As Chief Justice of the Supreme Court of British Columbia, I am responsible for the administration of the Court. In keeping with the principle of judicial independence, a Chief Justice will rarely comment on the rulings of other judges of the Court, and I do not intend to do so in the comments that follow. I do, however, feel compelled to respond to attacks that undermine public confidence in the rule of law and the judicial institution itself. I refer to recent opinion pieces by Ian Mulgrew concerning Cotton v. Berry and Cambie Surgeries Corporation v. British Columbia (Attorney General).

I do not wish to suggest that courts should be immunized from media scrutiny. In R. v. Kopyto, Mr. Justice Cory, then at the Ontario Court of Appeal, stated that judges are to expect criticism, even intemperate criticism, because of their role in democratic society: "Some criticism may be well founded, some suggestions for change worth adopting. But the courts are not fragile flowers that will wither in the hot heat of controversy. … They need not fear criticism nor need they seek to sustain unnecessary barriers to complaints about their operations or decisions."

Comments critical of the decisions of judges are perfectly acceptable. Those that misconstrue the facts of a case or its procedural history, or that disparage the personal integrity of a judge, in my view overstep the bounds of responsible journalism, mislead the public, and threaten to unfairly bring the administration of justice into disrepute.

In the face of unwarranted criticism about a judge or the Court, the legal profession has special responsibilities to uphold the independence and integrity of the courts by speaking out publicly. That is what happened last month, when the Law Society of British Columbia and the BC Branch of the Canadian Bar Association responded to the inflammatory column by Mr. Mulgrew concerning the divorce case Cotton v. Berry decided by Justice Gray. I agree with and adopt the comments expressed by member of the profession and retired Chief Judge Carol Baird Ellan regarding Mr. Mulgrew's commentary on the case and the unforeseen tragic aftermath.

The subsequent article titled "Medical trial showcases legal complacency" inaccurately and unfairly misconstrues the procedural history and nature of the Cambie Surgeries trial, a complex constitutional case of considerable significance to Canadians and Canadian society. Judges do not enjoy the luxury of defining issues they are asked to hear. Those familiar with our system of justice understand that that is the role of counsel or litigants. Delays in this case have been caused by disputes between the parties over evidentiary issues and their late cancellation of hearing dates that they booked. Justice Steeves has issued 25 rulings on pre-trial matters that the parties have been unable to resolve between themselves. By way of example of the erroneous statements in Mulgrew's article, Justice Steeves has allowed the submission of Brandeis briefs in this case limited to the social science evidence.

In Canadian Broadcasting Corp. v. Canada (Attorney General), the Supreme Court of Canada warned that "Freedom of the press and the fair administration of justice are essential to the proper functioning of a democratic society and must be harmonized with one another. Each one is just as vital as the other. Freedom of the press cannot foster self-fulfilment, democratic discourse and truth finding if it has a negative impact on the fair administration of justice."

Public confidence in the justice system of this country is fundamental to a democratic society. That confidence cannot be maintained if the media inaccurately reports or distorts the decisions of the courts.

Christopher E. Hinkson
Chief Justice
Supreme Court of British Columbia