



**“The only thing we have to fear is fear itself.”
Franklin D. Roosevelt, 1933**

Canada has been ranked by the United Nations Human Development Index as the most desirable nation on earth in which to live, 10 times in the last 25 years. It is ranked 6th in 2006, behind only Norway, Iceland, Australia, Ireland, and Sweden.

Do we have problems that have to be addressed? Of course we do! But by every conceivable measure there are very few (if any) more desirable places on this planet to live.

As we move into the 2nd half of the 1st decade of the 21st Century do we, as Canadians, have reason to be so fearful of our fellow citizens that we are prepared, indeed willing, to turn our backs on the fundamental human rights and freedoms that have been centuries in the making, and that have arguably attained their pinnacle in our nation?

Ours is a nation governed by the rule of law and due process. As we pointed out in the Fall 2005 *Issue* of **The Reporter**, what that means with respect to the criminal law is that the rule of law requires:

- ⚖ the treatment of all citizens with dignity and respect;
- ⚖ the imposition of penal sanctions as a last resort, when all else fails, and that such sanction be appropriate to the crime and the offender;
- ⚖ the right to counsel; and
- ⚖ the right to be tried by a fair and impartial Court, according to law, and to be presumed innocent unless proven guilty beyond a reasonable doubt.

The foundation for this is found in *Magna Carta*, signed by King John in 1215 A.D. which, by the *British North America Act (Constitution Act 1876)* remains the law of Canada today, and which, by *The Canadian Charter of Rights and Freedoms (Constitution Act 1982)* has been affirmed by Federal and Provincial Governments as fundamental to our Canadian way of life.

Magna Carta states, in *Clause 39*:

“No free man shall be taken or imprisoned or dispossessed, or outlawed or exiled, or in any way destroyed, nor will we go upon him, nor will we send against him except by the lawful judgment of his peers or the law of the land.”

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And in *Clause 40*:

***“To no man will we sell, or deny, or delay,
right or justice.”***

Canadian Judges are amongst the most respected in the world, and with good reason. Because Canadian Judges daily uphold these principals regardless of public sentiment or political acquiescence to such public sentiment. Indeed, it is their sworn duty to uphold these principals – a duty which they take very seriously.

Yet daily we are inundated with messages from the mass media that, directly or indirectly, impugn our Judges for doing the very thing they are sworn to do. Further, we see more and more that some elected representatives, all of whom ought to know better, are taking up this message and demeaning our judges and the court process.

Why is this happening?

As we have indicated in previous issues, we believe that this arises in large part from a fundamental misunderstanding of the role of our Courts, Judges, and criminal justice process. Either that, or it arises from a fundamental disagreement with this role, and a view that the role ought to be something other than what it is – and if it is the latter, that is even more disturbing than if it arises from ignorance.

Our democratic society is based on a tri-partite form of government; each of the 3 arms of government have certain powers and responsibilities, with each “balancing” the others, so that no one arm gains ascendancy (and thereby complete control) over the others. Thus we have the Executive Branch (Cabinet), the Legislative Branch (Parliament & the Legislatures), and the Courts. But Federally, what has happened over the course of the last several decades is that the power and control of the Executive Branch has grown ever greater and at the same time, particularly since the 1980s, not only have we seen a diminishing in the power of the House of Commons, but also in that of the Senate – that other Parliamentary body charged with putting a brake on an overzealous Executive that controls the House of Commons.

At the same time as we have seen this shift in power and control from Parliament, in the form of the House of Commons and the Senate, we have seen a rise in attacks on the Senate for endeavouring to do that which it is charged, by our Constitution to do, and attacks on the Judiciary, who are charged with upholding the Rule of Law, and with protecting the rights and freedoms of all citizens – even those citizens that have been accused of committing crimes.

Indeed, more than in any other instance, the role of the Court is to ensure that the fundamental rights and freedoms of the accused have not been abused by the Executive Branch or its agents, and that any person charged with an offence under our Criminal Law is not convicted unless there has been due process and proof of guilt beyond a reasonable doubt. Further, and upon a conviction, **the Court is charged with passing sentence according to law**, which law is found in the *Criminal Code* in ss. 718 ff., and in the common law.

It's clear that a (vocal) segment of the population is driven by fears (and anger) that are not grounded in fact.

Our legislators are responding to this (apparent) fear in the public, by proposing legislation that they hope will allay those fears; legislation that will have no effect in reducing the anti-social activities that give rise to these fears. Further, they have responded by demeaning our institutions that are operating on a basis of law and fact – primarily the Courts.

Our Leaders would be well advised to consider the words of John F. Kennedy, spoken at his Presidential Inauguration in 1961:

“If a free society cannot help the many who are poor, it cannot save the few who are rich.”

By proceeding on the present course, our Leaders are not, we would respectfully submit, “leading” – they are following. The time has long since passed for our Leaders to stand up to public pressure to do the expedient thing, and instead to do the right thing.



The Charitable Dilemma – Part 6

[In this, the sixth and final of a series of commentaries, Brad Odsen, Executive Director of the John Howard Society of Alberta concludes his examination of issues impacting charitable organizations across Canada, with particular relevance to those in the human services business, including the John Howard Societies in Alberta.]

I had hoped to conclude this series on an optimistic note by indicating that there has been some change in the funding policies that I have been talking about over the course of the last 3 years.

And yes, there have been some very recent initiatives undertaken by the governments of Canada and Alberta that have the avowed purpose of addressing the crises in the charitable sector and strengthening our volunteer organizations.

The Government of Canada struck a “Blue Ribbon Panel” in the Spring of 2006, charged with seeking input from the charitable sector from across Canada on issues that government could address to strengthen the sector. We responded to the Panel’s call for input by providing it with a copy of the first 5 commentaries of “*The Charitable Dilemma*”.

The Report from this Panel is scheduled to be delivered to Parliament in the very near future and we can only hope that our government follows the advice that we believe the Panel will be providing – certainly there is nothing being said by us that isn’t being said by charitable organizations from sea to sea to sea. But that same government’s recent actions in “cutting” \$1B in funding for programs operated by, or directly impacting, charitable organizations, leaves us less than optimistic. Particularly in light of a further “commitment” by this government to “cut” a further \$1B in funding.

The Alberta Government has also taken an initiative, called the Alberta Nonprofit/Voluntary Sector Initiative, which is looking not only at the (primary) issues of sustainability and capacity of community organizations in Alberta, but also ways in which the Alberta Government can work more effectively in partnership with community organizations. This, it seems to me, has the potential to have a significant impact on the way in which the government of Alberta does business with community organizations, and we are looking forward to our opportunity to become

involved in the work being undertaken by this initiative. One thing that we find particularly insightful about this initiative is that it is a cross-ministerial initiative, with significant support from Ministers and Deputy Ministers of all of the Ministries that do interact on a regular basis with the voluntary sector.

Hopefully, in the Spring 2007 *Issue* of **The Reporter**, I will be able to provide you an update on these two government initiatives that will indicate that the changes the charitable needs to see happen have begun to happen.

The Reporter, a publication of the John Howard Society of Alberta, is distributed free of charge to a wide audience of citizens, educators, agencies, and criminal justice staff. Our goal is to provide information and commentary on timely criminal justice issues. We welcome and encourage your feedback on The Reporter.

The John Howard Society of Alberta is an agency composed of citizens in Alberta who are interested in criminal justice reform and preventing crime in our communities. We recognize that dealing with crime is the responsibility of the community as well as public agencies.

We gratefully accept donations to help offset the costs of our efforts in criminal justice reform and crime prevention. Donations are income tax deductible.

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Happy Holidays!

Happy New Year!



Best wishes from the staff at:

