

REMARKS BY / ALLOCUTION PRONONCÉE PAR

BERNARD AMYOT

PRESIDENT/PRÉSIDENT

CANADIAN BAR ASSOCIATION

L'ASSOCIATION DU BARREAU CANADIEN

TO THE / AU

**COMMITTEE ON FOREIGN AFFAIRS & INTERNATIONAL DEVELOPMENT,
SUBCOMMITTEE ON INTERNATIONAL HUMAN RIGHTS**

**COMITÉ PERMANENT DES AFFAIRES ÉTRANGÈRES ET
DU DÉVELOPPEMENT INTERNATIONAL**

SOUS-COMITÉ DES DROITS INTERNATIONAUX DE LA PERSONNE

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Ottawa, May 5, 2008

Thank you for this opportunity to bring the perspective of the Canadian Bar Association to your deliberations on the Omar Khadr case. I am joined here today by Lorne Waldman, member of the CBA's National Citizenship and Immigration Law Section. Mr. Waldman is one of our experts on anti-terrorism and security legislation.

The CBA is a national association of 38,000 jurists across Canada.

Il nous fait plaisir de vous présenter aujourd'hui le point de vue de la profession juridique. Notre démarche n'a aucun caractère idéologique. Je désire ainsi poursuivre la longue tradition de l'ABC de parler haut et fort, pour se porter à la défense de la primauté du droit et de l'administration équitable de la justice, au Canada et dans le monde. Ni plus, ni moins.

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. What is the rule of law? According to the rule of law, everyone, including governments, are subject to the law. The law itself must be fair, and free from the influence of arbitrary power. Our Association has a long-standing tradition of staunchly defending the rule of law, wherever it's threatened.

Il y a deux ans, l'ABC a vivement exhorté le Canada à demander aux États-Unis de cesser de détenir sans accusation, et sans procès équitable, des combattants étrangers à sa base navale de Guantanamo. Selon nous, les assurances de procédures équitables données par le gouvernement des États-Unis sont insuffisantes. Les tribunaux militaires siégeant à Guantanamo ne respectent ni la primauté du droit, ni les droits de la personne.

Sanctionner de la preuve secrète, sanctionner de la preuve obtenue par la torture, faire obstacle au droit de consulter un avocat, et créer des crimes ex post facto constituent des dénis de justice, anéantissant toute possibilité de tenir un procès équitable.

The CBA is also greatly disturbed by the situation of Omar Khadr, a Canadian held for six years in Guantanamo Bay.

The focus of our concern is the lack of respect for the rule of law. It's easy to provide legal rights to those aligned with popular causes. Our commitment to justice is challenged where the individual is unpopular and accused of terrible crimes. It's at times like this that we must speak out, and defend those rights. This is what the rule of law requires – that we recognize the rights of all, not just the favoured few.

In the case of Omar Khadr, we are speaking about an individual who suffered serious deprivations that violate the international norms to which we, in Canada, are committed.

While the charges Khadr faces are serious, this is no reason to continue to subject him to an illegal process before a U.S. military court. I stress that we are not pre-judging whether Khadr is guilty or innocent, or that he simply walk away if he's returned to Canada. If the Crown finds that charges are warranted, he would be subject to the Canadian criminal justice system.

En août dernier, les délégués à notre conférence juridique annuelle à Calgary, ont ovationné l'annonce des pressions exercées par notre président sur le gouvernement à cet égard. En février dernier, j'ai écrit au premier ministre pour demander à nouveau que M. Khadr soit rapatrié au Canada, pour y subir un procès équitable.

Du même coup, fort de l'appui de nombreux juristes à l'échelle internationale, j'ai fait savoir au premier ministre que la communauté juridique exhortait le président des États-Unis de respecter la primauté du droit, et de fermer la prison de Guantanamo. Notre déclaration était cosignée par le Bâtonnier de Paris et le président du Barreau de l'Angleterre et du pays de Galles. Au total, 34 présidents de barreaux à travers le monde ont apposé leur signature sur cette déclaration commune.

The statement said that few operations in democratic countries, have shown such a profound disrespect for the rule of law, as does Guantanamo Bay. This prison has come to symbolize injustice for some, at the hands of the powerful. Lawyers in Canada, and abroad, see Guantanamo Bay as a travesty of the rule of law.

Let me make our position clear. We do not condone terrorism. We support a strong anti-terrorism act that protects national security. But we must not accept that human rights be sacrificed at the altar of security. If we sacrifice what we hold dear - our Canadian way of life, and our respect for one another – that's too high a price to pay. We must continue to strive to balance national security measures with individual rights.

Canada is the only Western country with a citizen still detained at Guantanamo. France, Belgium, Australia and the U.K. all acted to repatriate their detained citizens. We urge this Government to press for the immediate repatriation to Canada of Mr. Khadr, to be dealt with under the Canadian legal system. Let him answer to any appropriate charges, in a fair and open process. There never was, and there still isn't, any excuse for failing to take this action. I cannot state the case any more clearly.

Thank you for your invitation. My colleague Lorne Waldman and I would be pleased to answer your questions. *Merci.*