

REMARKS BY/ALLOCUTION PRONONCÉE PAR

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PRESIDENT/PRÉSIDENT

CANADIAN BAR ASSOCIATION

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Good afternoon. C'est un honneur pour moi d'être ici aujourd'hui et de prononcer l'allocution annuelle du président devant un auditoire aussi distingué. It is an honour to stand before you today and deliver the annual presidential address to such a distinguished audience. In addition to the luminaries on the stage, and those in the audience whom I have already introduced, I want to highlight some equally distinguished guests who are also with us today.

Members of the Nepal Bar Association have travelled to Canada as part of a joint project between our two organizations. We are delighted to assist the NBA's extraordinary work supporting Nepal's movement towards democracy. Nepalese lawyers face tremendous challenges in this work, including physical danger and threats to their lives, with courage and determination.

I had the privilege last fall of speaking at a program with a member of the Nepalese Bar. It was humbling to learn about the tremendous personal risk of simply being a lawyer and fulfilling

your obligations to justice and the rule of law. Please join me in recognizing and applauding these honoured guests!

There are numerous topics on which I could address you today, but recent published articles have sharpened our focus on standing up for the good name of our profession.

As you are aware, over the past two weeks, the CBA has spoken out forcefully in defence of the reputation of lawyers and the legal profession. Our public statements in this regard received the full support of the CBA's National Board of Directors, and the overwhelming approval of scores of members who wrote to applaud our quick reaction and assertive message.

I think it is helpful to identify two separate elements of the incident that gave rise to our actions. First, there were serious allegations of deep-rooted, systemic flaws within the legal profession and the justice system. Secondly, there was the manner in which those

allegations were published and disseminated by a national magazine.

Let me begin by dealing briefly with the second point. I will not add anything to the statements we have already made in response to the publication in question. Nor will we ever back away from defending the legal profession, which we serve as its ally and advocate. Our swift and vigorous response should give pause to anyone who believes that lawyers are an easy target.

The first point – the charges of systemic flaws – is worth a closer inspection, and ties in to the central theme of my remarks this morning, which is access to justice.

Anyone familiar with the justice system and the professionals who work within it will easily accept legitimate criticism about it.

But distorted, sweeping accusations designed to denigrate the members of the profession and the judiciary, undermine the trust

so essential to the justice system - one of the pillars of our democracy. There is a difference between legitimate criticism and uninformed headline-grabbing.

It would be wrong to conclude that the justice system today is trouble-free. Certainly, the profession and the justice system are vastly different, and in some respects improved, from when I started practising 30 years ago. But notwithstanding any progress we have made, there is still much to be done. No one here would seek to deny that. Indeed, the CBA has been sending exactly that message — and working for positive change — for many years.

The CBA has a lengthy history of initiatives and projects undertaken to help advance access to justice. We've been in the forefront in recommending improvements to the justice system, including:

- increasing legal aid funding for the poor,
- bettering the civil litigation process,

- supporting pro bono work by thousands of lawyers
- educating high school students about the legal system, and
- supporting the rule of law, both at home and in developing countries overseas, and
- standing up for our independent judiciary.

In particular, we spoke out last year in defence of an independent, unbiased judiciary, following unilateral government changes to the judicial advisory committee system. The changes effectively “stacked the deck” in the committees with a majority of federal government appointees, increased the risk of politicization and undermined public confidence in how judges are chosen. We will hold steadfast to that position in the future.

We’ve also led the way in raising lawyers’ own level of performance and improving the profession. We have:

- issued a groundbreaking report on women in the profession,

- crafted a model Code of Conduct for lawyers,
- created client care handbooks and an online practice resource center,
- tracked emerging professional issues through a series of in-depth reports, and
- continued to sponsor leading-edge continuing legal education programs.

Et nous avons accompli tout cela durant une période de bouleversement sans précédent et de complexité croissante du droit. And we have done all this during a time of unprecedented upheaval in the profession and a wave of growing complexity in the law.

I remember, in the early 1990s, coming across a complex commercial litigation file in our office, completed in the mid-1970s. I was struck by how little shelf space the file occupied,

from correspondence and pleadings right through to the Court of Appeal. On an adjacent shelf sat the file of another equally complex matter. But the 1990s file was a shelf hog, dwarfing the modest amount of space taken up by its 1970s predecessor, and without any appeal included.

The pace of change in the law has been extraordinary. Advances in technology and globalization have led to a huge time compression that has completely changed the expectations of our clients. It's an increasingly complex world, and it's challenging for lawyers and the legal system to respond.

Laundry lists of perceived shortcomings in the justice system are of little use if they do not take this new context into account. The reality on the ground is very different for those of us who labour there.

But the need for the justice system to respond effectively to change is nonetheless real. As lawyers, we recognize our responsibility in this regard. Today, we are reaffirming our duty, our responsibility, and our willingness to play our part. We will continue to work in collaboration with the other responsible parties – judges, court administrators, and all levels of government. As the Chief Justice has said, we all have the opportunity and responsibility to answer the critical and growing need for true access to justice.

We must all be part of the solution, and we must use the tools and resources available to us to do just that. Consider the Canadian Forum for Civil Justice. Born out of the CBA's 1996 Systems of Civil Justice Report and housed at the University of Alberta, the Forum is a clearinghouse of projects and ideas to improve Canadians' access to justice.

The Forum is a sterling example of the one quality that we need most to truly make a difference in the legal system: innovation.

Without it, we would not have gotten where we are. Without it, we will not get to where we need to go.

The CBA recognized early on the importance of innovation in the law, and we have been promoting it for years.

- As early as 1989, we saw the need for alternative methods of resolving disputes, and struck a Task Force on ADR. Its report led to the founding of the landmark Windsor-Essex Mediation Project, championed by the Right Honourable Roy McMurtry. And it led to the eventual widespread acceptance across Canada of ADR, which has made justice far more accessible and affordable.
- We saw the changing nature of demographics in the profession and produced the landmark 1994 *Bertha Wilson Touchstones Report on Equality in the Legal Profession*.

- We saw courts sinking under the weight of backlogs and litigants unable to afford justice, so we commissioned the *1996 System of Civil Justice Report*.
- At the turn of the millennium, we saw the brave new world of advanced technology and client empowerment, and came out with the *Young Lawyers' Challenge of Change* report on the future of the legal profession.
- Building on that work, and sensing a need for the profession and the association to chart a new course, the CBA Futures Committee produced in 2006 the *Crystal Clear: Strategic Directions for the CBA* report.

At every point along the road to change, the legal profession, through the CBA, has been the trailblazer. We have been leading the way towards creating a justice system that is accessible to

everyone and that works for everyone. We have the proven track record of envisioning and accomplishing positive change in the law. This is why the CBA can and does speak with credibility on this topic.

Innovation will become even more necessary to ensure access to justice in the future, because the pace of change is only accelerating. Consider:

- Demographic change is threatening access to justice outside large urban centers in Canada. Lawyers in these smaller communities are approaching retirement without an adequate supply of younger lawyers ready to take their place. We are pursuing innovative solutions to encourage and support lawyers in these communities, such as webcast CLEs and remote service delivery.

- Unprecedented mobility of lawyers across provincial borders is challenging the traditional lawyer regulatory process. Our law societies are looking at innovative responses to this trend, and we will lend them our ideas and support.
- With generational change and greater work pressures come value shifts and new stressors in our challenging and demanding profession. The CBA, and in particular our award-winning *National* magazine, is bringing forward innovative ideas to improve the legal work culture and lawyers' career satisfaction.
- Whatever else may be said about the billable hour system for selling legal services, it is far from innovative. We must encourage the progress already underway to improve the professional financial metrics upon which lawyers and clients both rely.

- The general public, and clients in particular, have better information tools and more interest in the legal system than ever before. Lawyers must adopt innovative approaches to public legal education to increase Canadians' understanding of the system and appreciation of their rights.

We have proven, time and again, that lawyers and the CBA are perfectly positioned to be the champions of change in the justice system. We will continue to prove that in future, until the day arrives that every Canadian has full and fair access to a justice system that is independent, innovative and even more widely respected than it is today.

I call upon each of us to accept the challenge, to help our profession and our association to advance solutions to these issues. It is essential to protecting and promoting the rule of law. And it is, very simply, the right thing to do.

Thank you.