

**Remarks of the Right Honourable Antonio Lamer, P.C.  
Chief Justice of Canada  
to the  
Council of the Canadian Bar Association  
August 21, 1999  
Edmonton, Alberta**

Thank you very much for that kind introduction.

It is a great pleasure to be back in Alberta, a province I have had the pleasure of visiting many times during my career both as a lawyer and as a judge. I have also had many fond and fruitful hunting trips over the years with my good friends of the Alberta Bar and Bench.

This year, it is once again my honour to appear before the Council of the Canadian Bar Association with a positive report on the state of the Canadian judiciary. The three main areas on which I usually report in this annual address are the National Judicial Institute and the Canadian Judicial Council and the Supreme Court of Canada. The first two of these institutions publish annual reports and those of you who are really interested in them are invited to consult those reports. I intend to make only a few brief remarks about them today, in favour of telling you something that concerns my own Court.

As for the National Judicial Institute, I am happy to report that things are running very smoothly. There are, however, significant personnel changes underway there. Judge Dolores Hansen, a judge of the Provincial Court here in Edmonton, will be leaving us this year after six years as Executive Director and one year as Associate Director. We owe Judge Hansen our profound thanks for her very able stewardship of the NJI over that period of time. The Board of Governors of the NJI, of which I am Chairman, will be making an announcement regarding her successor in the very near future. We also said goodbye this year to Professor Rosemary Cairns-Way, who served as the Coordinator of the NJI's Social Context Education Project over the past two and a half years. That Project, which has been very well received by the judiciary and was the subject of a very favourable external evaluation this year, will now be lead by Professor Brett Dawson of Carleton University.

At the Canadian Judicial Council, there are some special projects underway which I should like to bring to your attention. The first is the creation of a Special Committee on Public Education, which is chaired by the Chief Justice of Quebec, Chief Justice Pierre Michaud. This initiative derives from the collective recognition at the Council that there is perhaps a larger role that may be properly played by the judiciary in informing the public about the operation of its legal system. The Committee will be looking at ways in which the judiciary can be involved in public education while at the same time maintaining its independence.

A second new initiative of Council is the creation of the National Committee on Jury Instructions. This project is aimed at implementing the recommendations of the National Jury Instructions Symposium which was held in March of 1997. The goal of the Committee is to explore the promulgation of specimen jury charges that could be used in all of the provinces and territories. The Committee is chaired by Chief Justice Richard Scott of Manitoba and is composed of trial and appellate judges from across the country, crown and defence counsel and an academic advisor. As many of you will be aware, an Ontario committee chaired by Justice David Watt has been involved over the past two years in the preparation of plain language jury instructions for use in that province. So as not to "reinvent the wheel", the national committee will be using

the Ontario draft as its starting point for the development of national specimen instructions. I am sure that you will agree that the creation of understandable and legally correct jury instructions at the national level, in both official languages, is a most worthy goal indeed.

The third Council project I wish to describe is one which in once sense is complete and, in another sense, will never be complete. I refer to the publication in December 1998 of the Ethical Principles for Judges. The Ethical Principles were drafted by a Working Committee, chaired once again by Chief Justice Scott of Manitoba, and were subsequently endorsed by the Canadian Judicial Council after considerable consultation with judges, academics, deputy ministers and, of course, the bar.

As the Principles themselves make clear, they do not lay out a code of conduct or, for that matter, a litany of misconduct of judges. They establish broad guidelines that will serve judges faced with ethical quandaries and will aid public understanding of the judicial role. As such, the Principles provide a point of reference rather than compendium of specific acts.

One of the main purposes of the Ethical Principles, then, is to reinforce the qualities that help guarantee an independent and impartial judiciary. Let me quote from the opening chapter of the Principles:

An independent judiciary is the right of every Canadian. A judge must be and be seen to be free to decide honestly and impartially on the basis of the law and the evidence, without external pressure or influence and without fear of interference from anyone. Nothing in these Statements, Principles and Commentaries can, or is intended to limit or restrict judicial independence in any manner. To do so, would be to deny the very thing this document seeks to further: the rights of everyone to equal, and impartial justice administered by fair and independent judges.

...[J]udges have the duty to uphold and defend judicial independence, not as a privilege of judicial office but as the constitutionally guaranteed right of everyone to have their disputes heard and decided by impartial judges.

In keeping with this purpose, the document sets out five major statements pertaining to the judicial role, each of which is elaborated on by way of articulated principles and explanatory commentary. The main statements relate to Judicial Independence, Integrity, Diligence, Equality and Impartiality.

I say that this initiative will never really be complete because ethical principles cannot be frozen at any given point of time. These principles will be kept under constant review, and will be adjusted and elaborated on as appropriate over time. Indeed, the Canadian Judicial Council's idea was not simply to set out these lofty statements and principles and then leave it at that. It wanted also to set up a means by which the highest

standards of judicial conduct could be applied. Accordingly, the Council has established an Advisory Committee on the Ethical Principles which is made up of judges from across the country. Its role is to receive and respond to inquiries from judges about specific ethical issues. The Committee will respond to such inquiries with its best advice on the subject. The advice is not binding on the judge but if the matter subsequently becomes the subject of a complaint, the fact that the judge followed the advice of the Committee will obviously weigh in his or her favour in the disposition of the complaint. Indeed, what more could be asked of judges than to seek out advice on ethical issues from the most appropriate source and then to follow that advice.

[TRADUCTION] Je dis que ce projet ne sera jamais terminé parce que les principes déontologiques ne sauraient être arrêtés définitivement en un point donné dans le temps. Ces principes feront l'objet d'un examen constant, et ils seront adaptés et précisés selon les besoins. Mais le Conseil canadien de la magistrature n'a pas voulu s'en tenir à la formulation de principes et de déclarations nobles, il a également voulu créer un instrument pour assurer l'application au sein de la magistrature des normes de conduite les plus élevées. Par conséquent, le Conseil a constitué un comité consultatif des principes déontologiques qui est composé de juges de toutes les parties du pays. Ce comité reçoit les demandes de renseignements que lui adressent les juges sur des problèmes déontologiques précis. Il donne ensuite son avis éclairé sur la question. Le juge n'est pas lié par cet avis mais si l'affaire fait subséquemment l'objet d'une plainte, le fait d'avoir suivi l'avis jouera bien sûr en sa faveur. En effet, que demander de plus à un juge que de se conformer à l'avis qu'il aura sollicité auprès de la source la mieux autorisée en la matière?

It will also fall to the Advisory Committee to keep the principles current and expand on the commentaries that give precision to those principles. As such, judges will have a constant source of current guidance both in the Ethical Principles themselves and from the Advisory Committee. Further, the public will have available to it a document that clearly and accurately describes the judicial role. Both functions are clearly desirable and I am very proud of the Council's efforts to bring them to fruition. By the way, the Ethical Principles are available on the Canadian Judicial Council's website for all those who are interested.

Now I turn to the Supreme Court of Canada. The biggest change in my Court over the last year is, of course, the departure in June of my good friend and dear colleague Peter Cory and the upcoming arrival, in about three weeks, of Justice Louise Arbour. As you can perhaps imagine, these developments provoke in me a combination of very deep emotions. I am losing in Peter Cory a quintessential judge, a stalwart colleague and a tireless worker on my Court. Yet, in Louise Arbour, I will have the pleasure of swearing in a very able judge who has gained an international reputation for her work as Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and Rwanda. It will also be a special privilege for me to welcome a former student and colleague from the Law Reform Commission of Canada on my Court. And, given that Justice Arbour is a former law clerk of the Supreme Court of Canada, the first law clerk I might add to come back to us as a judge, you can imagine that her appointment provides particular inspiration to present and former clerks everywhere.

As I said in a recent interview, one of the biggest changes in the Court that I have noticed during these last years is the increased collegiality among the judges. Members of the Court communicate and cooperate with each other much more than was the case when I first joined in and for some years thereafter. This is a most welcome trend. It is one which I fully expect will continue when Justice Arbour joins us.

As you can imagine, in a Court as small as ours, the arrival of a new judge requires some adjustment - a period of transition, if you like. It is my intention to stay on as Chief Justice for that transitional period, but no longer. At the end of December, I will be commencing my 31<sup>st</sup> year as a Superior and Appellate Court judge, 20 of which were spent on the Supreme Court of Canada, and for 10 of those 20 years I was Chief Justice of the Court and of Canada. Having heard 1,317 cases on the Supreme Court and written reasons in 345 of them, I have decided to hang up my robes early in the next millennium, specifically, on January 7,

2000.

I have unofficially advised the Minister and the Prime Minister and expected to do so in writing this morning as I expected her, as she usually does, to be speaking to you this morning. I will be advising her officially today by letter. At the time of my appointment, and subsequently on more than one occasion, I have said to myself and shared that thought with others that I would step down when I lost the feu sacré, the necessary enthusiasm of spirit and intellect for hearing and deciding the kinds of cases that come to our Court. Having reflected over the summer on my time at the Court and the upcoming session, I realized that after the coming term I will gradually start to lose that degree of enthusiasm, I dare say of passion, for my work, that the litigants and the public deserve to expect in members of the Supreme Court of Canada, a fortiori, in their Chief Justice. Putting it another way, is that what was a very demanding but nevertheless fascinating period of my professional life is gradually becoming a job. To play it safe, by January it will be time for me to go, and to be free to go on to other things.

[TRADUCTION] Comme vous pouvez l'imaginer, dans une cour aussi petite que la nôtre, l'arrivée d'un nouveau juge nécessite des ajustements, une période de transition en quelque sorte. J'ai l'intention de conserver mes fonctions de Juge en chef durant cette période de transition, mais pas plus longtemps. Fin décembre, j'entamerai ma 31<sup>e</sup> année comme juge de cour supérieure et de cour d'appel, ce qui inclut vingt ans passés à la Cour suprême du Canada dont dix comme Juge en chef de la Cour et du Canada. Après avoir entendu 1,317 affaires en Cour suprême et écrit des motifs dans 345 d'entre elles, j'ai décidé de raccrocher ma toge au tout début du prochain millénaire, et plus précisément le 7 janvier 2000.

J'ai déjà, il y a quelques temps, avisé de façon non officielle Madame le ministre de la Justice ainsi que le Premier Ministre et je m'attendais à le faire de façon officielle par écrit ce matin parce que je m'attendais à ce que Madame le ministre soit avec nous ici, comme ce fut le cas par le passé. Elle sera avisée officiellement par écrit avant la fin de la journée. Au moment de ma nomination et à plusieurs reprises par la suite, je me suis dit à moi-même et à bien d'autres que je résignerais mes fonctions lorsque j'aurais perdu le feu sacré, l'enthousiasme d'esprit et de coeur nécessaire pour aborder le genre d'affaires qui viennent à notre Cour. Après avoir réfléchi pendant l'été à mes années à la Cour et à la session qui s'en vient, j'ai réalisé qu'après cette session, je commencerai à perdre graduellement le degré d'enthousiasme, je dirai même la passion, que les parties et le public sont en droit de s'attendre des juges de la Cour suprême du Canada, a fortiori de leur Juge en chef. Pour tout dire, ce qui était une très exigeante mais néanmoins passionnante période de ma vie professionnelle, devient graduellement un emploi. La prudence commande donc qu'en janvier, je tire ma révérence non pas seulement pour prendre ma retraite, mais pour relever d'autres défis.

Finally, I must thank the Canadian Bar Association, and its current and past Presidents, for the kind reception it has provided me each year and for giving me the opportunity of speaking to members of the bar on an annual basis. Have a very successful conference.