

Canadian Delegation to the
Organization for Security & Cooperation
in Europe



Délégation du Canada auprès de
l'Organisation pour la sécurité et la coopération
en Europe

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DELEGATION OF CANADA TO THE OSCE
STATEMENT AT THE OPENING PLENARY OF THE 2008 HUMAN
DIMENSION SEMINAR ON CONSTITUTIONAL JUSTICE, WARSAW
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Canada is glad to participate in this Human Dimension seminar, and we thank ODIHR for organizing it. The agenda is broad and encompasses a number of very interesting, and very actual questions. All of these issues are the subject of debate, to various degrees, in all of the participating States, including in Canada. This should make for a very fruitful exchange of views and best practices.

Canada's constitution goes back to 1867, but was amended in 1982 to include our Charter of Rights and Freedoms. The Charter gave fundamental individual rights and freedoms constitutional protection. Canadian courts thus have a role not only in deciding disputes on the division of powers and jurisdiction, but also to ensure that the fundamental rights recognized in the Charter are not impinged upon by the government. If a law violates those rights, it is the Court's duty to strike it down. And laws indeed have been set aside by the Courts.

A democracy should be based on the rule of law, not the rule by law. The rule of law involves more than a set of rules, but is founded on and encompasses certain minimum, fundamental values. To quote the Chief Justice of Canada: "Rules and rule systems can be good, but they can also be evil. Something more than the very existence of rules, it is argued, is required for them to demand respect: in short, to transform rules into law." Judges are thus called to protect certain fundamental principles as essential to the rule of law and the expression of democratic will. This may include principles recognized at international law, another issue for debate during the seminar. To conclude on this, judges who enforce unjust laws – laws that run counter to fundamental assumptions about the just society – lose their legitimacy.

Another fundamental tenet of democracy is that power must not go uncontrolled, unchecked. An accountable, independent judiciary is a key element in providing this necessary control. Without judicial independence, there cannot be impartial justice. An independent judiciary is a guarantee of the protection of rights and of the rule of law, and ultimately of democracy. Protecting the independence of the judiciary is one of our OSCE commitments.

As our Chief Justice recently said, Canadians can expect justice from the Courts, based on law and evidence. In Canadian courts, corruption and partisanship are non-issues. However, this is not to say that our justice system does not face challenges. One of them is the subject of the 3rd workshop: and that is access to justice. The cost and length of court cases can become obstacles in the pursuit of justice, and so Canadian provinces have developed legal aid programmes to ensure that citizens with limited incomes can have access to legal advice and representation.

Lastly, I would like to note that, in the OSCE region, Canada has been a contributor to projects involving constitutional law, reform and development. For example, Canada has been engaged with partners including the Council of Europe, the OSCE and the UNDP in providing judicial reform and training assistance in the Balkans. This includes a 12 million dollar project through Canada's International Development Agency to help Bosnia and Herzegovina and Serbia strengthen judicial institutions through policy support and strategic development. These projects are aimed at improving democratic governance through improvements in the rule of law, developing accountable public institutions, enhancing transparency and tackling corruption. We also would like to underline the great work that ODIHR performs in assisting participating States in this area.

We look forward to this week's discussions, and wish all participants a fruitful seminar.