



OFFICE OF THE PRESIDENT
CABINET DU PRÉSIDENT

October 18, 2006

The Honourable Vic Toews, P.C., M.P.
Minister of Justice and Attorney General of Canada
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

Re: Resolution on Legal Aid

I write to express the Canadian Bar Association's support for the Resolution on Legal Aid put forward by the provincial and territorial Ministers of Justice on October 11, 2006 (the Resolution). I understand that the issue of legal aid funding was discussed at the meeting of all Ministers of Justice last week.

For some time, the CBA has made improving legal aid a top priority. In fact, the CBA has repeatedly urged most of the same federal commitments to ensure access to justice as those contained in the Resolution. We have pressed the federal government to guarantee adequate access to justice for both civil and criminal matters through increased federal funding for legal aid, and greater transparency and accountability for the way federal funds are used for civil legal aid.

The CBA is distressed by the negative impact declining legal aid services has had in courtrooms, in addition to the enormous human costs when people are denied access to justice. The increase in unrepresented accused and civil litigants is dramatic and the resulting costs to the justice system significant. These include court delays and a distortion of the role of judges who are caught trying to maintain the appearance of impartiality while helping an unrepresented litigant navigate the court process. Unrepresented litigants are too likely to come away from their contact with the justice system feeling that they have not been heard and justice has not been done. This can lead to distrust and disrespect for the justice system. The situation has even sparked comment from the Chief Justice of the Supreme Court of Canada who has noted the growing problem of "lawyerless litigants".



Like your provincial/territorial counterparts, the CBA passed a resolution in 2001 calling for the federal government to make the Investment Fund permanent. We have noted that the diminished proportionate federal contribution for criminal legal aid has placed an increasing financial burden on the provinces and territories. Inadequate funding for criminal legal aid means that already disadvantaged people may accumulate criminal records when viable defences are available, and that even those accused of serious criminal matters may be compelled to appear without legal representation. These concerns are heightened, especially given the many criminal law reforms currently under consideration.

The increasing financial burden for criminal legal aid also means that fewer provincial/territorial resources remain available for civil legal aid. Civil legal aid can ensure legal representation for people in dire situations involving loss of custody of children, housing or income.

In 2004, the CBA passed a resolution recommending that the federal government designate a Minister responsible for access to justice on civil legal aid matters and also offer new targeted funds to the provinces and territories for civil legal aid services. At our meeting in St. John's in August, we understood that you have now assumed responsibility for the civil legal aid file. We ask that you act on the other part of our recommendation, and work to establish a significant, specifically earmarked civil legal aid federal transfer sufficient to guarantee adequate national standards for civil legal aid services.

The CBA believes that access to justice is the biggest challenge facing our justice system at this time, and urges you to act upon the Resolution without delay. I would be pleased to discuss with you at your convenience how the CBA can help to improve the Canadian legal aid situation.

Yours truly,

(original signed by J. Parker MacCarthy)

J. Parker MacCarthy, Q.C.