



December 18, 2008

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

Dear Minister,

I am writing to extend my congratulations on your continuing appointment to the Justice portfolio. The CBA has enjoyed our working relationship to date. We appreciate meeting regularly with you and your officials to convey the perspective of the legal profession on issues of mutual interest and look forward to meeting with you in the near future to discuss a number of priority issues, including the following.

#### **LEGAL AID**

At our recent meetings, we were pleased to hear your commitment to working with the provinces and territories to develop a sustainable justice system that includes legal aid. We noted the November 2008 report of the UN Committee on the Elimination of Discrimination against Women, encouraging Canada to consider establishing minimum criteria for access to legal aid applicable in all provinces and territories. In September, the provincial and territorial Ministers presented you with a business case for increased funding for criminal legal aid and designated funding for civil legal aid. We would be interested to know your reaction to the business plan. We also would like to meet with you and Minister Flaherty to discuss solutions to the ongoing crisis in civil legal aid.

#### **AFFORDABILITY OF LEGAL SERVICES**

Many middle class Canadians cannot afford a lawyer when they most need legal assistance. They go to court without the guidance of an experienced lawyer, with resulting delays and costs for litigants and for court administration. The CBA and other justice system stakeholders have formed the Action Committee on Access to Justice, chaired by Chief Justice Beverley McLachlin and sponsored by the Canadian Forum on Civil Justice, to take concrete measures to streamline the justice system and the affordability of legal services. We welcome Deputy Minister John Sims' participation on the Action Committee and the federal government's partnership in the initiatives developed by the Committee.

#### **PRO BONO LEGAL SERVICES**

While no substitute for an adequately funded legal aid system, the CBA recognizes the importance of lawyers engaged in pro bono legal services. Lawyers employed by the federal government make generous volunteer contributions to their communities, yet they are at less liberty than lawyers in private practice to participate in pro bono legal work. We would appreciate your support of a pro bono culture within Justice Canada and wish to work with your officials to encourage pro bono in the public service.



### **PRIVACY ACT REFORM**

The CBA has called for a comprehensive modernization of the federal *Privacy Act*, which has not kept pace with societal and technological developments. In our view, personal information should be collected by governments only when demonstrably necessary for clear state goals. The government must rigorously protect personal information it collects, and should not share Canadians' personal information with other governments unless the same protections are guaranteed. The Parliamentary Committee study underway in the last session is a starting point for further work. We would welcome an opportunity to work with you and your officials in this regard.

### **CRIMINAL INTEREST RATES – *Criminal Code* s. 347**

Section 347 of the *Criminal Code* was designed to criminalize loan sharking. It has the unintended effect of making many legitimate loan transactions between business parties unlawful. We commend to you recent work by the Uniform Law Commission of Canada, aimed at seeking appropriate vehicles targeted to the specific harms, and addressing the business problems caused by the current law.

### **CRIMINAL JUSTICE**

Through the National Criminal Justice Section, the CBA offers practical experience, balanced with Crown and defence perspectives, to assist in developing improvements to criminal justice. Recently, Section members and Justice Canada officials met in Ottawa for a frank and open discussion on various topics, including justice inefficiencies and youth criminal justice. We appreciate your support for this dialogue and trust that you find our input beneficial.

### **DEATH PENALTY**

Canadian law does not permit extradition of citizens to countries where they may face the death penalty. The CBA believes that Canada must seek clemency for all Canadians who face the death penalty in other countries. A policy of not intervening, or of intervening only in selected cases, is unlikely to be favorably received by the other country, as it implicitly suggests that Canada has judged the other country's justice system to be inadequate and undemocratic. Recognizing that responsibility for Canadians abroad generally falls within the purview of the Minister of Foreign Affairs, in any Cabinet discussions of the issue we urge you to support an unequivocal position to seek clemency for all Canadians facing the death penalty abroad.

### **REPATRIATION OF OMAR KHADR**

The CBA is committed to the repatriation of Omar Khadr to Canada from the prison at Guantanamo Bay. In light of recent statements of intent by the U.S. President Elect to close Guantanamo, we again request your support in bringing Mr. Khadr back to Canada where the circumstances of his alleged offences can be assessed under Canadian law, and if prosecuted, where he may receive a fair trial.

### **JUDICIAL COMPENSATION**

We look forward to the Government's response to the Quadrennial Judicial Compensation and Benefits Commission. We trust the Government will take seriously the Commission's recommendations, give a substantive response and act upon them in a timely fashion.

The Canadian Bar Association looks forward to our ongoing collaboration during the coming Parliamentary session, and to a meeting at your convenience.

Yours very truly,

*(Original signed by J. Guy Joubert)*

J. Guy Joubert