

## **PRO BONO CONTRIBUTIONS TO IMPROVING ACCESS TO JUSTICE IN CHINA.**

### **BACKGROUND:**

The Canadian Bar Association (CBA) is a professional, voluntary organization formed in 1896. Today, the CBA represents some 37,000 lawyers, judges, notaries, law teachers, and law students from across Canada. Approximately two-thirds of all practicing lawyers in Canada belong to the CBA. The CBA also maintains strong institutional linkages with Canadian legal institutions, non-government and private organizations and legal information networks, including ministries of justice, all levels of the courts, provincial legal aid agencies, universities, libraries, law firms and community-based legal organizations.

Since 1990, the CBA has delivered justice system reform and modernization programs in 30 countries across Asia, Africa, the Caribbean and Central Europe. The mission of the International Development Committee (IDC) is to promote the rule of law in developing and transitional countries. Our vision is that the rule of law will be enhanced within the countries in which the IDC works. Rule of law is essential for sustainable social, political and economic development, the respect of human rights, the protection of personal security and the reduction of poverty. It includes:

- Strong and independent legal institutions, including the legal profession and the judiciary;
- Laws that are developed through democratic and participatory processes and that reflect accepted social values and meet recognized international norms;
- Access to justice by all members of society through accessible institutions, fair and efficient administrative processes, public access to information and the availability of legal aid for those in need;
- Full respect for human rights, including equality rights; and
- Government that is accountable and transparent.

The current strategic priorities of the International Development Program are:

- Improving the administration of justice;
- Access to justice through legal aid programs and legal outreach;
- Supporting policy reform and rights advocacy, with particular focus on

rights of women, children and vulnerable minorities;

- Strengthening the legal profession;
- Fostering institutional collaboration nationally and internationally

In pursuing these strategic priorities the CBA has engaged in a wide range of justice reform projects, including: institutional capacity building, policy and law reform, the administration of justice, access to justice (including juvenile justice, legal aid and community outreach programs), constitution building, justice system review and professional skills and substantive law training. Our programs are structured with local partners – including governments, the judiciary, national and provincial bars and civil society organizations – and are responsive to their needs.

The CBA has been working in Asia since the mid-nineties and currently has ongoing collaboration programs with the legal profession in China, Vietnam, Laos PDR, Cambodia and, more recently, Nepal. We also have projects supporting the Ministry of Justice in China to design, deliver and expand legal aid services and with the Ministry of Law and Parliamentary Affairs of Bangladesh to develop and strengthen legal aid, juvenile justice and alternative dispute resolution. All our programs are funded with outside funding sources, primarily the Canadian International Development Agency.

The CBA's International Development group is able to draw on the substantial resources of the CBA's national and provincial branch offices across Canada. The CBA's ability to engage a broad range of stakeholders and access highly qualified experts is a core strength of the CBA's international programs. More than 500 legal professionals have provided support to the CBA's international programs to date, in professional exchanges, training delivery and program design, seminar presentations in their areas of expertise and developing courses and training materials for use in the program. CBA members also give many volunteer hours to sitting on project design and advisory teams, ensuring that our programs are supported by many of the most leading senior and well-respected legal experts in the country. For specific ongoing projects, where appropriate, advisory committees consisting of senior legal practitioners have been established to provide specialized expertise for the life of a project. This ensures continuity in support and knowledge. Lawyer networks are also organized to support the projects with legal opinions and research and as a conduit for educating the Canadian legal community in rule of law and development issues.

## **CHINA:**

### **CBA/All China Lawyers Association (ACLA) Collaboration**

In 1994, the CBA became the first foreign bar association to sign a cooperation agreement with the All China Lawyers Association (ACLA). Our program began in the context of China's rapidly developing legal system with an exponentially expanding and newly privatizing legal profession. The challenges for the organization and professionalization of the legal profession were enormous. Our initial program focused

on supporting the ACLA efforts to strengthen its institutional capacity to take on the role of supporting and representing the legal profession, including developing the skills of its members. We worked closely with the ACLA to identify priorities and design training programs, materials, study tours and placements to help achieve these priorities.

Canadian lawyers, judges and academics from across Canada participated on a voluntary basis in the program sharing their Canadian and comparative experiences and supporting their Chinese colleagues as they worked to develop and evolve an appropriate Chinese approach. Our Chinese colleagues have also worked on a pro bono basis throughout our collaboration program, with many from the Criminal Law Committee donating countless hours providing input to the preparation of the criminal procedure law reform recommendations and organizing and implementing training programs and public legal education activities.

Since 2004, the CBA has supported the ACLA's efforts to mobilize and engage their membership in criminal law advocacy and reform. Criminal defense lawyers are on the front line in defending basic human rights in the criminal justice system. The criminal justice system in China remains rife with incidents of torture, arbitrary detention and denials of due process. Despite these obstacles, China's lawyers are starting to play an increasingly active role in encouraging reform and fostering public awareness of legal rights.

This four-year project includes technical assistance to the ACLA to develop and expand the work of its Criminal Law Committees (CLC), professional skills training for criminal lawyers, capacity building to support advocacy for reforms to the criminal laws and the promotion of greater public awareness of the role of lawyers in the legal system in general and the criminal justice system in particular.

The project is educating lawyers and the public in every province in China about human rights standards, including the presumption of innocence, the right to silence and the right to counsel. Through extensive advocacy training, the project is also training lawyers to become better advocates for their clients. For many, it is the first opportunity to learn about how a Western criminal justice system works in practice, how and what human rights are protected and the important role that lawyers play in asserting clients' rights.

The ACLA has used knowledge of the Canadian justice system and international legal standards gained through this project to call for the Chinese government to introduce significant reforms to the criminal justice system that directly impact on human rights. For example, the national CLC, through broad consultation with its membership, submitted an extensive and detailed proposal to the Chinese government to reform China's criminal procedure law and enhance legal protections for those suspected or accused of crimes. Also, the CLC is now drafting Death Penalty Defense Guidelines that would create a role for defense lawyers in reviewing death penalty cases before appellate courts; currently, defense lawyers have little or no role in this process.

Finally, the CBA-ACLA project supports the ACLA in its evolution from an arm of China's Ministry of Justice (MOJ) to a civil society organization with an independent voice

from that of the government. Since 1994, the ACLA has made structural and institutional changes that demonstrate increased independence. For instance, the association is now almost entirely financially self-sustaining, and, unlike in previous years, the presidents of the national and most provincial level branches come from the private bar rather than the MOJ. With this increased institutional and structural independence comes a stronger voice in advocating for reform.

## **Legal Aid and Community Legal Services**

Improving laws and building the capacity of defense lawyers to use those laws effectively is critical to protecting basic human rights. But for many, those rights are meaningless without access to justice.

In many countries, including China, the poor and disadvantaged are confronted by corruption, lack of accountability, abuse, violation of rights and discrimination at the hands of landlords, employers, local government officials and agencies, police and spouses. Laws and regulations can discriminate against poor and other disadvantaged groups or be arbitrarily and inequitably applied and enforced to the detriment of those groups. The result is that the poor, and particularly women and other disadvantaged people, often have problems accessing basic services and entitlements, obtaining social and economic benefits and asserting their rights and interests. This increases their marginalization, limits their participation in society and impedes them in addressing their own deprivation or improving their own living conditions.

These individuals are limited in asserting their own rights by constraints they encounter in using the legal system to address their concerns. These barriers include high costs, limited legal knowledge and awareness, low quality legal representation and a lack of confidence in the legal system.

One of the most effective ways for such groups to gain access to legal benefits and protections is through effective and efficient legal aid services. Legal aid services can provide free, competent legal representation and advice, and promote public access and understanding of legal rights. Legal aid helps people access the legal system to assert their rights within and outside the formal court process. Legal aid also helps such people collect their entitlements, obtain basic services, seek administrative review of government action and redress against arbitrary or corrupt decisions of local government officials and get court orders to protect women from domestic violence.

Legal aid and community legal services in China are in the early stages of development. The Canada-China Legal Aid and Community Services Project began in 2004 with the goal of strengthening China's legal aid and community legal services system and enhancing the capacity of China's MOJ in this area. This project focuses on integrating and coordinating the legal aid system, providing training and development for legal aid workers and increasing public awareness and information.

The project has already resulted in the creation of Model Legal Aid Centres (MLACs) in four provinces, each with increased funding from local governments and staffing support from legal professionals, the judiciary and academics. The MLACs have reported significant increases in the number of cases they can handle, and point to specific instances where they have played an important role in resolving matters such as difficult family law and labour rights disputes.

In one case, the Changsha Municipal Legal Aid Centre helped bring the issue of discriminatory practices against rural households to the forefront. While riding on a municipal bus, a man fell over and died. His family was initially refused compensation, but after legal aid lawyers took on the case, they found evidence that the man was flung to his death because of the driver's actions. The family was awarded substantial damages in court, but an appeal court later reduced the award because the victim was part of a rural rather than urban household. This triggered considerable media coverage and public debate, and China's Supreme Court is now considering the issue.

Other activities flowing from the project include advocacy for legislative improvements to protect women from domestic violence and sexual harassment, and the broader recognition of the need for adequate social support services for victims of domestic violence.

In terms of pro bono, all the training and legal aid technical support was provided voluntarily by legal aid lawyers from Legal Aid Ontario and from the membership of the CBA. While the project largely focuses on strengthening the administrative capacity of government legal aid clinics, the legal aid services that they are administering are most often provided pro bono by Chinese lawyers. Chinese lawyers are currently required to provide a fixed number of pro bono legal services on an annual basis.

## **CONCLUSION:**

There is an increasing consensus that improved development outcomes are associated with higher levels of rule of law. From the CBA's perspective, rule of law is critical for economic, social and political development, the respect for human rights, the protection of personal security and the reduction of poverty and the CBA has made a commitment to work to contribute to advancing the rule of law nationally and internationally.

The following are some of the lessons that we have learned through our national and international work and that inform the CBA's international rule of law programming, including our access to justice programs in China:

- 1.** Rule of law requires established legal institutions that have the capacity to take on their proper role, including a strong and independent bar. These institutions can be effectively strengthened through collaboration and partnerships. Building institutional relationships and sharing institutional learning and experience in capacity building, law reform, continuing legal education, public legal education, regulation and all other issues and challenges that face the development of the bar can enrich and strengthen not only the developing bar but the developed partner bar.

Bar associations not only bring their institutional capacity but their institutional connections and the expertise and experience of their members to the collaboration. They are able to call on top legal experts from every sector of the justice system, government, academia, private practice, government and non-government organizations and the judiciary to engage in the program. In developing countries this often means that they are the champions for change. Moreover, through their networks and memberships they are also able to disseminate and share learning to ensure that the profession and legal system broadly benefit from the exchange and will lend a strong voice where needed to support change.

**2.** Strategic and multi-stakeholder engagement are needed to achieve and sustain long term rule of law reform. With their diverse memberships and institutional linkages, bar associations are able to bring together all the stakeholders of the legal system: government and private lawyers; judges; prosecutors; academics; members of the public; and other civil society and government organizations. It has been the CBA's experience in Canada and internationally that the engagement of all of relevant the stakeholders is required to build the rule of law and achieve sustainable reforms. By way of example, in our Legal Aid and Community Legal Services project the Local Advisory Committees that were established for each of the MLAC's included representatives from the public, the bar and the judiciary. The result was broader engagement, collaboration and commitment to the design and delivery of legal services and a more effective program.

**3.** Building the rule of law cannot be successful without champions in the host country. Projects need to be responsive and to be owned locally. Our partners generally know where they want to be, but they often simply lack the capacity, experience and tools to get there. It is our responsibility to support their process with the best comparative technical assistance we can provide. Most often this is a capacity building exercise so that they can take on the task themselves. In the case of the Criminal Law Reform and Advocacy Project and the CLC, we are now running to catch up!

**4.** Which leads to the next point, rule of law programs need to be iterative, that is, they have to build on lessons learned and adapt to changing circumstances. In our Legal Aid and Community Legal Services Project, our training sessions are designed collaboratively, integrating the lessons learned from past trainings and the feedback from the implementation of the newly acquired skills. As a result, the training has become much more frequent, focused and applied to reflect the expanding skill levels of the participants and is therefore more effective.

**5.** The impact of rule of law programming is long term and requires a long term outlook and commitment. It also requires resources that are appropriate to the task. We try to work with the same partners over an extended period of time to ensure a strong and effective working relationship. Not only are these relationships mutually and institutionally rewarding but this approach increases the long-term sustainability of our projects and reduces the risk of one-off events becoming simply public relations opportunities. Our Criminal Law Reform and Advocacy Project built on our long term

relationship with the ACLA which not only helped us ensure its success but also to access the necessary additional resources to implement the program.

**Robin Sully**

**Director International Development**

**Canadian Bar Association**

**September 4, 2007**