



February 22, 2011

Via email: Minister@cic.gc.ca; Kenney.I@parl.gc.ca

The Honourable Jason Kenney, P.C., M.P.
Minister of Citizenship, Immigration and Multiculturalism
Jean Edmonds Building
South Tower, 21st Floor
365 Laurier Street West
Ottawa, ON K1A 1L1

Dear Minister Kenney:

Re: Remarks to the University of Western Ontario

I am writing on behalf of the Canadian Bar Association to express concerns about remarks you made at the University of Western Ontario on February 11, 2011.

Your public criticism of judges who follow the law but not the government's political agenda is an affront to our democracy and freedoms. The effectiveness of the administration of justice depends, in large measure, on public confidence. Public comments by a Minister of the Crown with unjust criticism of judges and courts erodes that public confidence and weakens the administration of justice.

Canadians should not be encouraged to make conclusions about the judiciary based on criticism of judicial decisions for not supporting the government's agenda. Judges cannot enter the public arena to respond to criticism. Given that reality, your public invitation to the Federal Court to engage in a "constructive dialogue" was either naïve or misleading. I fear that your comments were one-sided and unfair, given that the judiciary cannot respond.

The concept of a "dialogue" between the branches of government refers to the dynamic interaction between those branches. The executive branch has the power to appoint judges. It can propose and support legislation to implement its political agenda and address any needs, omissions or problems that it identifies in the law. The legislative branch can enact or amend legislation. The judiciary then interprets the law, according to its mandate in a free and democratic system like Canada's, without political pressure of any sort. If the executive believes that the law is not being interpreted as it intended, it has the option of further legislative amendment. It does not, however, have the option of publicly reprimanding the judiciary for not supporting its political agenda.

A democracy relies on an independent, impartial judiciary, able to make decisions based solely on the law, and free from political interference or pressure. That independence enables the judiciary to safeguard our rights under the Constitution, to protect the rule of law and to uphold the democratic process. It is also imperative to ensure appropriate checks and balances on the exercise of political power. Judicial independence exists for the benefit of all Canadians, not for the personal benefit of the judge.

Judicial independence is the cornerstone of the rule of law. A free and independent judiciary is the last line of defence against the power of the state and majority opinion.

Other countries look to Canada's justice system as a model. Canadians expect their political leaders to build respect and public confidence in our judicial system. Your public criticism of an entire court and specific judicial decisions that you think do not advance the government's agenda can only undermine the respect and public confidence upon which our system depends.

Yours truly,

(original signed by Rod Snow)

Rod Snow

cc:

The Right Honourable Stephen Harper, P.C., M.P.
Prime Minister of Canada
Via email: pm@pm.gc.ca