

The Hon. Thomas J. Burke  
Minister of Justice and Attorney General  
PO Box 6000  
Fredericton NB  
E3B 5H1

October 16, 2006

Dear Minister,

The Canadian Bar Association is calling upon the federal government to reinstate the Court Challenges Program (CCP), funding for which was eliminated last week by the Federal government. The New Brunswick branch is calling on you, as the Minister responsible for this program in New Brunswick, to join with your colleagues across the country in calling for the return of this very important program that provides unimpeded access to the justice system.

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 access to justice. 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 financial means.

The elimination of the Court Challenges Program was rationalized 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, Aboriginal groups, French speaking minority groups, women who have experienced sexual assault, 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*. 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 *Canadian Charter of Rights and Freedoms* 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 (\$150.00 per hour), as well as total costs for taking a case to trial (\$60,000) or an appeal/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 would have remained 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 add your support to the call for reinstatement of the Court Challenges Program. We would be happy to meet with you to discuss this matter of concern to the Canadian democracy and the citizens of New Brunswick.

Sincerely,

A handwritten signature in black ink, appearing to read 'René J. Basque', with a long horizontal line extending to the right.

René J. Basque  
President, CBA New Brunswick