brother looks so much like him, and reminds us of what a wonderful person John was.

However, lest we make him sound too saintly, we must remember that John had a wonderful sense of humour

and could be quite wicked about things. Once he got to know you, he could be quite funny, and given to delightful observations.

But he was a most kind and wonderful person, and the three years that I worked with him as Minister of Justice were among the happiest of my career. I have often said to people that being Justice Minister is lawyer heaven, and it truly is.

Interestingly, it was almost twelve years ago that I went to Rideau Hall, on a snowy February morning, in my very unfashionable down-filled coat, to be sworn in as Minister of Justice and Attorney General of Canada. My predecessor, Doug Lewis, introduced me to a tall, shy man, saying, "This is John Tait, the best deputy minister in government."

It was typical of Doug, being so thoughtful and kind, to think of introducing me to my new deputy minister right away. And it was not hyperbole when he said that John was the best deputy minister in government.

In fact, for three years, we had a great partnership, although, for the last few months of that time, in the fall of 1992, John was very ill, as Sonia and her family will remember.

Even when, in January of 1993, I went to the Department of National Defence, I still relied on John's judgment. And,



when I faced the difficult issue of what I could do about the problems in Somalia caused by the murder of young Shidane Arone; when I was wondering what I could do to set up an inquiry, while avoiding ground that the Supreme Court of Canada had said we could not tread on; when I was looking for a way to avoid a judicial inquiry that would infringe on criminal law; it was to John that I turned for advice.

The last time I saw him was in Kingston, when he had a fellowship at Queen's University. He invited me to come and talk to his class. It was great fun sitting with him, telling war stories that the students appeared to enjoy. John and I enjoyed them immensely. We had a wonderful dinner that evening with some of his scholars at Queen's, who clearly regarded John's presence as a huge advantage, and as the jewel in the crown of all their guests that year.

The last time I saw many of you was at John's memorial service, a sad time. But I do feel, in many ways, that it is family this evening, for many of you and for me.

I knew of John's work on ethics in the public service after I had political retirement thrust upon me, and after

the publication of the wonderful Tait Report. John would have been so touched and honoured to have such a lecture series named for him.

I can surely see him, and I am sure that all of those who knew him and loved him can just imagine his expression and the way he was, being moved and touched.

My only regret is that he cannot be with us still to enjoy the tribute, especially since I am bound to say some things tonight that might have made him roll his eyes. He used to do that sometimes. He would get the look: what is she on about now?

Sometimes when we were sitting together in Cabinet committee meetings, and I had comments that I did not really think I should say out loud, I would pass John a note with some acerbic comment. He would look at it, his eyes would get big, and he would fold it up and put it in his pocket. I do not know what he ever did with those notes. If you ever find them, I would be willing to pay to get them back.

This evening, I feel I am among family, not only with the people from the Department of Justice, but with my colleague Pierre Blais, and so many of the people that I appointed to the Bench, who look so happy.



I wish to say that one of the wonderful things about being Minister of Justice is that, anywhere you go around the country, you have this collegial link with the legal community. The power of judicial appointment results in often-found friends.

It is wonderful to see so many of the people that I had the opportunity to work with as Justice Minister, because it is an exciting position. The Department of Justice is at the centre of the very important process of the creation of ideas in the Government of Canada. And I want to return to that.

Because I feel among family, I am not going to give you a talk about some of the broader challenges of ethics in the twenty-first century, the challenges of privacy and what to do about the cyber world. What I want to do is talk about ethics in government, the challenges of the twenty-first century, from a personal perspective.

I have been out of public office for eight years now, although for four of those years I was a public servant. I was Consul General of Canada in Los Angeles, and this was a very new perspective for me in looking at government. Now, I teach at the Kennedy School of Government at Harvard, and this proves the old maxim that those who lose elections teach.

When I became Minister of Justice, I set out to define three priorities for my time in office. I remember one Saturday morning, shortly after I was sworn in, sitting with John Tait and Michael Ferrabee, who was then my executive assistant, in my office at the Justice Building. We were trying to hammer out some broad-brush themes so that people in the Department would know what my priorities were as Minister.

Some of you will remember that those priorities were inclusive justice, security of the public, and fairness in the relationship between citizens and government. I want to reflect on the ethical challenges, today's challenge to participate in government, from those three perspectives.

First of all, looking at inclusive justice. In 1990, when I defined inclusive justice as one of my priorities, I identified two groups of particular concern: women and Aboriginal people. Those were two groups that felt that the justice system did not serve them well. Although Aboriginal justice is very important, and John Tait was hugely supportive and proud of our efforts in that area, this evening I want to focus on women's issues.



The first speech I ever made as Minister of Justice at the Department, as many of you may remember, was on International Women's Day, about a month after I had been sworn in on February 23<sup>rd</sup>, when I spoke to the Diversity Committee of the Department. A year later, we hosted the first-ever National Symposium on Women, Law, and the Administration of Justice. These were very heady times. This was just the beginning of our commitment to expanding justice for women.

We wrestled with many difficult issues, like abortion, the bill that I inherited. You know, when I saw the Prime Minister, he said, "The good news is you're going to be Minister of Justice and Attorney General of Canada; the bad news is that the abortion bill is now yours." It had passed second reading.

It was exciting in those days, in the early 1990s, and we really felt that we were on our way to empowering women. I am very glad to see that our rape shield bill, for example, has withstood challenges before the Court. In creating that piece of legislation, we opened up our consultative process to an unprecedented degree, and it would be a shame if that careful work were struck down by the courts.

Shortly before I left my diplomatic post in Los Angeles, in the year 2000, I had the opportunity to host Madame Justice Louise Arbour, who was visiting the city. She had just joined the Supreme Court of Canada after her very distinguished career as Chief Prosecutor of the International War Crimes Tribunal in The Hague.

We were talking about the identification of systematic rape as a war crime, which was a major development during her tenure as prosecutor there. She spoke of how important it was that legal reforms in the area of sexual assault had been made domestically in our advanced democracy, in order to make possible this change in international law.

It was the first time that I really thought about that symbiotic relationship between what countries do in their own legal systems and how this changes the way the world looks at certain purposes, certain problems.

But there are still huge problems to overcome for most of the world's women. In a course I teach at Harvard, at the Kennedy School, called Gender and Power, we look at something called gender schemas, which are the unarticulated hypotheses that we all bring to the understanding of gender roles and behaviour.



If we didn't have these hypotheses, we would be overwhelmed every day with decision-making. We all have hypotheses that help us to understand things. When we see somebody, we have a sense, we have a frame of reference, that tells us something about that person.

Understanding gender schemas was a revelation to me. It certainly helped me to understand some of the things that I had experienced when I was in public life, things that were perplexing to me.

The research shows what we call the masculine construct of leadership. The qualities that are construed as being the qualities of a leader are very much the same qualities that people identify as the qualities of masculinity, whereas there is virtually no overlap between the qualities that are defined as those of femininity and those of leadership.

So women bring this problem with them when they enter areas where they wish to be leaders, whether it be in the political world or the business world, or whatever. The expectation is that they are, in fact, not competent because they are women, or there is at least a tension between their femininity and the expectation of competence.

It is interesting that women and men share these views, this dissonance between notions of femininity and competence. It is not just men who see women as, somehow, less competent.

There is a whole range of research called the Goldberg Paradigm research. Goldberg was a sociologist and the first person who thought of doing things like taking a single résumé and putting a woman's name on it and then a man's name on it, in order to see how people respond to the person portrayed in that résumé, when gender is the only variable.

This kind of research indicates that women have very much the same gender schemas that men have, in terms of their expectations of other women.

There is an interesting statistic I often use that was printed in the *Wall Street Journal*, in 1997, which says that when symphony orchestras audition behind a screen they hire 35 per cent more women.

To me, that sums up the problem, because, of course, we cannot live behind a screen. We may be able to take our violin and play behind it, but we cannot live behind a screen. How do we understand what it is that that



screen filters out, and how can we make it possible to judge people fairly when we see them and know who they are? How can we deal with those issues?

I think that it is an ethical challenge to make the operations of government truly gender-neutral, and I think that one of the ways of doing that is to promote gender-literacy among people throughout the government.

The Government of Canada has, in fact, a good record on issues relating to gender equity, certainly when compared to many other countries. And I see materials that are used in a number of departments — I don't know how widely used they are — dealing with issues like inclusive vocabulary, trying to avoid the problems that immediately set women apart.

When I lived in California, I often lectured at a UCLA media and ethics class that was taught by Tom Plate. I used to say to the students there that I didn't think that the biggest ethical challenge was something like checking your sources. They knew that. That's Journalism 101: checking your sources, getting confirmation of controversial material, and even being concerned about how much you should intrude

in somebody's private life.

Some people talked about that, but, to me, the most important ethical challenge for journalists was to try to understand their own schemas, to learn enough about what kind of hypotheses they might have, not just about women, but about members of various racial groups, or about people who are disabled.

In fact, in my class at Harvard, there are several African-Americans who, looking at the research on gender schemas, recognize this kind of thinking. To me, this is the great ethical challenge for people who are mediating the communication of participants in the public arena to the public at large — to make sure that, in fact, what they focus on is the right thing.

I'll give you an example: women candidates for public office. The press will often focus differently on a woman candidate — does she have enough money, is she politically viable — and her experience will tend to be underrated compared to that of male candidates.

Journalists need to know that they are doing it. People in government need to understand this phenomenon. They need to understand it for a variety of reasons, because government, itself, is such an important structure.



They need to understand so that government, itself, will truly reflect the people, so that all those who come to work in a department will actually have the opportunity to be promoted and to succeed, based on their skills — so that these schemas, whether they are related to gender or to other characteristics, do not filter them out.

But it is also important in order to be visionary in terms of public policy. It is extremely important for those in government, whether they be elected or in the public service, to understand, to become literate about these phenomena, because they have to be wise. And this is very difficult if you are living with preconceptions that colour your perception of everyone.

When I was Justice Minister, I used to say that there was nothing radical or subversive about the notion that the reality of life as it is experienced by women should be one of the premises upon which we make public policy.

This is also true in foreign policy and the foreign-aid work that we do in the world. Canada is actually pretty good in terms of supporting women. But I do think that it is a mistake to think that women's rights are a matter of cultural relativism, which is something that I hear now with respect to discussions of what the United States

and its allies should do in Afghanistan.

The international community has to stand up for women. This is both a practical and a moral imperative. It is a practical imperative because all of the research shows that, for a country to pull itself out of poverty, the education of women and the political and economic empowerment of women are among the most crucial factors.

When we hear organizations like the World Bank talking about this, we realize that it is not even radical anymore. It is absolutely understood. So, if we really want to help countries, we are not just being nice when we say that they must educate women. It is absolutely essential for their social and economic development.

It is also a question of our ethics in the international arena. How can we stand up for principles in our own country, if we are somehow prepared to accept that the women in another country don't come under those ethical rules, that they don't come under that ethical imperative?

It is something that we need to be much more aggressive on. And, as I say, this is not cultural relativism. The women of Afghanistan have not always been seriously repressed. There was a time when women there were professionals and they played an important role in their society. It is important that countries like Canada,



and those who speak for Canada and its government, stand up for that.

But there are forces undermining the empowerment of women in our own society. It is actually frightening to see how much popular culture involves misogynist views. Those of us who don't have young people in the house may sometimes not be aware of this.

In *Dream Worlds 2*, his film about rock-music videos, Sut Jhally argues that the images found in rock videos are the sexual fantasies of the middle-aged men who make them. These videos portray women as person-less bodies, sexually voracious, and ready.

Even female artists wind up playing into this. When you first see Madonna's videos, they are actually quite shocking, in a way. On the one hand, she has asserted herself as an artist who can make her own agenda; on the other hand, there are videos of her in positions of exaggerated subjugation that are really characteristic only of hardcore pornography. It is very difficult for female artists who have a problem with this, because they cannot get support from the corporate world to make videos that have a softer message.

How surprising is it then, when 3000 college students were surveyed

on the proposition that a woman who gets raped has usually brought it upon herself by revealing clothes or suggestive behaviour, that 60 per cent of men and 40 per cent of women agreed? This is a very shocking statistic.

That is why it is so important for lawmakers to continue to protect women from such pernicious ideas. I am not arguing for censorship, but I am arguing for the continued commitment to laws like the rape shield law. People who make these laws must recognize that they have an ethical, moral commitment to represent the reality of women's lives, as opposed to what might be the distortion portrayed in popular culture.

Let me look now to the question of public security. Since September 11<sup>th</sup>, this has been very much on everyone's mind. In 1993, in my brief, happy career as Prime Minister of Canada, I created the Department of Public Security, which was designed to bring together all the law enforcement functions of the Government of Canada — in particular, the Solicitor General's Department, Customs and Excise, and the enforcement side of our immigration law (not the policy side, which was to stay in Human Resources because immigrants are a human resource).



What is interesting is that this re-direction, this design, was not only dropped by the subsequent government, but it was also criticized; it became a political target. The government argued that this was a terrible thing, designed to make criminals of immigrants, which was not the case at all.

I would like to suggest that, had it been kept, it might have gone a considerable distance in reducing American concerns over the management of our borders. People were buzzing today about yesterday's meeting between United States Attorney General Ashcroft and Canadian officials, and the Canadian response to the American concerns about our borders — basically de-militarizing our borders, but also harmonizing our policies with respect to granting visas and, perhaps, refugee determination.

I think it is very important for politicians to accept that they have an ethical responsibility not to play politics with issues of security. Now this is clearly easier said than done. If only somebody from the current government had raised the matter of ethics in the debate, a debate in which our government played politics with all sorts of issues.

I am not trying to be petty, but it is something that we have to think about. It is a matter of our economic security as well as our physical security. We have a powerful vested interest in a free-flow border. You cannot separate that issue from the broader security issue. It has implications.

But I would also say that public servants also have a challenge in this context. In the United States, when I read about the rivalry and the tension between the CIA and the FBI, and the failure of the FBI and the CIA to give information to the FAA (the Federal Aviation Authority) when the CIA and the FBI knew the identity of some of the hijackers, who could perhaps have been stopped from getting on the planes if the FAA had had that information — I am struck by the fact that, in the twenty-first century, turf wars are simply unacceptable.

This is no longer a private game for people in government to play in terms of their own careers. I expect people to care about their careers. I expect people to want to be promoted. But, more than ever, in government, we have to remember who we are serving, who is going to be affected by a failure to co-operate, by a failure to provide



information, by a desire to try to keep information in our own domain as a way of enhancing our own importance. It simply cannot be done any more.

The moral and ethical obligation to work for the best interests of the people makes that, in my view, a totally outdated and inappropriate way to look at the functioning of government. Where there are problems with departments co-operating or difficulties with government actually identifying specific people, mediators should go in and try to sort it out.

Political leaders have a very important responsibility here to lead and to set the tone, although political leaders themselves can also be guilty. Ministers can be competitive with other ministers and want to keep things in their own department.

More than ever, it is important for governments to share information and to bear in mind that the security of their own populations depends upon that kind of an attitude.

Finally, I want to look at the question of fairness in the relationship between citizens and government. In 1990, I defined this principle because we were looking at interesting changes and amendments in administrative law, at allowing citizens to challenge, in court, the actions of administrative tribunals.

We were also looking at the possibility of creating some kind of federal ombudsperson to be an advocate, and we wanted to do the appropriate thing.

But again, in the post-September 11<sup>th</sup> period, the relationship between citizens and government and the fairness of that relationship have taken on a heightened importance. Unlike the area of gender equity, this is not an area where Canada has a particularly good record.

If we look at our internment of Japanese-Canadians in World War II, there is a recognition, now, that, whatever the security considerations, dispossessing people of their lawful property was totally inappropriate, and we need to think very seriously about these issues.

I want to raise an example that I think is an extraordinary example that people often seem to take for granted. I want to mention the October Crisis. After September 11<sup>th</sup>, I participated at the Kennedy School in a number of panels on "leadership in a time of crisis." One of the things that I said, based on my own experience as a Canadian, is that one has to be very careful to think about the implications of what one does, to avoid making things worse rather than better.



When I look at the history of the October Crisis, when we stop and think about what the issue was — one provincial cabinet minister kidnapped and murdered, and a British diplomat kidnapped — I think that the imposition of the *War Measures Act* in 1970 was one of the greatest overreactions by a government in modern history.

When this happened, I was living in London where the threat of the IRA was all around. It struck me at the time that the sight of soldiers on the streets of Montreal and tanks on Parliament Hill seemed to suggest a problem much greater than that we read about in the press.

I think that most Canadians assume that that reaction reflected something that the government knew, and they didn't know. But we know now that that was not the case.

At that time, our Prime Minister — whose motto on his coat of arms, I might add, is *faire contre-poids*, make counterweights — could not even answer civilly a question by a CBC reporter about whether he felt that seeing tanks on Parliament Hill was a problem. There are no tanks around the Capitol in Washington, D.C. today.

It is clear to what extent that was an overreaction, as was the *War Measures*

*Act's* suspension of the right of *habeas corpus* across the country.

Aside from the fact that this was an extraordinary overreaction, the result was that a large number of people, several hundred in Montreal, were rounded up and arrested. Many of them had no political involvement whatsoever, and they were held without charge, without the right to be charged, because of the suspension of *habeas corpus*. Many of those people came out of that experience radicalized.

But the imposition of the *War Measures Act* gave the separatists in Quebec a real grievance that they could point to, and that they are still pointing to 30 years later, as an example of how the federal government regards Quebec. I would not for a moment suggest that it created the separatist cause in and of itself, but it was a serious, serious overreaction that, I think, had a very negative result.

Of course, government must be able to protect its citizens. Usually, we can identify who the problems are. They are either countries, rogue countries (as, during the Cold War it was the



Soviet Union, the Soviet Bloc), or it is the Hell's Angels, or the Mafia — some identifiable group that, as much as we do not like them, we feel that we understand what they are about and what their goals are.

Today, we are perplexed. We are concerned because, as we have learned, those who threaten us are not so readily identifiable and we cannot, reasonably, understand their motivations or their goals at all.

But this is an area where power is abused, even in highly developed democracies. It is extremely important, when considering action in these areas, to remember that dissidents are not terrorists.

Now, how do we sort out these difficult issues? It is a huge ethical challenge because — if we remember the October Crisis — the implementation of the *War Measures Act* was hugely, politically popular all across Canada, except in Quebec.

The public is not necessarily the best guide for what is ethical and right, because when people are afraid they will believe governments, even if governments exaggerate the threat. They will believe governments if they are presented with only a narrow range of options to deal with things that frighten them.

I believe that the challenge of protecting the people and their rights rests

in large part with you, those of you who work at the Department of Justice, those of you who adjudicate the law, and those of you who teach and study the law.

When I was Minister of Justice, I used to say that I believed that the Department of Justice was one of the most important intellectual centres in the government. It was where people needed to think creatively and to respond to the challenges of a changing world.

I still believe that this is the case. I think that there are many opportunities to do things that will be counterproductive or that will shame us when we look back. But there are also opportunities to be wise. There are opportunities to, as we say in law, define the mischief that we are trying to identify and deal with, and craft the law carefully, respectfully, and strongly — while understanding that making laws, that governing, is not an abstract exercise. Real flesh-and-blood human beings are affected by what we do.

I think that this is one of the most important ethical principles that anyone in the adjudicative or the authoritative worlds of our society must remember: it is not an abstract exercise. In fact, one of my great idols — too strong a word, but one of the great



influences of my life was the philosopher Edmund Burke, who said of the French revolutionaries, “[They] think of men as abstractions, and, in thinking of them as abstractions, they forget that they are human.”

This is, I believe, one of the most important ethical challenges we face in the twenty-first century, not simply because it is a matter of being just, but because our credibility in the world depends on our living up to our principles.

That is why it is such a concern in the United States. I read the debate about the notion of military tribunals. People said, well, what if an American is captured and another country wants to use that kind of justice on an American? How would we feel about that? How can we accept that? And what is the basis for us to challenge that, if this is what we are doing?

There are no easy answers, but we have to understand that these are the most difficult circumstances in which to make laws and policy. This is also a time for us to be re-connected to our principles — not to be mindful of the loudest voices from the public, but to do the thing that this evening stands for.

This evening honours John Tait, one of the most ethical people I have ever known. This evening honours justice.

Thank you very much.





## Questions and Answers

*Q: The National Post has just reported a lawsuit brought by a female member of the United States military against the United States government. She is stationed in Saudi Arabia and is obliged, whenever she leaves the base, to be dressed from head to toe in a black cloak, and to sit in the back of the car:*

*From the perspective of your experience in government, how would you suggest that the United States deal with Saudi Arabia on that issue? And, from your perspective in the administration of justice, what relief do you think that the courts of the United States should give to her against her government?*

### **Kim Campbell**

Well, I have no idea whether they will even agree to hear the case. One of the things that my experience as Minister of Justice tells me is not to second-guess the courts. You will be sorry if you do.

It is a very, very difficult issue, given the fact that Americans are there at the request of the Saudis and that these women are members of the forces. I have not been to Saudi Arabia, but I have been to Bahrain, and I do know many people who have visited Saudi Arabia. I know that, quite aside from what the military may allow this woman to do and what is acceptable, she runs a serious risk, in fact, of being

physically assaulted if she goes about not covered up. I would need to know more; exactly how the policy was worded.

Realistically, the United States military cannot necessarily provide protection to someone who goes about uncovered. There are parts of eastern Saudi Arabia where she probably would not have to cover as much, but, if she goes to Jeddah, for example, no matter what an American court decides, she is going to have a problem.

I think this should not necessarily be viewed as a matter of gender, but rather as part of the broader problem of American military personnel being there, because there are lots of things that American military personnel would want to do that are not legal in Saudi Arabia.

### **Senator Pierre De Bané**

Madame Campbell, first, I would like to tell you that your lecture was very, very stimulating, and I want to thank you for it. Secondly, I was a Member of Parliament in 1970, and there is no doubt that, in retrospect, we over-reacted. On that point, you are right.

But I would like to bring you back to that period, and I am comfortable in doing so because I was one of the most vocal critics when I was then a backbencher. I just want to remind



you of the circumstances when the government overreacted.

Premier Robert Bourassa went on TV to say that he rejected totally the ultimatum that he had received from the kidnappers of Mr. James Cross, the British trade commissioner in Canada. Less than 30 minutes later, Quebec Immigration and Labour Minister Pierre Laporte was kidnapped. The government here assumed that such a quick reaction, in less than 30 minutes after the Premier had said no, must be the result of there being a large organized group.

And, as you remember, there was even a senior minister here who said that there were more than 3000 terrorists who could blow up downtown Montreal. We know today how inaccurate that was.

But I just want you to think about how one should have reacted when, less than 30 minutes after the Premier had said no, another politician was kidnapped. The government obviously, in retrospect, realized that its conclusion was faulty, but it was not out of touch with the facts, as they were believed to be. Let us not forget that the bombs started exploding in 1962, and that they continued until 1970.

So I do not want to dispute your reading of the action or your conclusion, in retrospect, that we overreacted.

But I do, because I was then a Member of Parliament, and I know what the circumstances were that brought about this erroneous reaction. Again, thank you very much for your lecture.

### **Kim Campbell**

Thank you, though I think that the publication of Cabinet papers has shown that Cabinet knew that the case was not as they said. I am trying to make my point — and I am not really here to second-guess — to illustrate that it is not just a question of the time; it is the importance of doing what is wise and proportionate. This is very difficult. And the action can rebound and have an even worse effect. That is why these things have to be considered so carefully.

As for politicians, well I am out of political office now, although I was recently a public servant for four years. But I still have political instincts. We all, when we hold public office, want to get re-elected. We all want to do what the voters want, and sometimes it is very difficult not to.

The real ethical challenge is understanding that, sometimes, the short-term gratification of that very appropriate desire — because you can't do anything for the voters if you are not in office, and trust me, I know that — often blinds people to really thinking about the long-term implications.



That is why our system of government — where we have public servants and elected people, and, hopefully, a good dialogue between them, also reaching out to other knowledgeable people — can help us to avoid the easy answers that lead to awful mistakes.

I think that, given the stakes today, we have to understand that it is a really important ethical issue for us. Sometimes what our political instincts tell us to do is simply the wrong thing to do.

*Q: I have a question following on this “rush to act.” Are you concerned about the privacy or personal rights Canadians may be forfeiting?*

### **Kim Campbell**

Well, there are many players in the field, the courts being very, very important players, and there may be challenges to some of the things that are being proposed.

It was not my purpose to come and trash what is happening in Canada, by any stretch of the imagination, but rather to point out that it is a very difficult environment in which to make the law.

It is very, very difficult, when people have a sense of crisis, to do things that are truly respectful of rights. And I



think it is also very easy for governments to want to use the law to solve all their problems.

Again, we must make the distinction between people who are genuine threats to public order and public security and people who are only expressing their opinions. That is an extremely important line to draw, but governments often want to be all-inclusive.

I believe in inclusive justice. What I don't believe in is lumping together everybody who is irritating and loud-voiced into one group. That said, there are people who are a genuine threat to our society, and our law enforcement authorities need the appropriate tools to deal with those people.

It is important to recognize that it is an issue. I am saying that there aren't any easy answers. It is one of the most difficult ethical challenges facing governments in the twenty-first century, I think, because the nature of the threats that are coming to us is very different, and we no longer have the sense that we at least know where the threats are coming from.

If it is the Mafia, we will pass laws against money-laundering, and organized crime, and conspiracy, and all this kind of stuff. We may not like them, and we may be afraid of what they can do, but they're an understandable entity.

We are now looking at threats to us that we do not understand, and that we feel uncomfortable with, and it can lead us to overreact. But maybe we're not overreacting. So where does the discussion come from, where does the commitment come from to try to sort out those difficulties?

I'll tell you, if John Tait were here today, he would be relishing this as a challenge. It is a real challenge. I am not here to just answer the question, but to say that we are talking about the ethical challenges of the twenty-first century. And this is one of the biggest ones, particularly for people who are responsible for, and involved in, creating criminal law, where the whole power of the state comes down on the citizen.

*Q: Madame Campbell, I greatly appreciated your comments on the fate of women in Afghanistan. But there is another problem in Afghanistan, the problem of delayed-action bombs, whose effect is to wound and mutilate the people. These are much more than weapons of war. Should these weapons have been completely banned from warfare, like anti-personnel mines?*

### **Kim Campbell**

This is something that is very worrisome.

I've been involved for some time with an interesting group. I chair an organization called the Council of Women



World Leaders, which is made up of women who have been presidents or prime ministers of their countries. We are trying to get some of our members involved, not at the negotiating table, but in supporting and providing the prestige of their office as weight to the Afghan women who will participate in these discussions.

For a number of years, I have been involved with groups who have been very dismayed about the situation of women in Afghanistan, when there was really no hope, no mechanism to make a change.

So, however bad it is, the bombing in Afghanistan — even with cluster bombs being used — has provided the first opportunity to actually make real changes there. Sometimes, necessary methods are difficult to accept.

I am not a pacifist. I am peace-loving, but both my parents were in uniform in World War II, and I am deeply grateful that there were people who were prepared to put their lives on the line to defeat Hitler. A lot of innocent people died, a lot of innocent women and children.

If there were a way of fighting those battles and defeating those tyrannies surgically, I would be the first person to support it. It is worrisome, and I think there is an ethical obligation to try to focus the fighting against the people who are actually the problem.

I think the Americans are trying to do that, and to avoid, as much as possible, what the military euphemistically calls collateral damage. But, however “smart” weapons are, no weapons are that smart.

I would think that, although it is worrisome, it is actually the first time since the Taliban have been in power that there is really an opportunity to try to turn around that very repressive policy for women. I think Afghans understand that. Afghan women understand that

*Q: I believe that, as our population ages, we should be addressing, in a much fuller way, the issues that confront us, issues of major ethical significance, such as euthanasia. Is the government doing enough? Can we do more? What should we do?*

### **Kim Campbell**

Well, I am not a member of the government, so I am really not in a position to say whether we are doing enough. I do not know what is happening in the Department of Justice on that issue. Certainly, when I was Minister, it was an issue that was under discussion.

It is one that politicians are uncomfortable with. It is one of those issues like abortion, like gun control, like gay rights, that tends to split caucuses, that



people feel very strongly about — so it is not something that politicians are eager to address.

Ageing is very important, and its related issues — like older people's illnesses — affect us all.

I would say, also, that there is a gender aspect to ageing, because there is a significant over-representation of women among the elderly. That is reflected in concerns about poverty — so many women are among the poor — and also in issues of health research.

For example, one of the most difficult problems for older people is incontinence, and the vast majority of elderly people who are incontinent are women. It is often a physical effect from childbearing. It is a very important issue because it is often the issue that makes the difference between somebody living independently and not living independently. In other words, the family is very happy to look after Granny, but once she starts wetting the sofa, it's off to the nursing home — but we don't really have sufficient proper facilities for that.

Sometimes, we don't analyze problems before establishing priorities. Often, things that seem primarily to relate to women are not seen as women's issues, and that includes a lot of issues concerning age.

As to the question of assisted suicide: happily, there are some countries and some jurisdictions that are doing things that perhaps we can learn from. This is not an area where I see Canada being in the forefront; we are not courageous one way or the other about this. But there may be other jurisdictions whose experiences will help to guide us.

I agree with you. It is an important issue and it is a very important ethical issue. It is one that you are quite right to point out. We are going to have to deal, in the near future, with all the ethical issues relating to an ageing population.

*Q: We would love to jump into Afghanistan tomorrow and make things different. But we have seen things like children being pulled out of rug-making factories, for example, and people have starved as a result. When looking at implementing change, how do we measure and decide the appropriate steps that are not going to be more damaging than beneficial?*

### **Kim Campbell**

I think that is an extremely important question and one that certainly identifies, again, one of the ethical challenges



that governments face, particularly in their foreign policy and foreign-aid programs.

When you identify, for example, the problem of children who make carpets, it is true that there are some companies that have taken on the question of child labour, first of all, because the Internet has made their consumers so much more knowledgeable and so much more able to put pressure on them. What they have done in some countries is to provide some sort of minimal aid to the children, and also provide them schooling.

You are quite right. It is not necessarily a good idea to take children out of the labour force if that, in fact, impoverishes their families. We have to remember in our own world, among people on farms, for example, even the smallest children did chores like collecting eggs or feeding the chickens.

The notion of child labour is not in and of itself abhorrent. What is abhorrent is robbing children of their childhood — not allowing them to get an education and have a chance to make choices about what they will do as adults — and robbing them of their health, by forcing them into physically debilitating work.

In fact, there are some companies in the world, Levi-Strauss, for example, trying to deal with the problem in a way that respects the fact that these children often need to earn a living, but that they also need to have a life and some prospects.

If we avoid looking at issues as abstractions, if we stop and look at the flesh-and-blood human beings who are part of the issue we are concerned with and who will be affected by any decision we make, we are much likelier to be wise, and we are much likelier to find the pace of change that will succeed. We are much likelier not to turn our backs on the issue and say, well, no, it's too big, we can't deal with it. And we are also more likely to do things that might have a chance of ultimate success.

You have asked a question for which I am certainly not wise enough to have the answer. You identify a really, really difficult issue. As I say, the humanity of these problems must be recognized.

I think that is something John Tait always did. He had a wonderful mind for abstract ideas, but he was very much rooted in the reality of people and life. I think if we can follow his example, our chances of making wise decisions are greater.

Thank you.





## Mary Dawson / Morris Rosenberg

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### **Mary Dawson**

I would like to call upon Morris Rosenberg, Deputy Minister of Justice and Deputy Attorney General of Canada, to say a few words of appreciation to our guest.

### **Morris Rosenberg**

Thank you, Mary. On behalf of Dean Leuprecht and all those who have joined us here this evening, I want to extend a sincere thank-you for a wonderful lecture. You have continued the tradition — with the second one, it is now a tradition — in great style.

This evening shows us to what extent the partnership between the Department of Justice and institutions like McGill University is important. We in the Department wish to strengthen our ties with the academic community in Canada, to take advantage of the diversity of opinion that comes from such a partnership.

This evening, the Right Honourable Kim Campbell spoke to us about the challenges that currently face us in questions of ethics. Ethics, especially in the twenty-first century, is, in fact, a field that is rich in challenges. It takes a person with intellectual discipline and vast experience to explain clearly and convincingly what these challenges are, and how we, as a society, can take them up.



Just about everybody who has been up here tonight has talked about John, and I am not going to be an exception, because tonight's event touches on many facets of John Tait's life. He was a McGill graduate, he was Deputy Minister of Justice of Canada, and he worked with the Right Honourable Kim Campbell, when she was Minister of Justice. And, when he left the Department, he authored his definitive report on ethics and values in the public service.

I mention this because all of these factors have come together this evening and really do commemorate him. As Dean Leuprecht mentioned, the Tait Report is a milestone in establishing public service values and ethics, and, in it, John describes the broad grey area between behaviour that is forbidden and behaviour that is honest or ethical.

Clearly, the black-and-white decisions are easy; those are not the ones that we get paid for. The grey area is the challenge for public servants and all people in public life, as they perform their duties, and those are the ones that provide grist for the mill and an interesting forum for debate.

While ethics forms a code of conduct in the practice of good government, we must not forget that it is ethics that

underpins the public's trust in its institutions, institutions that could not function in the absence of that trust.

Any study of ethics is far from an easy task. You have shown us how complex it is, to what extent it touches on the most fundamental questions in our society, and the close relationship between questions of ethics and the development of the law.

You chose to frame your remarks in terms of your priorities when you were Minister of Justice: inclusive justice, public security, and fairness. Those are priorities that you articulated more than ten years ago. Now some of my colleagues have characterized the public service as the permanent custodian of permanent problems or, one might say, the permanent custodian of permanent ethical dilemmas.

And the fact is that, although the specific content of the ethical challenges in each category may have changed somewhat over the intervening years, I think your priorities well describe most of the current challenges that we are facing. In fact, I would say that in the post-September 11<sup>th</sup> world, all three of them, together, define the challenge of governments.