



August 23, 2021

Via email: Erin.OToole@parl.gc.ca

The Honourable Erin O'Toole, P.C., M.P.
Leader of the Conservative Party
1720-130 Albert St.
Ottawa, ON K1P 5G4

Dear Mr. O'Toole:

We are writing on behalf of the Canadian Bar Association, during this federal election campaign, to seek your party's commitment to transforming the justice systems¹ to ensure equal access to justice in Canada.

The Canadian Bar Association is a national association of more than 36,000 lawyers, Québec notaries, law teachers and students, with a mandate to promote improvements in the law and the administration of justice. The CBA has long advocated for changes to the justice systems to make them more responsive to the needs of those seeking justice. The policy statements in this letter have been adopted in accordance with the CBA Bylaw.

The COVID-19 crisis has shone a light on the importance of forging accessible and modern justice systems.² Access to justice is not a luxury: almost 50% of adult Canadians will experience a serious everyday legal problem in any given three-year period.³ Everyday legal problems include matters related to family, employment, wills, incapacity, treatment by police, personal injury, discrimination or debt. Making matters worse is that an unresolved legal problem can result in otherwise avoidable problems, like physical and mental health problems, loss of housing and relationship breakdown.

Sustainable changes are required in several key areas to ensure equal access to modern justice systems focused on the individuals seeking justice.

Investment in innovation

We recognize that timely and effective implementation of new measures, procedures and technologies can come with a high price tag. We also appreciate the financial challenges and pressures governments face, especially as we recover from the pandemic. However, given the social and economic costs of ill-resourced justice systems, and a clear return on investment in accessible and modern justice systems, investment in this area is justified.

Sustainable legal aid

Legal aid, Canada's most important access to justice program, is too often inconsistently available, even for essential legal needs. As federal contributions have waned, some provinces and territories have tried to fill gaps. Services vary as to who gets help and for what across Canada, much more than for other essential public services. For example, a single mother working for minimum wage might get a lawyer for a child custody problem in one province, but in the next province be directed to a website or self-help materials. The federal government should take a leadership role with the provinces and territories to ensure a national, integrated system of public legal assistance to improve access to justice and meet the needs of disadvantaged people across Canada.⁴

Indigenous legal orders and traditions

An important element of reconciliation is recognizing Indigenous legal orders and traditions.⁵ Allying with Indigenous experts to develop these sources is necessary to achieve that goal.

We know too well, for example, about Canada's excessive and worsening incarceration of marginalized populations, particularly Indigenous people. Systemic discrimination occurs throughout the criminal justice system, in policing, courts and corrections.⁶ Relying on punishment and incarceration, at the expense of rehabilitation, reintegration and crime prevention, undermines both equal justice and public safety. Both are advanced by acting on available evidence as to what actually prevents crime and working to redress historical cultural biases.

An independent, representative judiciary

The CBA has long supported an open and transparent process for appointing judges, based solely on merit and ultimately representative of Canadian society. Changes to the appointment process in recent years have unfortunately not resulted yet in an appreciably more diverse judiciary.⁷ Legal decisions affecting racialized individuals, for example, are made by an overwhelmingly white judiciary with no first-hand experience of the racism and systemic challenges these communities face.⁸

Closing comments – informed voters

As Canadians consider their choices, we offer you the opportunity – by answering four questions – to tell our members (and all Canadians) how your government would help transform the justice systems to ensure equal access to justice in Canada.

- 1. How would your government work with provincial and territorial governments to invest in and lead the timely and effective implementation of new measures, procedures and technologies to deliver justice?**
- 2. What would your government do to bolster federal leadership to ensure that Canada's legal aid system serves the essential legal needs of all people who need help?**
- 3. What would your government do to recognize Indigenous legal orders as a source of law?**
- 4. What would your government do to appoint qualified members of diverse communities to the Superior Courts, Courts of Appeal and Supreme Court of Canada?**

All responses will be posted on the CBA website and other social platforms. We invite you to send your replies to lawreform@cba.org at your earliest convenience.

We wish you the very best during this election campaign.

Yours truly,

(original letter signed by Bradley D. Regehr and Stephen Rotstein)

Bradley D. Regehr
President, 2020-2021

Stephen Rotstein, CIC.C
President, 2021-2022

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- ¹ Reference to justice systems embraces criminal, civil and administrative systems, as well as civil law, common law and Indigenous legal orders.
- ² In February 2021, the CBA published [No Turning Back: CBA Task Force Report on Justice Issues Arising from COVID-19](#). Two principal themes underlie the report. First, there is no turning back. The pandemic propelled the justice system into a long-awaited modernization. We must continue forward and build on the measures, procedures and innovations implemented in response to the pandemic. Second, new measures and technology must be deployed in a manner that enhances access to justice, rather than unintentionally inhibit it.
- ³ Farrow, et al, [Everyday Legal Problems and the Cost of Justice in Canada: Overview Report](#), Canadian Forum on Civil Justice, 2016.
- ⁴ In 2016, the CBA and the Association of Legal Aid Plans of Canada proposed six [National Benchmarks for Public Legal Assistance Services](#).
- ⁵ [Honouring the Truth, Reconciling for the Future](#), Summary of the final report of the Truth and Reconciliation Commission of Canada, 2015.
- ⁶ Justice Canada, [Understanding the Overrepresentation of Indigenous people in the Criminal Justice System](#)
- ⁷ Ian Burns, [Judicial diversity stats show move in right direction but more needs to be done: observers](#). The Lawyer's Daily, 7 Dec 2020
- ⁸ Letter from CBA President Brad Regehr and Past President Vivene Salmon, re [Appointing BIPOC Candidates to the Federal Judiciary](#), 14 Sep 2020.