



THE CANADIAN  
BAR ASSOCIATION  
L'ASSOCIATION DU  
BARREAU CANADIEN

March 14, 2011

Via email: [NichoR@parl.gc.ca](mailto:NichoR@parl.gc.ca)

The Honourable Robert Nicholson, P.C., M.P.  
Minister of Justice and Attorney General of Canada  
284 Wellington Street  
Ottawa, ON K1A 0H8

Dear Minister:

**Re: Training of Administrative Tribunal Members on Charter Issues**

The Canadian Bar Association (“CBA”) is a national association representing approximately 37,000 jurists, including lawyers, notaries, law teachers and students, across Canada. Our primary objectives are to uphold the Rule of Law, improve the administration of justice, and promote equality in the law. The Administrative Law Section deals with every facet of decision making, rulemaking and exercise of powers by governments, public authorities and administrative boards and tribunals, as well as the practice of lawyers in relation to them.

Administrative boards and tribunals have an ever increasing role in the administration of justice, at all levels of government throughout Canada. They often constitute the first point of contact individuals and businesses have with the justice system. In many cases they are the only point at which people have contact with the justice system. As such, it is essential that they deliver justice in a fair, competent and impartial manner.

Since the *Canadian Charter of Rights and Freedoms* came into force in 1982, the role of administrative boards and tribunals has gradually been expanded, through the evolution of the case law, to include the determination of *Charter*-protected rights. The Supreme Court of Canada recently held, in *R. v. Conway*, 2010 SCC 22, that every administrative tribunal with authority to deal with questions of law has the jurisdiction to apply the *Charter* and to issue remedies in accordance with it.

The Supreme Court framed its reasons in terms of facilitating access to justice, thus acknowledging “the practical advantages and constitutional basis for allowing Canadians to assert their Charter rights in the most accessible forum available”.

The CBA endorses the rationale that underpins the Supreme Court's decision, as a way to ensure access to justice. Yet access to justice is only meaningful if it entails access to appropriately trained adjudicators. This may require, when necessary, that training be offered to board and tribunal members in areas where they exercise jurisdiction, including the *Charter*.

The CBA urges your government to develop and implement a systematic program of mandatory training and continuing education with respect to the *Canadian Charter of Rights and Freedoms* for all members of tribunals with the authority to deal with legal questions, to give practical effect to the recognition of their jurisdiction to apply the *Canadian Charter of Rights and Freedoms*.

We hope your government will take concrete steps to implement this recommendation. We would welcome an opportunity to discuss this further and explore practical avenues in which the CBA could work with your government in achieving these goals.

Yours truly,

*(Original signed by Rebecca Bromwich for Mathieu Bouchard)*

Mathieu Bouchard, Chair,  
Administrative Law Section, CBA

Att.

## **Application of *Canadian Charter of Rights and Freedoms* by Administrative Tribunals**

**WHEREAS** the administrative justice system covers important aspects of the lives of Canadians, including immigration, taxation, income support and disability compensation, licensing, professional governance, employment health and safety regulation, labour relations, employment standards, marketing and distribution, land use, intellectual property, the environment and human rights;

**WHEREAS** the evolution of the case law since 1982 has cemented the direct relationship between the *Canadian Charter of Rights and Freedoms*, its remedial provisions and administrative tribunals;

**WHEREAS** in *R. v. Conway*, the Supreme Court of Canada:

- reaffirmed the notion that “[w]e do not have one *Charter* for the courts and another for administrative tribunals”;
- acknowledged that “not only [should] expert tribunals [...] play a primary role in the determination of *Charter* issues

## **Application de la *Charte canadienne des droits et libertés* par les tribunaux administratifs**

**ATTENDU QUE** le système de justice administrative traite d’aspects importants des vies des Canadiens et des Canadiennes, dont l’immigration, la fiscalité, la sécurité du revenu et les prestations d’invalidité, l’octroi de licences, la gouvernance professionnelle, la santé et la sécurité au travail, les relations de travail, les normes du travail, le marketing et la distribution, le zonage, la propriété intellectuelle, l’environnement et les droits de la personne;

**ATTENDU QUE** l’évolution de la jurisprudence depuis 1982 a consolidé la relation directe entre la *Charte canadienne des droits et libertés*, ses dispositions réparatrices et les tribunaux administratifs.

**ATTENDU QUE**, dans *R. c. Conway*, la Cour suprême du Canada a :

- réaffirmé la notion qu’« [i]l n’y a pas une *Charte* pour les cours de justice et une autre pour les tribunaux administratifs »;
- reconnu que « les tribunaux spécialisés devaient non seulement jouer un rôle de premier plan dans le règlement des

falling within their specialized jurisdiction, but also that in exercising their statutory discretion, they must comply with the *Charter*”;

- recognized “the practical advantages and constitutional basis for allowing Canadians to assert their *Charter* rights in the most accessible forum available”;
- held that every administrative tribunal with authority to deal with questions of law has the jurisdiction to apply the *Charter* and to issue remedies in accordance with it;

**WHEREAS** obtaining a remedy based on the *Canadian Charter of Rights and Freedoms* before an administrative tribunal is the only effective way many Canadians have to enforce their fundamental rights and freedoms, thus helping to ensure access to justice for all;

**WHEREAS** tribunal members at all levels must now be knowledgeable of basic principles pertaining to the content and application of the *Canadian Charter of Rights and Freedoms*;

**BE IT RESOLVED THAT** the Canadian Bar Association urge the federal, provincial and territorial governments to develop and implement a systematic program of mandatory training and continuing education with respect to the *Canadian Charter of Rights and Freedoms*

questions liées à la *Charte* et relevant de leur compétence particulière, mais également se conformer à la *Charte* dans l’exercice de leur pouvoir discrétionnaire »;

- reconnu « les avantages pratiques et le fondement constitutionnel de la solution qui consiste à permettre aux Canadiens de faire valoir les droits et les libertés que leur garantit la *Charte* devant le tribunal qui est le plus à leur portée »;
- déterminé que tout tribunal administratif investi du pouvoir d’appliquer la loi a compétence pour appliquer la *Charte* et d’accorder des réparations conformément à celle-ci.

**ATTENDU QUE** d’obtenir réparation en vertu de la *Charte canadienne des droits et libertés* devant un tribunal administratif est le seul moyen efficace pour de nombreux Canadiens et Canadiennes de faire valoir leurs libertés et droits fondamentaux, contribuant ainsi à assurer l’accès à la justice pour tous et toutes;

**ATTENDU QUE** les membres de tribunaux administratifs de tous paliers doivent désormais connaître les règles de base relatives au contenu et à l’application de la *Charte canadienne des droits et libertés*;

**QU’IL SOIT RÉSOLU QUE** l’Association du Barreau canadien exhorte le gouvernement fédéral et les gouvernements provinciaux et territoriaux à élaborer et à mettre en œuvre un programme systématique et obligatoire de formation et d’éducation permanente qui porte

**Resolution 11-01-M**

for all members of tribunals with the authority to deal with legal questions, to give practical effect to the recognition of their jurisdiction to apply the *Canadian Charter of Rights and Freedoms*.

**Certified true copy of a resolution carried by the Council of the Canadian Bar Association at the Mid-Winter Meeting held in Charlevoix, QC, February 19-20, 2011.**

**Résolution 11-01-M**

sur la *Charte canadienne des droits et libertés* et s'adresse à tous les membres de tribunaux administratifs investis du pouvoir d'appliquer la loi, et ce, afin de donner un effet pratique à la reconnaissance de leur compétence en matière d'application de la *Charte canadienne des droits et libertés*.

**Copie certifiée d'une résolution adoptée par le Conseil de l'Association du Barreau canadien, lors de l'Assemblée de la mi-hiver, à Charlevoix, QC, du 19 au 20 février 2011.**

**John D.V. Hoyles  
Chief Executive Officer/Chef de la direction**