



OFFICE OF THE PRESIDENT
CABINET DU PRÉSIDENT

December 22, 2003

The Honourable Irwin Cotler, P.C., M.P.
Minister of Justice and Attorney General of Canada
House of Commons
Ottawa ON K1A 0A6

Dear Minister,

On behalf of the Canadian Bar Association, I am writing to extend my congratulations and to welcome you to your new portfolio. The CBA has always fostered a strong and fruitful relationship with our Ministers of Justice. We look forward to meeting regularly with you and your officials throughout the year to share the perspective of the legal profession.

We would be honoured for you to address the CBA Mid-Winter Meeting of Council, which will take place in Whitehorse on February 21 and 22, 2004. We would be pleased to provide you with this opportunity to address the legal profession on your upcoming plans and priorities. I would also be pleased for you join me at the President's Dinner on the evening of February 21.

As you embark on this new challenge, I would also like to take an opportunity to bring some CBA priorities to your attention and to **request a meeting** at your earliest convenience, to discuss a number of critical issues of mutual interest. The CBA is a national association representing 38,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

In our view, four issues in particular require priority attention:

- Access to justice through legal aid
- Review of the impact of measures to fight terrorism
- Solicitor-client confidentiality vis-à-vis proceeds of crime legislation
- Process for appointments to the Supreme Court of Canada

Legal Aid

Improvement to legal aid continues to be an urgent priority for the CBA, as an integral part of ensuring access to justice.

We were pleased with the federal, provincial and territorial governments' recent agreement for the three-year Legal Aid Renewal Strategy. This as an important step toward improving access and coverage of legal aid.

We continue to have serious concerns about both coverage and provincial and territorial accountability for funding of civil legal aid under the CHST. We wish to explore with you and your Cabinet colleagues possible avenues to improve the situation, including the possibility of carving legal aid funding out of the CHST and establishing a separate Access to Justice Transfer.

Impact of Anti-Terrorism Laws

Since September 2001, Canadians have witnessed a proliferation of laws and government action aimed at addressing security matters, but which have an invidious impact on the civil liberties of Canadians and those who seek to come here. These include the *Anti-Terrorism Act*, detention and removal under the *Immigration and Refugee Protection Act*, intelligence measures by the RCMP and CSIS, and revocation procedures in proposed citizenship legislation.

The CBA has called for a public inquiry into the situation of Mahar Arar. But in our view, the issues are more pervasive than those of one individual. We urge your government to undertake an early, comprehensive review of the impact of all these "anti-terrorism" measures.

Solicitor-Client Confidentiality and Proceeds of Crime Legislation

The CBA does not dispute the importance of fighting organized crime and money laundering. While we certainly recognize the need to balance many interests in the development of any legislation, we remain convinced that the public interest is best served by greater protections for solicitor-client confidences in this context.

The CBA, the Federation of Law Societies of Canada and various law societies successfully challenged the constitutionality of the *Proceeds of Crime (Money Laundering) Act*, arguing that the legislation fails to protect solicitor-client confidentiality adequately. Your officials have initiated discussions to redesign the regulations relating to the legal profession. The CBA is pleased to participate in these discussions, with the goal of fully protecting solicitor-client confidentiality.

Supreme Court of Canada Appointments

Canadians expect, and are entitled to have, judges who are well qualified, independent, and perceived to be independent of political influence. In our view, the U.S. Congressional type of review does not achieve this goal. Parliamentary review of candidates risks politicizing the appointment process.

The identification and assessment of candidates for superior and appellate courts has been greatly improved with more formalized review by advisory committees in each province and territory. In our view, this process should be brought to bear on appointments to the Supreme Court of Canada and the Federal Court of Canada.

We would welcome the opportunity to meet with you in the very near future, to discuss these and other matters at greater length.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Johnson". The signature is written in a cursive style with a long, sweeping tail that loops back under the name.

F. William Johnson, Q.C.