

**Remarks of the Right Honourable Beverley McLachlin, P.C.  
Chief Justice of Canada**

**to the Council of the Canadian Bar Association  
at the Canadian Legal Conference**

**Saturday, August 13, 2011  
Halifax, Nova Scotia**

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Good morning ladies and gentlemen. **Mesdames et messieurs, bonjour.** Once again, I am very pleased to address the Council of the Canadian Bar Association. I value the opportunity to speak to you about issues regarding the administration of justice which are of concern to the judiciary, and to members of the bar. This dialogue underscores the strong and productive relationship between the bar and the judiciary in Canada. **J'apprécie l'occasion qui m'est donnée d'aborder avec vous des questions concernant l'administration de la justice qui intéressent la magistrature et les avocats. Vous rencontrer et assister à cette conférence chaque année contribue également à affermir la relation fructueuse entre la magistrature et les avocats.**

I would like to speak to you this morning about three matters that are very important to me as Chief Justice, and that I am sure are of concern to you, as members of the bar — developments

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at the Supreme Court of Canada over the past year, access to justice, and public confidence in the judiciary.

### The Supreme Court

First, let me give you an update on the Supreme Court.

This has been a momentous year. We are only nine judges at the Supreme Court of Canada, so it is always very keenly felt when a colleague decides the time has come to move on. When two announce their decision to leave the Court at the very same moment, as happened this year, it is a heavy blow indeed.

Justices Binnie and Charron have been extraordinary colleagues — warm, collegial supportive and extremely hard working. They have both made enormous contributions to the work and life of the Court and, I'm sure you will agree, to the administration of justice in Canada. Both served on the CBA-Court liaison committee and worked hard at maintaining the excellent relationship that that the Court enjoys with the CBA. They will be sorely missed.

I understand that the federal government is presently engaged in the process of identifying and appointing two new judges to the Supreme Court. I very much hope that these appointments will be made shortly and that we will have a full complement for our fall session.

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In terms of our workload, the trend this year is an increase in the number of leave applications received and the number of appeals we will hear. For leave applications, the numbers for 2011 are markedly up and the current trend suggests we will receive approximately 600 leave applications this year. This indicates that litigants continue to have confidence in the Supreme Court as a court of final appeal. Over the years, we have consistently granted about 11% of the leave applications received. I expect this to continue. In 2010 there was an increase in appeals as of right. We received 24 – a record number. When you put it all together, we will likely hear over 80 cases in the upcoming Court year.

In 2010, 75% of our judgments were unanimous – a high note for a court of final appeal. We dealt with many complex difficult issues including the constitutional validity of Canada's *Assisted Human Reproduction Act*<sup>1</sup> and whether law enforcement may use a recording device to create a profile of a home's electricity consumption without obtaining a judicial warrant<sup>2</sup>. We also dealt with a number of issues of interest to the media – notably the question of journalist source privilege on two separate occasions<sup>3</sup>. As with recent years, we have seen an increase in the number of cases raising difficult division of powers questions. Presently, we have two such cases under reserve – the *Securities Reference* and the Vancouver Safe Injection site appeal.

Looking forward, our upcoming fall session will be particularly busy as we are scheduled to hear 33 appeals. Administrative law figures prominently in our fall session, as does copyright and we will be hearing a series of cases addressing issues raised by downloading music from the

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<sup>1</sup> *Reference re Assisted Human Reproduction Act*, [2010] 3 S.C.R. 457.

<sup>2</sup> *R. v. Gomboc*, [2010] 3 S.C.R. 2011.

<sup>3</sup> *R. v. National Post*, [2010] 1 S.C.R. 477; *Globe and Mail v. Canada (Attorney General)*, [2010] 2 S.C.R. 592.

internet. Of course, we will hear our fair share of criminal appeals involving both the *Charter* and general questions of criminal law. Our heavy fall schedule underscores the importance of having two new judges well in advance of our first sitting on October 12.

### Access to Justice

Second, I would like to turn now to an issue that is of concern to us all — access to justice.

**En deuxième lieu, je souhaite dire quelques mots sur un sujet qui nous préoccupe tous : l'accès à la justice.**

We have a justice system that really is the envy of the world. The problem is that it is not accessible for far too many Canadians. In my view, access to justice is the greatest challenge facing the Canadian justice system. I am not alone in this regard. In its 2011 *Rule of Law Index*, the World Justice Project surveys 66 countries to assess the state of the rule of law in each of these jurisdictions. Canada, as you would expect, does rather well. The one area where the *Rule of Law Index* shows that we have significant difficulty is access to civil justice. On access to justice, the index ranks Canada 9<sup>th</sup> out of 12 wealthy Western European and North American countries. The most problematic areas, according to the index, are access to legal counsel and unreasonable delay in civil justice.

I sense that the tide is changing, as lawyers, judges and governments realize that there is a problem and that it is up to them to solve it. I would like to commend you for the leadership role

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that you are taking on this important issue. The CBA has been a strong participant in the Action Committee on Access to Justice in Civil and Family Matters, and has recently established a standing committee on access to justice to coordinate its efforts in this area. As someone who cares deeply about access, I thank you for your commitment to this issue.

The CBA has traditionally taken a strong leadership role in relation to legal aid. I hope this will continue. Another area where the CBA may have a significant role to play is that of legal expense insurance. In some countries, legal expense insurance forms part of a typical homeowners' insurance policy. This is not the case in Canada. It seems to me that if we could change our culture in this regard, affordable legal services could be made available to large numbers of middle-income Canadians. The CBA may be well-placed to explore this possibility.

#### Public Confidence

Finally, I would like to say a few words about public confidence in the judiciary. **Enfin, j'aborde brièvement la question de la confiance du citoyen dans le système judiciaire.**

We live in a society with a strong commitment to the rule of law. One of the elements of our commitment to the rule of law is a deep cultural confidence in the judiciary. This confidence goes beyond a generalized belief in the individual competence and integrity of our judges. It is the confidence that brings litigants to faithfully choose the courts as the forum for resolving their disputes and vindicating their rights. It is what brings them to accept the resulting judgments, be they favourable or not.

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The CBA has been a constant guardian of public confidence in the Canadian judiciary. Thus when the judiciary has come under unjust attack, the CBA, consistent with the highest tradition of the Bar, has come to its defence to preserve judicial independence and public confidence.

For instance, earlier this year, in response to a speech given by a Minister of the Crown suggesting that some judges were insufficiently solicitous to government policy, Mr. Snow wrote a powerful public letter to the Minister in question reminding him of the importance of public confidence in an independent and impartial judiciary that bases its decisions on the law and not on government policy.

I thank the CBA for its continued support of the Canadian judiciary and for giving me the opportunity to speak to you today. I wish you productive deliberations during this conference. **Je vous remercie encore une fois de m'avoir donné l'occasion de prendre la parole aujourd'hui et je vous souhaite de fructueuses délibérations pendant cette conférence.**