



OFFICE OF THE PRESIDENT
CABINET DU PRÉSIDENT

October 16, 2006

The Rt. Hon. Stephen Harper, P.C., M.P.
Prime Minister of Canada
80 Wellington Street
Ottawa, ON K1A 0A2

The Hon. Victor Toews, Q.C., P.C., M.P.
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H9

The Hon. Beverley J. Oda, P.C., M.P.
Minister of Canadian Heritage and Status of Women
15 Eddy Street
Gatineau, QC K1A 0M5

The Hon. John Baird, P.C., M.P.
President of the Treasury Board
L'Esplanade Laurier, 9th Floor, East Tower
140 O'Connor Street
Ottawa, ON K1A 0R5

The Hon. James Flaherty, P.C., M.P.
Minister of Finance
140 O'Connor Street
Ottawa, Ontario K1A 0G5

Dear Prime Minister and Ministers,

We are writing to you to add the voice of the Canadian Bar Association to those who have already expressed profound concern and dismay over the elimination of the Court Challenges Program.

A program such as the Court Challenges Program is critical in a society that prides itself on adhering to the Rule of Law and promoting unimpeded access to the justice system. It plays an important role in ensuring that marginalized groups in society are not precluded from enforcing their constitutional rights by virtue only of their limited financial means.

In light of the Program's vital importance to Canada, the Canadian Bar Association recently restated its long-standing support for the Court Challenges Program, calling on the government to ensure its long-term financial stability through increased levels of funding. Your government rationalized the elimination of the Court



Challenges Program on the basis that it did not provide good “value for money”. With respect, this rationale fundamentally misconstrues the purpose and operation of the Program.

Claimants who have benefited from the Court Challenges Program include disabled children and their families, French speaking minority groups, women who have experienced sexual assault, Aboriginal groups, and gay men and lesbians. Characterizing these groups as “third parties” suggests an “us versus them” mentality that has no place in Canadian society. The *Canadian Charter of Rights and Freedoms* protects the rights of *all of us*. All of us have a gender, a first language, a race, a nationality, a sexual orientation, and certain physical and mental abilities, among other things. Striking down discriminatory laws alleviates the historical disadvantage experienced by vulnerable groups. A more egalitarian society benefits us all.

The Government of Canada enacted the *Charter* because it recognized that in a democracy, minorities require protection against the greater resources and political power of the majority. This imbalance of power often manifests itself when an individual claimant takes the government to court to uphold their rights. A *Charter* case against a government with seemingly deep pockets can be all-consuming for an individual claimant and his or her advocate. The funding provided on a per-case basis by the Court Challenges Program was relatively modest. In addition to legal fees, the funds were used for expert testimony, court fees, and out-of-pocket expenses to get the documents filed and the lawyers to court. No lawyer gets rich from Court Challenges funds. Maximums are set for legal fees (\$150. per hour), as well as total costs for taking a case to trial (\$60,000) or an appeal or intervention (\$35,000).

Despite Court Challenges funding, much of the legal work on cases for disadvantaged persons is at substantially reduced rates, or *pro bono*. Every Court Challenges application includes a budget line for a lawyer’s *pro bono* contribution. Most lawyers take on a *Charter* claim because of the commitment of the legal profession to the principle that every person, no matter what their means, deserves their day in court and that individual rights and freedoms are worth upholding.

Without the Court Challenges Program, equality rights and language rights guaranteed in the *Charter* remain simply rights on paper. Based upon the CBA’s frequent dialogue with international bar leaders and our engagement in international development work, we know that, by its example, Canada spreads its vision of democracy around the world, including respect for minority rights. Sacrificing these rights at home in the name of budgetary restraint is too high a price to pay.

We urge you to consider reinstatement of and providing stable funding for the Court Challenges Program. We would be happy to meet with you or the appropriate members of your Cabinet to discuss this matter of concern to the Canadian democracy.

Sincerely,

(original signed by J. Parker MacCarthy)

J. Parker MacCarthy, Q.C.
President