

INTERNATIONAL DEFENCE BAR GETS A VOICE

Barbara Bedont
Ontario Law Times
July 17, 2002

Canada recently hosted a conference to create the first ever International Criminal Bar (ICB). The ICB will be an organization for lawyers who will be practising at the International Criminal Court (ICC).

The conference, held in Montreal on June 13-15, was attended by over 350 lawyers from 80 countries, including across Canada. It was organized in anticipation of the operational takeoff of the ICC, envisaged for 2003.

The ICC will be a permanent court based in The Hague, Netherlands, that will try individuals for genocide, war crimes, and crimes against humanity. The treaty to create the ICC came into force July 1.

The ICB will be separate from the existing International Bar Association, which includes lawyers that practise mostly private international law. In contrast, the criminal law association will be the first international bar to assist lawyers practicing at an international court.

The establishment of an ICB is aimed at empowering lawyers in their dealings with the ICC. It was inspired, in part, by problems encountered by defence counsel working at the two ad hoc tribunals for Rwanda and the former Yugoslavia, which are currently trying war criminals.

For example, defendants at the two tribunals have not been able to retain lawyers of their own choosing, and proceedings have been long and protracted. Lawyers working at the tribunals have had limited power to fight against these problems because of their lack of a collective voice.

“Defence counsel have been shortchanged at the tribunals,” argues Toronto lawyer Peter Zaduk, who attended the conference. For this reason, he says, “the ICB needs to be a strong voice for defence in order to put the brakes on this.”

Zaduk has first-hand experience with some of these problems. One of his clients, a defendant at the Rwanda tribunal, wanted Zaduk as his counsel. He was denied his choice and instead appointed a Dutch lawyer by the tribunal’s registrar.

The incident was the latest in a series of problems regarding Canadian lawyers. For a while, the tribunal had imposed a moratorium on Canadian lawyers, saying there were too many Canadians representing defendants there.

Canadian lawyers do, in fact, constitute a disproportionately large number of the defence counsel at the tribunals. Defendants have favoured Canadian lawyers because of their fluency in French and English.

Moreover, their experience in a common-law adversarial system — the system used at the tribunals — puts them at an advantage over other French-speaking lawyers who come from a civil law system.

“Canadian lawyers are naturals for this work,” notes Zaduk.

While Ontario lawyers have been slow to get involved in international criminal law work, Quebec lawyers have been particularly active at the tribunals.

“The whole ICC crept up on people,” Zaduk says, “Once they become more aware of the ICC, Ontario lawyers will soon catch up with Quebec lawyers.”

Some Canadian lawyers attended the Montreal conference with a view toward practising at the ICC in the future.

“More and more, Canadian lawyers are asking about the ICC and are interested in knowing how they can get involved,” says Donald Piragoff, senior general counsel at the Canadian Department of Justice.

Leo Adler, another Toronto lawyer at the conference, hopes the ICB will help to prevent the politicization of the ICC.

“Only criminal defence lawyers will be able to counter any politics intertwined with the ICC. The problem is that criminal defence lawyers are a very small group. And we don’t have financial resources.”

While the conference ended with the agreement to create an ICB, many details remain to be worked out. Some of the issues include the relationship between the ICB and national bars, and whether the ICB should engage in advocacy on behalf of both victims and defence counsel.

The statute for the ICC allows for victims to participate in the proceedings through legal representatives. The ad hoc tribunals do not have this option. Some defence counselsee the involvement of victims’ groups in the judicial process as compromising the independence of the court.

However, the ICC statute was hailed by many human rights organizations for its provisions allowing victims to participate in the court’s proceedings.

“The single greatest area of controversy,” says Zaduk, “is the relationship between the ICB and victims’ counsel. Lawyers from common-law systems saw an inherent conflict

of interest [in including both defence counsel and victims' counsel in the ICB]. The ICB will have to figure out who they are.”

The Montreal conference was organized by bar associations from Quebec, Mexico, Germany, Senegal, the Netherlands, and France, on the initiative of the International Criminal Defence Attorneys Association based in Montreal.