

**Background for Proposed Resolution of the Council of the Canadian Bar  
Association, British Columbia Branch, June 21, 2008**

**Public Confidence in  
the Justice System of Canada**

Respect for the rule of law and for the administration of justice is essential for the proper functioning of Canada as a constitutional democracy founded on the rule of law. The rule of law is a fundamental postulate of our constitutional structure, and as such is expressly acknowledged by the preamble to the Charter of Rights and Freedoms of Canada.<sup>1,2</sup>

Fundamental to the administration of justice is public understanding, trust, and confidence in the justice system. The public would not cooperate with the police and the criminal courts if it had no confidence in these institutions. Similarly, in the civil realm, the public would not hire lawyers or engage in legal proceeding without confidence that the rule of law applies, and that the system of justice will provide a remedy. The rule of law would be meaningless without a competent and effective system of laws and remedies necessary to make it real.

The Mission of the Canadian Bar Association recognizes these principles. The Mission of the Canadian Bar Association includes improvement of the administration of justice, promoting the rule of law, and enhancing public understanding and respect for law and legal process, and the role of the legal profession and the judicial system.<sup>3</sup>

Public confidence in the justice system cannot be taken for granted. Perceptions of the justice system are shaped by political leaders, the police, the news media, and entertainment media, and these influences are often negative.

Misconceptions and lack of understanding of the system can distort important policy debates and decisions. For example, calls for mandatory minimum sentences, and lengthier sentences, are based upon the idea that judges tend to be “soft” on criminals, and that longer sentences will be effective in reducing crime, whether this is founded upon real evidence or not. Distorted and exaggerated fear of crime will also influence individual decision-making.

Lack of confidence in the justice system and specifically in the judiciary results in more frequent and more vitriolic attacks on judges and their decisions. These attacks are often rooted in a lack of understanding of the justice system, and a lack of relevant information concerning the nature of the issues before the court.

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<sup>1</sup> *British Columbia v. Imperial Tobacco Limited*, [2005] S.C.C. 49, paragraph 57 per Major J.

<sup>2</sup> *BCGEU v. Attorney General of British Columbia*, [1988] 2 S.C.R. 215, at page 228 per Dickson C.J.C.

<sup>3</sup> Mission of the Canadian Bar Association adopted by council February 1992

Surveys consistently show that the public has very high levels of confidence in the police, significantly lower levels of confidence in the judiciary, and still lower levels of confidence in the legal profession.<sup>4</sup>

The Bar has traditionally accepted a responsibility to support and defend the judiciary against unjust criticism and complaint. This is reflected in the Canons of Legal Ethics of the Law Society of British Columbia, Canon 2(2):

Judges, not being free to defend themselves, are entitled to receive the support of the legal profession against unjust criticism and complaint.

However, after-the-fact defence of the judiciary against unwarranted criticism, while useful and important, is not an effective strategy for shaping the public attitudes and misconceptions that may have led to the criticism in the first place. It would be more effective to increase the level of public confidence and understanding of the justice system so as to reduce the frequency of unjust attacks. In any event, better informed public debate about the justice system including the decisions of the courts would be beneficial and is therefore desirable in itself.

Lawyers have an obvious central role in the administration of justice, are stakeholders in the system, and in accordance with the Mission of the Canadian Bar Association, should also play a central role in promoting the rule of law and improving the administration of justice, by enhancing public understanding and respect for the justice system, including the law, legal process, the legal profession, and the judiciary.

The first part of the proposed resolution acknowledges the commitment of the B.C. Branch of the Canadian Bar Association to the objective of improving public confidence in the justice system. It also acknowledges that our work in this area should be in partnership with others, such as the judiciary, government, other legal groups, law enforcement, academia, and the media.

The second part of the resolution recognizes the responsibility of all lawyers to foster public understanding of and confidence in the rule of law and the administration of justice in Canada. The resolution is modeled on a similar resolution passed by the American Bar Association in February 2000. Therefore, in addition to the Canadian Bar Association B.C. Branch taking action, as expressed in the first resolution, we encourage all lawyers, whether members of Canadian Bar Association or not, to work towards this same objective.

The Executive Committee of the B.C. Branch has been working on an initiative in this respect since mid 2007. Meetings with the bench, Law Society and Attorney General have elicited a very positive response. Specific efforts so far undertaken include:

1. A CBA program of improved media relations, with the objective of making available to the media on a fast response basis knowledgeable legal commentators, so as to achieve better balance in media coverage.

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<sup>4</sup> 2007 Leger Marketing Profession Barometer; Police Officers: 87%; Judges: 74%; Lawyers: 52%; Politicians: 15%. <http://www.legermarketing.com/documents/SPCLM/070522ENG.pdf>

2. CBABC support for and participation in a project sponsored by the Law Courts Education Society of British Columbia to examine and make recommendations concerning the British Columbia high school curriculum in relation to legal education. The work is supported by a grant from the Law Foundation of British Columbia.
3. A decision to make public confidence in the justice system an ongoing initiative of the B.C. Branch, with the Past President from year to year having specific responsibility in this area.
4. A decision to gather data and expertise with which to educate the public and to counter negative, ill-informed perceptions and misinformation when reported in the media.

Attachments:

1. Mission of the Canadian Bar Association;
2. ABA Network Report accompanying House of Delegates Resolution;
3. Public Confidence in the Criminal System: Public Safety and Emergency Preparedness Canada.

**CBABC Executive Committee**

**May 15, 2008**