

REMARKS BY/ALLOCUTION PRONONCÉE PAR

BERNARD AMYOT

PRESIDENT/PRÉSIDENT

CANADIAN BAR ASSOCIATION

L'ASSOCIATION DU BARREAU CANADIEN

AT THE MIDWINTER MEETING OF COUNCIL 2008

A LA RÉUNION DU CONSEIL DE LA MI-HIVER 2008

YELLOWKNIFE N.W.T.

Saturday/ Samedi Feb 23 fév, 2007 10H30

Check Against Delivery/Seul le texte prononcé fait foi

These are trying times for one of the central, but also one of the most fragile, underpinnings of a democratic society – the rule of law.

Everyone, including governments, are subject to the rule of law. The law itself must be fair, and free from the influence of arbitrary power.

Il y a dix ans, dans le *Renvoi relatif à la sécession du Québec*, la Cour suprême du Canada nous a rappelé que « la démocratie au vrai sens du terme ne peut exister en l'absence de la primauté du droit ». « À son niveau le plus élémentaire, ajoute la Cour, le principe de la primauté du droit assure aux citoyens et résidents une société stable, prévisible et ordonnée. Elle fournit aux personnes un rempart contre l'arbitraire de l'État. »

Une décennie plus tôt, dans le *Renvoi relatif aux droits linguistiques au Manitoba* de 1985, la Cour voyait dans la primauté du droit « un principe d'une profonde importance constitutionnelle et politique ».

While discussion of the rule of law in Canada is relatively benign, in too many other countries, the rule of law relates to life and death.

History abounds with examples. Millions died in the last century when the rule of law was cast aside by the Nazis; by Stalin during his rule of the Soviet Union and by Pol

Pot in Cambodia. These, and other atrocities point to the dangers of making the rule of law subservient to the rule of men.

More recent decades have seen troubling violations of the rule of law at the hands of dictatorships in Latin America. The “dirty war” of Argentina in the late 70s and early 80s, saw the rise of lawyers and judges against the regime. Many who sought to assert the rule of law were imprisoned, forced to flee, or killed.

In recent years, we’ve witnessed genocides in Rwanda and Sudan. We’ve seen Zimbabwe descend into chaos and economic ruin.

In Pakistan, President Musharraf suspended the Constitution and dismissed the Supreme Court judges. He replaced them with a hand-picked bench that brushed aside legal challenges to his rule. Despite the dangers involved, Pakistan’s lawyers are resisting the imposition of martial rule. Television images show our colleagues being beaten and jailed for defending their belief in justice.

Last September, I attended the Commonwealth Law Conference in Nairobi, Kenya. I met courageous lawyers from around the world who live in countries where the rule of law is in constant jeopardy.

Kenya is teetering on the brink of chaos, after what is widely viewed as a fraudulent election. A recent issue of *The Economist* spoke of the need to “stop Kenya’s

descent into hell.” It is a reminder to all of us how a weakened rule of law leads to societal breakdown.

A travers le monde, des avocats se lèvent pour affronter ceux qui veulent anéantir l’État de droit. Nous savons que la négation de la primauté du droit engendre la négation des droits fondamentaux. Les régimes décidés à supprimer la primauté du droit savent aussi que les avocats forment un rempart contre l’abus.

This is the very reason why they try to silence us.

Even in Canada, we face assaults on the rule of law. A Canadian, Omar Khadr, was arrested when he was 15, a “child” under the terms of the *UN Convention on the Rights of the Child*. For the last five years, Mr. Khadr has languished at Guantánamo.

There is reason to believe that he has been subjected to treatment that is at best degrading, and at worst amounts to torture. He’s been denied basic procedural rights normally afforded to an accused.

His confidential communications with his lawyers have been compromised. His rights under the UN Convention have been ignored.

He is the only Canadian – indeed the only citizen of a Western state – still detained at Guantánamo. Other Western nations – France, the U.K. and Germany – have sought, and obtained, repatriation of their citizens.

L'ABC n'affirme ni la culpabilité ni l'innocence de M. Khadr. Il appartient à un tribunal impartial de prendre cette décision. Néanmoins, nous tenons à défendre son droit fondamental à un procès équitable et impartial. Nous avons réclamé le transfert immédiat de M. Khadr aux autorités canadiennes est en droit de bénéficier de procédures équitables en vertu des lois canadiennes.

Malheureusement, nos demandes au premier ministre Harper d'exhorter le gouvernement américain de rapatrier M. Khadr sont restées sans réponse.

The CBA, along with the Paris Bar and the Law Society of England and Wales, has asked Bar leaders from around the world to endorse a joint statement. We calling for the closure of Guantánamo and the repatriation of Omar Khadr to Canada. I am pleased to report that over thirty other legal organizations have signed so far. We will send the statement to US President Bush, Prime Minister Harper and other world leaders next week.

The *Military Commissions Act of 2006*, is the authority under which the U.S. tries the suspects.

- It subjects the detainees to trial by military commission, solely on the basis of their status as aliens;
- The Act fails to meet the requirements of the *Geneva Convention Relative to the Treatment of Prisoners of War*.
- It permits military commissions to consider coerced statements.
- Relying on claims of national security, it denies defence counsel access to evidence that may be essential to a proper defence.

These measures, and many more, constitute grievous affronts to the rule of law.

Standing up for the rule of law does not in any way diminish the horror of terrorism in the U.S. or other countries. However, with many threats to the basic rights of human beings, the world cannot afford to tolerate Guantánamo.

In Canada, we can be thankful that the issues facing our legal profession are less threatening than those confronting our colleagues elsewhere. We are free to hold convictions about the value of independence of the judiciary and of lawyers without fear of recriminations, detention or death.

Plusieurs de nos collègues à l'étranger n'ont pas autant de chance. Ils ont besoin de l'appui de l'ABC dans leur quête pour assurer le respect de la primauté du droit.

Aujourd'hui, dans un contexte de mondialisation, nous devons raffermir notre soutien à nos collègues à l'étranger et réclamer le respect universel de la primauté du droit.

Durant cette assemblée, nous aborderons plusieurs questions importantes pour notre profession et notre système de justice. Je vous incite, dans vos discussions, à ne jamais oublier la primauté du droit – et notre devoir de la défendre dans le monde entier.

As many of you know, the CBA is working with jurists and legal institutions in many parts of the world to strengthen their legal systems. These are long-term projects intended to ensure that the rule of law becomes entrenched around the globe. But we must also be willing to speak out when the flashpoints of injustice arise – be they in Pakistan, Burma, Zimbabwe, Kenya or Guantánamo Bay. That is certainly one of our most sacred duties as lawyers.

Our challenge is simple: We must remain vigilant defenders of the rule of law. We must ensure that Canadians understand the critical importance of the rule of law to the fabric of our democratic society. There is no doubt. Our advocacy for the rule of law will result in long term benefits for the society in which we live. Thank you.