

Independent judiciary vital for Afghanistan

By Cristin Schmitz
Ottawa

The absence of an independent judiciary and “centralized rule of law” in Afghanistan means that working with local warlords and other regional powerbrokers is likely the lesser of many evils, including igniting a new civil war in a country ravaged by conflict for more than 25 years, says the Canadian army general who commanded NATO’s Task Force Kabul.

“I have had dinner with some of the most ruthless, breathtakingly cruel, focused, power-hungry men in the world,” Lieutenant General Andrew Leslie told a conference sponsored by Canadian Lawyers Abroad at the University of Ottawa’s Faculty of Law last month.

“Warlords arguably are the curse of our age,” Leslie observed. “They could be eliminated [in Afghanistan] because ... soldiers, where we have discernible targets that have broken the rule of law and pose a threat to us or those whom we are charged to protect, we do really unpleasant things, so they could be eliminated.”

But he warned “if you do so ... think through the second- and third-order consequences, because warlords surround themselves with minor warlords.

“In the absence of centralized rule of law, the warlord vacuum would be filled by somebody else. And because he is a minor warlord being moved up to a major war-

lord, the other minor warlords will probably try to take him out on the way up, which in turn could trigger a civil war.”

Leslie called the institution of an independent judiciary “arguably the single most important” contributor to a well-functioning society.

But as Afghanistan has yet to develop one, the country’s president Hamid Karzai, and the UN’s



Andrew Leslie at the University of Ottawa

former special envoy to Afghanistan, Lakhdar Brahimî — described by Leslie as “very wise men”—both opted to work instead with the local established power brokers “rather than having them eliminated,” said Leslie.

“Sometimes it is better to deal with the devil you know, than to create rippling effects of instability by eliminating him and going to the next one,” he suggested.

Alluding to the U.S. removal of Iraq’s Sunni-dominated Baathist regime, he added “think of other

international ventures where the entire power elite were not eliminated, in the sense that they were killed, but were disenfranchised with the stroke of a pen. And what happens? The society ... just imploded.”

Leslie remarked that Afghan warlords, some of whom are also drug lords and Taliban sympathizers, are mostly “grumpy” men between the ages of 40 and 60. “Their primary pursuit is not the furtherance of one of the world’s great religions. It is not societal development. It is the acquisition of power and domination, and control over women, land and resources.”

Asked to react to the recent proposal of the Senlis Council, an international security and development think tank, that controversial forced poppy-eradication programs in Afghanistan be dropped in favour of licensed poppy farming to produce opiates like morphine and codeine for sale on the legal international markets, Leslie did not dismiss the idea.

“I do know that new ideas have got to be tried because every old idea hasn’t worked,” said Leslie, who was promoted to Commander of the Army last year.

“Crop eradication has not worked in Canada. Why should it work in Afghanistan?” he queried.

For the poppy farmers forced

see LESLIE p. 5

LEGAL briefs

Goodman and Carr calls it quits

Mid-sized Toronto firm Goodman and Carr LLP is shutting its doors following a steady migration of partners to competing firms.

The firm’s partners met Tuesday evening at the firm’s head office in downtown Toronto and voted to dissolve the 42-year-old commercial and litigation law firm.

The approximately 85 lawyers and 170 support staff were officially notified of the decision on Wednesday morning.

“Rumours have been swirling for a while,” says Susan Kennedy, managing consultant with the Toronto office of ZSA Recruitment. “Everyone on the street knew that Goodman and Carr had been having difficulty.”

A source within the firm says, “There were certainly problems that were identified along the way but it shows a lot about the capability and common sense of the partners to take this bold step. And it’s the right step. It’s in the best interests of our clients and the firm.”

It’s believed that after failed merger discussions with the Chicago-based firm of Baker & McKenzie last month, senior partners began looking to competing firms, which resulted in a mood of great uncertainty within the firm.

Steve Watson, a partner in the corporate and commercial group at the firm who is overseeing the dissolution, says that although the exodus of lawyers to other firms was an aspect in the firm’s demise, “the decision can’t be traced to any one factor.”

Kennedy says that she started taking calls from lawyers prior to the actual demise of the firm but spoke to several on Wednesday morning.

The firm’s closing is believed to be the largest law firm closing in Canadian history, following Toronto-based Holden Day Wilson’s demise in 1996.

Goodman and Carr has been working with Hildebrandt International, a consulting firm with roots in the legal industry, to boost its position in the competitive marketplace.

“At the end of the day, it’s just a really unfortunate situation. It was a great firm with a really long history,” says Kennedy.

The firm will cease to carry on active business on June 6. *By Jennifer Allen*

Costs assessed at \$160,000 for one-day motion

A divided Ontario Divisional Court has upheld an order requiring Jazz Air Inc. to pay costs of \$160,000 plus disbursements and GST for a one-day motion in *Jazz Air LP v. Toronto Port Authority*, [2007] O.J. No. 809.

Relying on the “high degree of deference” to be accorded a judge’s decision regarding costs, Justice Gladys Pardu acknowledged, “Although the costs awarded are enormous, Spence J. did not err in principle, nor was he plainly wrong to award the costs he did.” Justice Dennis Lane concurred.

Justice Pardu also referred to the “flock of senior counsel” arguing the motion and noted, “It was open to Spence J. to award costs on a substantial indemnity basis because of the unsubstantiated allegations of conspiracy and improper conduct and because of the tactical approach to the timing of the motion.”

In dissent, Justice Ted Matlow would have reduced the costs by half. He held that reasonableness is the overriding principle, even more “now that the grids have been eliminated.”

He stressed the importance of judges taking the reasonable expectations of the parties into account in their assessment of costs: “An amount that exceeds those expectations should be awarded only sparingly and only if it is clearly justified by the circumstances. If there were ever to be a trend showing that awards of costs have risen far above such expectations, litigants would likely lose confidence in the administration of justice and would be unwilling to take the risks inherent in litigating in our courts.”

As Justice Pardu explained, “Porter Airlines planned to begin passenger flight operations there and had purchased \$500 million worth of new aircraft. It had a tight construction schedule for renovations to start March 1, 2006. Grant of the injunction restraining termination of the lease for the premises occupied by Jazz would have had catastrophic consequences for Porter Airlines.”

Porter had heard rumours of the pending motion some days earlier and had begun to prepare for the motion.

Donald Jack and Brian Radnoff of Lerner’s LLP acted for Jazz Air. Jack was not available for comment, but his office advised that they have received no instructions regarding leave to appeal.

Robert L. Armstrong and Orestes Pasparakis of Ogilvy Renault LLP acted for the respondents. Pasparakis told *The Lawyers Weekly*, “Certainly the circumstances leading up to the motion were unusual and they justified the costs. These cases are always fact specific and the court looks at what’s at stake and at the expectations of the parties.” *By John Jaffey*

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