
**Remarks of the Rt. Hon. Beverley McLachlin, P.C.
Chief Justice of Canada
to the
Council of the Canadian Bar Association
Saturday, August 14, 2004
Winnipeg, Manitoba**

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Good morning, ladies and gentlemen. **Bonjour mesdames et messieurs.** First, let me say how grateful I am for this opportunity to address the Council of the Canadian Bar Association. I regard this as a very significant occasion, as a time to consider the year just passed, and a time to share with the Bar some of the most pressing concerns of the Bench. **Il s'agit pour moi d'un moment très privilégié où il m'est permis de passer en revue l'année écoulée et de faire état de certains des principaux défis qui se posent à la Cour.**

Much has happened at the Supreme Court of Canada over the past twelve months, and since most of it has been reported, analyzed and discussed in considerable detail, I fear that I will not be able to surprise you this morning with any morsel of fresh news. I think it is fair to say that the Court, its judges, and its role in Canadian public life have been the object of more attention this year than ever before.

Two of my colleagues have now left the Court. I don't need to tell you that the departure of such extraordinary human beings as Justice Frank Iacobucci and Justice Louise Arbour is anything but "business as usual". Both were immensely important contributors to the work of the Court, and their absence is felt most dearly. The question of their replacement, of course, is one which has generated much of the public attention that I have just mentioned. Allow me to turn briefly to this topic.

For the most part, members of the judiciary have remained silent in this public debate

about the best process to make appointments to the Supreme Court. Judges have been silent, or shall I say cautious, but that is not for lack of interest. This is an issue that is very dear to our hearts, one that goes to the very essence of the independence of the judicial branch. That is not to say that judges are opposed to any reform of the current process of judicial appointments. Rather, for the judges of Canada, the most important goal in appointing new members of the Supreme Court remains to ensure that persons of the highest merit are selected, independently of any and all political or ideological considerations. That is what is needed to sustain the confidence of the public. That confidence hinges on the conviction that those who are chosen to sit on the Supreme Court of Canada possess the most competent, experienced and independent legal minds that one can find. Whatever the process by which judges are appointed, it must serve that purpose. **Cette confiance repose sur la conviction que les juristes les plus compétents, les plus expérimentés et les plus farouchement indépendants sont appelés à siéger à la Cour suprême du Canada. Quel que soit le mode de nomination des juges, il doit servir cette fin.**

Over the course of the past year, I have intervened on occasion in the debate, in my capacity as Chief Justice of Canada, to reaffirm the principle that appointments must continue to be based on merit, in a manner that leaves no doubt about the independence and distinct role of the judicial branch in our constitutional democracy. In my view, as long as this key principle is observed, the precise details of the process for judicial appointments is a matter

that must be debated and resolved by Canadian citizens at large, through their elected representatives.

Here, I must pause to note the remarkable contribution of the Canadian Bar Association to this important debate. The CBA, and its President, Mr. William Johnson, have worked relentlessly to propose creative reforms, to correct mistaken assumptions about the role of the Supreme Court, and to sustain the principle of a judiciary that operates at arms-length from Parliament and the Cabinet. This debate has highlighted the unique role played by your Association in the political life of our country, and I encourage you to continue in these efforts.

As public debate on this issue progressed in all corners of Canada, I was reassured to see emerging a broad consensus that the appointment of judges to the Supreme Court cannot become an extension of partisan politics. One of the positive features of all these discussions is that Canadians now have a better understanding of the role of the Court, and of the responsibility that it bears to give concrete expression to our abstract constitutional rights. And I think that, by and large, armed with this better understanding, Canadians recognize the necessity of a separate institution which is entrusted with the responsibility to enforce the Constitution, and to evaluate our nation's political choices against our nation's most basic values.

I am aware that the government is presently working very hard to develop a revised appointment process which will offer guarantees of transparency that address many concerns raised over the past year. I am convinced that, in this effort, political parties in Canada will continue to act responsibly in upholding the Supreme Court as a key institution of our democratic state. I express the fervent hope that we will welcome shortly two outstanding judges as new members of the Court. As Canadians follow the different steps that lead to these appointments, they will find compelling evidence that the Supreme Court can continue to be the independent voice of the law and the Constitution in this country. **Au vu des différentes étapes préalables à ces nominations, les Canadiens auront la certitude que la Cour suprême demeure le défenseur indépendant du droit et de la Constitution au pays.**

Before closing, I would like to raise once more my concern, and the concern of many judges, over the current state of our criminal justice system. In my remarks before you last year, I touched on a number of aspects of criminal justice which are becoming increasingly worrisome. Backlogs and delays are still preoccupying, and the process of trial by jury, one of the cornerstones of our legal tradition, continues to evoke discussions in Canada, as it does across the Commonwealth and throughout the United States. As you know, the Canadian Judicial Council produced this year Standard Jury Instructions in plain language for many stages of criminal trials, and stands ready to participate in any joint efforts to improve the administration of criminal justice in Canada. Citizens continue to assess much of our justice system through what they read in the papers and see on television, and the health of our

criminal justice system is one of the key components in sustaining the confidence of the

public.

Thank you.