

**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 11, 2007
Calgary, Alberta**

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Good morning ladies and gentlemen. **Mesdames et messieurs, bonjour.** It is a pleasure and an honour for me 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. **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 two 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 – the work of the Supreme Court of Canada over the past year, and the problem of access to justice.

The Supreme Court of Canada

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

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The number of appeals heard over the past year is slightly down. This is a statistical blip, not a trend. The number of appeals heard was very high the year before¹. And the number will be high next year² — the Court's fall and winter sessions are already booked.

We are also in the midst of technological upgrades at the Court. Computers are coming to the courtroom. Computers will be installed on the bench, the lectern, each counsel table, and at the media table, to allow for electronic access to most documents required for the hearing of an appeal. Judges and counsel will also have access to internet research links. There will also be internet connections for counsel to use their own computers. The audio-visual equipment used to record hearings will also be upgraded.

Construction began in the courtroom in June, and is expected to be completed before the start of the fall session. In order to test the new equipment, and work out any bugs, we will first use the Justices as guinea-pigs. The computers will be available for the members of the Court during hearings beginning in the fall 2007 session. In the fall of 2007, counsel will also be able to connect to the internet in the courtroom using their own computers. In the spring of 2008, the Court will hear

¹ 80 appeals heard in 2006. 93 appeals heard in 2005. 83 appeals heard in 2004.

² 63 appeals are currently pending hearing. At this time last year, only 30 appeals were pending hearing (an increase of 33 appeals). The increase is a combination of more applications for leave to appeal having been granted, and more appeals as of right having been filed (2006-2007 Court year, 52 leave applications have been granted, and 12 notices of appeal as of right have been filed (total of 64 new appeals). At the same point in the 2005-2006 Court year, 42 leave applications had been granted, and 6 notices of appeal as of right had been filed (total of 48 new appeals)); *Caseload: Statistics as at June 30, 2007*.

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four appeals with the new computer system available to counsel and the media as well. We plan to have all appeals heard using the new electronic equipment in the fall of 2008.

In conjunction with bringing computers into the courtroom, the Court will soon require e-filing of most documents needed for the hearing of appeals. Since July 2005, we have required counsel to file an electronic copy of their factum in addition to the usual paper copy. Electronic filing will be expanded to include notices of appeal, factums, records and books of authorities. Paper copies will still also be required, but not as many copies. E-filing will be required for all appeals to be heard starting in the fall 2008 session.

These changes will truly bring the Court into the 21st century. They will enable the Court to better serve the public, and, I hope, facilitate the work of counsel appearing before the Court.

We continue to strive for as much consensus as possible, as this best achieves our statutory mandate of providing guidance on legal issues of national importance. Nevertheless, we cannot always achieve unanimity. Nine judges from nine different regions of the country are bound to entertain different views on many questions. What is important, as the late Justice Bertha Wilson once said, is that the nine cast their votes after having listened to and considered the views of the other eight. That is what we strive for, and that, I can assure you, is what is happening.

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Access to Justice

Next, a matter that is close to my heart, as I know it is to yours, as officers of the Canadian Bar Association — access to justice. I have spoken about access to justice many times before, and will continue to do so, because access to justice is the essential foundation for our legal system to function and to maintain the confidence of the public it serves.

First, let me outline some of the most pressing concerns about access to justice. These are issues which many of you will have experienced in your day to day practice.

The cost of legal services limits access to justice for many Canadians. The wealthy, and large corporations who have the means to pay, have access to justice. So do the very poor, who, despite its deficiencies in some areas, have access to legal aid, at least for serious criminal charges where they face the possibility of imprisonment. Middle income Canadians are hard hit, and often left with very the difficult choice that if they want access to justice, they must put a second mortgage on their home, or use funds set aside for a child's education or for retirement. The price of justice should not be so dear.

Self-represented litigants, some driven by cost, and some who simply prefer to represent themselves, place burdens on the courts and other parties to litigation. Judges must ensure that unrepresented litigants are treated fairly, while at the same time, not appearing partial to one of the parties.

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Delay plagues both the civil and criminal justice systems. On the criminal side, delays may result in serious charges being stayed, since the *Charter* guarantees the right to trial within a reasonable time. Delays can result in long periods of pre-trial custody for accused persons. Even where an accused person is out on bail prior to trial, the stress caused long delays and unresolved charges may be considerable. In both criminal and civil cases, witnesses are less likely to be reliable, as memories fade over time, diminishing the quality of justice. On the civil side, people need prompt resolution of issues so they can move on with their lives or businesses. They cannot wait years for their cases to be heard.

Long trials also place a strain on the courts and the parties in both the criminal and civil justice system. In criminal trials, pre-trial motions and evidentiary questions have become more and more time-consuming. In civil cases, the discovery process, in itself time-consuming, leads to more evidence being placed before the trier of fact, lengthening trials. Expanded use of expert evidence has also contributed to longer trials.

We need to come to grips with these problems, to enable the justice system to provide accessible, efficient and timely resolution of legal issues for the public it serves.

In the past year, since I last spoke to you on this matter, we have seen an important change. We have moved beyond the stage of discussing the problem to the stage of doing something about

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it. Across the country, at both the provincial and national levels, concrete steps are being taken to improve access to justice in the civil and criminal courts.

It is gratifying to see lawyers, law societies, and governments working together to strengthen Canada's justice system.

The judiciary recognizes that it must also play a part in improving access to justice. Everyone must be on the same track. The only way to achieve real and lasting results is for the bench, the bar and government to work together, all in the context of the community which we serve.

To this end, we have met with your President, Parker McCarthy. In June of this year I met with Parker, and several other representatives of the Canadian Bar Association. We had a wide-ranging and fruitful discussion about our shared concerns about access to justice – the problems I have already described of cost and delays which impair access to justice, and hurt public confidence in the justice system. We agreed that this is a problem which no one group in the administration of justice can solve alone. We must work together as judges, lawyers, attorneys-general and other elected representatives to solve these problems. At the end of the meeting, the Canadian Bar Association, and the judiciary made a commitment to work together with other players in the justice system to improve access to justice for all Canadians.

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Les mesures prises à l'échelon national sont importantes. Certes, au Canada, l'administration des tribunaux relève de la compétence provinciale, mais nous pouvons partager l'information et tirer des enseignements de ce qui se fait dans les autres provinces et territoires. De plus, même si une certaine adaptation aux besoins d'une province ou d'un territoire s'impose assurément, une plus grande uniformité de la justice est souhaitable en cette époque où les frontières s'estompent de plus en plus dans la vie quotidienne et dans l'exercice du droit.

We recognize that the problem is multi-faceted and complex. We also recognize that each constituency — bar, bench, and government — are and must remain independent. It is neither necessary nor desirable to cede independence. It is both necessary and desirable that we talk to each other and work with each other, so that all the facets of the justice system — bench, bar and administration of justice — can together provide Canadian men, women and children with excellent and affordable justice.

Thank you. **Merci.**

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