

October 18, 2002

Honourable Jane E. Stewart
Minister of Human Resources Development, Canada

Honourable Peter G. Christie
Minister of Community Services, Nova Scotia

Co-Chairs, Federal/Provincial/Territorial Council on Social Policy
SUFA Review
P.O. Box 13, 611 Alexander Street
Vancouver, B.C.
V6A 1E1

Dear Ministers,

I write on behalf of the Canadian Bar Association (CBA) in relation to the review of the Social Union Framework Agreement (SUFA).

This letter comments on the process of that review, which we believe inadequate, and offers a single substantive comment on the operation of the SUFA. We are reduced to this single point by the lack of time between learning of your deadline for submissions and the deadline itself. I shall deal first with the substantive point, that a lack of transparency in the spending of transferred moneys has bred iniquity in the legal aid system, and later with our objection to the process of your consultation.

The CBA represents over 38,000 jurists, including lawyers, notaries, law teachers and students across Canada. An important aspect of the CBA's mandate is seeking improvements in the law and the administration of justice, and it is pursuant to that mandate that we make this submission to the SUFA review.

As the voice of Canada's legal professionals and a national organization committed to social justice, we are concerned with the detrimental affect of the SUFA on access to justice, and specifically, on publicly funded legal representation for lower income Canadians.

Legal aid services, especially civil legal aid services, have been eroded in recent years and, in some areas, gutted. These services should, for example:

- allow parents without money to fight for custody of their children when more affluent parents, or the state, try to take them away,
- allow spouses suffering abuse from their partners to seek child support and police protection for themselves and their children,
- allow refugees to argue against being returned to countries where they would face torture or death,
- allow tenants to assert their legal rights not to be unjustly rendered homeless, and
- allow seniors or those living on disability benefits to contest measures which would deny them those benefits.

Laws intended to ensure justice and fairness are meaningless if they can only be relied upon by those with above average resources, or resources so paltry as to qualify for assistance.

As have others concerned about measures to protect those most vulnerable in Canada, the CBA has confronted a barrier in terms of public accountability for the provision of legal aid services. After several years of concerted efforts, we have been unable to break through a shuffling of responsibility between levels of government, frustrating attempts to achieve public accountability for denied access to justice.

In 1995, the *Canada Health and Social Transfer* (CHST) replaced the *Canada Assistance Plan* (CAP). While CAP linked federal funding to that actually provided by the provinces and territories, the CHST provides flexibility and autonomy through a “no strings” block transfer of federal funds. However, the CHST has not met other important goals of the SUFA, such as that of ensuring “access to essential social programs and services of reasonably comparable quality” across Canada. This is simply not the current reality in terms of access to justice.

The same can be said for public accountability and transparency, explicitly intended to be strengthened under section 3 of the SUFA. The respective contributions of different levels of government are obscured, in spite of the expressed commitment under section 3 of SUFA to “report regularly to its constituents on the performance of these programs” and “to use funds transferred from another order of government for the purposes agreed”. Further, each level of government turns to the other in disclaiming its own responsibility. The federal government argues that it has done its part through its contribution to the CHST. The provinces and territories point to competing demands on the CHST, adding that the federal government transfer is inadequate.

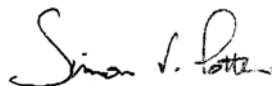
Canadians have no means of taking their governments properly to task for the deficiencies in the funding of legal aid programs. Section 7 of the SUFA commits the governments to a “full review” after three years, a review that “will ensure significant opportunities for input and feedback from Canadians and interested parties, including social policy experts, private sector and voluntary organizations”. In our view, the SUFA review has not met this commitment to a comprehensive and open consultation process.

Ironically, our ongoing frustration with the lack of transparency in the actual operation of the SUFA is now redoubled by the lack of transparency in the consultation which, had it been more open, would surely have brought to brighter light the first lack of transparency.

Despite its visible and evident involvement in this issue for years, the CBA received nothing soliciting its participation in the review, neither an invitation to submit a written submission nor an invitation to the three roundtables that we now understand have already taken place. We do not doubt that credible individuals and organizations were invited to those roundtables, nor that they were intended to glean input from all parts of Canada, but we are aware of many, including the CBA, not invited, although they ought to have been. Without more information, we cannot say how inclusive that aspect of the consultation process has actually been, but we can say that it was insufficient in any event.

I trust that our concerns about the SUFA and the SUFA review will be given careful consideration. At a minimum, I believe that immediate measures should be taken to ensure that an appropriate extension of time is allowed for this review process and that real notification of the review be given to all those individuals and organizations, including the CBA, with a critical interest in the SUFA.

Yours truly,

A handwritten signature in black ink, appearing to read "Simon V. Potter". The signature is written in a cursive, slightly slanted style.

Simon V. Potter

cc: see attached

cc:

Honourable Anne McLellan
Minister of Health
Canada

Honourable Murray Coell
Minister of Human Resources
British Columbia

Honourable L. Joan MacAlpine
Minister of Family & Community Services
New Brunswick

Honourable J. Michael Miltenberger
Minister, Health and Social Services
Northwest Territories

Honourable Brenda Elliott
Minister of Community, Family and
Children's Services
Ontario

Honourable Halvar Jonson
Minister of International &
Intergovernmental
Relations
Alberta

Honourable Jean-Pierre Charbonneau
Cabinet du ministre délégué aux Affaires
Intergouvernementales canadiennes
Québec

Honourable Tim Sale
Minister of Family Services and Housing
Manitoba

Honourable Jamie Ballem
Minister of Health and Social Services
Prince Edward Island

Honourable Tom Lush
Minister of Intergovernmental Affairs
Newfoundland and Labrador

Honourable Ed Picco
Minister of Health and Social Services
Nunavut

Honourable Chris Axworthy, Q.C.
Minister of Justice and Attorney-General,
Minister of Aboriginal Affairs
Saskatchewan

Honourable Sue Edelman
Minister of Health
Yukon