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**SPEAKING NOTES**  
**Tom Marshall, Q.C.**

**THE ANATOMY OF CORRUPTION IN CANADA:ITS CAUSES AND  
PREVENTION**

When Bronwyn asked me – one of the newest members of Transparency International- to participate in a panel discussion entitled : The Anatomy of Corruption in Canada: Its Causes and Prevention I was only momentarily hesitant about accepting the invitation.

My hesitation ( very brief) reflected my experience of public administration in Ontario over more than 30 years and my perception that corruption at least as defined by TI was not an established persistent presence distorting decision making within a democratic political context.

There have undoubtedly been instances of the abuse of power ( and corrupt practice)by elected and non elected officials over the years <sup>1</sup>but the courts have largely dealt with such matters. A fundamental principle of what we refer to as the rule of law is the right of citizens affected by government action to challenge the exercise of power in the courts. Coupled with this is the institution of an independent judiciary (separate from and as far as possible not subject to government control)

To ensure that courts are able to exercise independence in decision making (free of any direct government interference) has required government to relinquish a degree of power and accept that while its decision making is not necessarily subordinate to the opinion of non elected judges the processes in particular by which decisions are made may be reviewable. No doubt the intervention of the courts may seem to public officials as at least an inconvenience but is generally recognized as necessary. In matters of public administration the risk of judicial review can and should be identified as a risk and addressed as part of the decision making process.

This was one of the matters I considered before accepting this invitation.

The second matter of reflection arose out of my experience as government counsel serving in the Ministry of the Attorney General. The attorney general is by law (and the

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<sup>1</sup> Roncarelli v. Duplessis e.g. a decision that grappled with the notion of abuse of power but which sat out there as a reminder to public officials that conduct whether for what might be considered a proper public objective or not and regardless of motive would not be condoned! This opinion given by the SCC remained and remains still largely a matter of reference but not much reflected in the jurisprudence.

constitution) responsible for the supervision of the administration of justice in Ontario. The Attorney General is accountable for matters of the administration of the law politically. The Attorney General is the largest employer of lawyers in Ontario (over 1300). These lawyers are involved in most decision-making activities and have front row seat so to say in the process.

There is now a long standing tradition that lawyers ( both in the public sector and the private sector ) have a professional obligation to promote and maintain the rule of law and indeed it is partly this obligation that distinguishes lawyers from any other profession or civil society organization in the influence and importance of its role in civil society.

So while I cannot speak directly about corruption in Canada ( others may provide individual examples) I can perhaps talk about conditions that if they were met in society to a significant degree would promote the development of traditions of confidence that the powers of government would be exercised in accordance with the precepts of the rule of law!

So I want to talk a little about the culture of law and to emphasize that to promote the development of a culture that values the rule of law it also has to value human rights and to recognize the essential dignity of each of the governments subjects. this process and the road that might eventually lead to a culture where the societies values are shared and supported by the bulk of the citizenry, is long and arduous.

What might be the characteristics then of a society that militates against the establishment of a culture that accepts corrupt practices (with or without bribery of public officials) as a norm?

I have supposed above that in Canadian experience (among others) the following:

- 1) A culture reflecting a general support for rule of law institutions and the perception that the law will be applied fairly and so far as possible predictability exists. And that human rights and equality before the law are actively supported.
- 2) This perception is founded on the existence of an independent judiciary (and, I would add, professionally trained) ;
- 3) An independent bar conscious of its role in society and, I note , the source for the appointment of judges)<sup>2</sup>
- 4) An Attorney General who is publicly accountable for the administration of justice supported by a large group of professionals
- 5) I add here an independent and free press
- 6) A permanent and professional civil service
- 7) A government that recognizes that its function is to serve the interest of the people it governs and which recognizes the essential nature and value of those matters I have just referred to.

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<sup>2</sup> Judges in some European countries are specially schooled as professionals – a separate legal profession

These points and others are related (relief from poverty, improving educational standards and literacy and a responsive affordable health system) and form an interdependent matrix that requires constant maintenance and vigilance. Trying to promote say the establishment of an independent judiciary in a country like Myanmar is an hopeless endeavour when the government will not tolerate it and where the populace would have no confidence in the justice of any resort to the courts.

Promoting the establishment of the rule of law is a complex matter and can be greatly assisted by engaging civil society organization if possible. The process is iterative and gradual as a comfort level is developed that these are principles that can be broadly supported. There are all kinds of reasons why this process would be resisted. The challenge may be to assist in the development of a culture that respects the rule of law short of a major civil upheaval. This requires attention to all of these matters.

If this sounds like a description of a gradual transition in the international context to increasing democratization, that is the case. But democracy is messy and requires a constant process of open discussion and compromise. All of the main participants in the society have to buy into this model.<sup>3</sup> If the US or Canada are taken as examples it has taken 200 years to reach this point of perhaps uncertain achievement.

Some of these points will be discussed at the “World Justice Forum” to be held in Vienna in early July. Among the sponsoring organizations are Transparency International USA, the American Bar Association and the Canadian Bar Association. The World Justice Forum is an initiative of the ABA developed within the “World Justice Project” This project is a multi national multidisciplinary initiative to strengthen the Rule of Law Worldwide . It is building a broad and diverse constituency that will advance the Rule of Law as a foundation for thriving communities. The forum will be the launch pad for the Project.

As the web page for the World Justice Project puts it: “A fair functioning system of laws is the foundation of communities of opportunity and equity. In the absence of the Rule of Law, violence, poverty, corruption, sickness and ignorance flourish”.

The emphasis, however, is on a recognition that for the Rule of law to flourish all stakeholders must be participants and they must proceed in concert with each other to achieve a common purpose.

The World Justice project is a project of the American Bar association. The current President of the American Bar Association William Neukom in his message in the latest ABA Journal places his organization squarely behind this initiative. The ABA has for some time now focused on initiatives to promote the Rule of Law internationally. It is significant that diverse non legal groups representing other disciplines and civil society organizations are recognized as necessary participants.

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<sup>3</sup> Are there other models that implement what we refer to as the Rule of law?

The Canadian Bar Association has for some years undertaken projects overseas to promote and strengthen the Rule of Law emphasizing the building of capacity to both promote and sustain support for the Rule of Law. The cultures involved need to undergo changes.

So based on my experience and I suggest yours as well in Canada what have we learned about the potential for corruption to develop a significant presence here? I suggest that the culture within government reflects the responsibility of the bureaucracy to serve the public interest; that politicians are for the most part earnest about their desire to serve their communities and their country and those civil society organizations in all their diversity insists that governments honour their responsibility to serve the interests of the people. Governing is collaboration between those in Canada elected to govern and those who are asked to submit to being governed. As a democracy this is messy but generally works.

No single initiative can create a state where the Rule of Law reigns supreme. Without a consensus broadly based within all sectors of the community it cannot be achieved at all. Our experience in Canada can suggest a range of initiatives however which can contribute to achieving the Rule of Law objectives. There needs to be fertile soil and a receptive environment which supports change. So for example in recognizing that an independent judiciary is a sine qua non it is necessary to understand that government organizations must recognize this and be prepared to submit to the judgment of judges who may take issue with governments desires. A strong independent bar is essential to promote the Rule of law and organizational assistance to assist law associations to develop and maintain the highest possible standards for their profession and to educate the public about the rule of law is important. There must be, however, a willingness to engage in the transformation of a society from one not fully committed to all that embracing a rule of law profile entails to one where the hopes and aspiration of all members of the society can be sought within a rule of law environment.<sup>4</sup>

So at home here in Canada can we in a self satisfied way claim to be free from I presume the temptation to pervert the course of public administration to engage in corrupt practices and to shelve any pretext to affording equal treatment in the administration of justice? I think that with a cautious amount of vigilance the answer is yes. Government in Ontario is free for the most part from opportunities for personal gain at public expense. The prevailing culture as distinct from the law ( although that too) does not condone self serving behaviour. The one who would betray a public trust is alone in that endeavour?

Too naive?

I don't think so

A culture that respects the rule of law.  
Public servants who are committed to public service

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<sup>4</sup> Role of primary education and the development of ethical/moral principles

Public servants who are ethical in their conduct (who don't need to be told and can differentiate between right and wrong).

But there are an Ombudsman, Independent public auditor, Integrity Commissioner, Ethics Commissioner, Freedom of Information and protection of Privacy Commissioners. There are proposed or existing whistle blowing legislation depending on where you are in Canada. There are laws dealing with lobbyist registration and election financing laws. This all quit apart from the criminal code.

How are we to view all of this? Is this what the public demands? Is it a reminder if indeed any reminder is necessary that the standard of public service is a high one.