



October 8, 2008

The Rt. Hon. Stephen Harper, P.C., M.P.  
Leader, Conservative Party of Canada  
Suite 1204  
130 Albert Street  
Ottawa, ON K1P 5G4

Dear Mr. Harper,

**RE: Election 2008**

I am writing to share with you some important concerns of the Canadian legal community during this 2008 federal election campaign.

The Canadian Bar Association (CBA) is a national, voluntary association of over 37,000 lawyers, law students, law professors and Quebec notaries. Among the objectives of the Association are improvement of the law and the administration of justice.

The CBA looks forward to working with you and your caucus in the 40th Parliament to realize these important initiatives.

**Access to Justice**

LEGAL AID

Every person should have fair benefit and protection of the law when a fundamental legal interest is threatened. Unfortunately, this is not the current situation in Canada. Federal leadership is required to help bring about a systemic solution so that “justice for all” is a reality, not just a lofty catchphrase. The CBA advocates changes to legal aid to ensure that disadvantaged individuals can access professional legal advice. Minimum national standards and increased funding for essential legal services would improve legal aid eligibility. An “Access to Justice Transfer” earmarking the federal financial contribution to provincial and territorial legal aid programs would add transparency and accountability to civil legal aid funding. It is time to end jurisdictional arguments, and give one federal Minister clear responsibility for collaborating with the provinces and territories to address the current shortfalls in legal aid. We hope your party will support these principles.

500 - 865 Carling, Ottawa, Ontario Canada K1S 5S8

Tel/Tél. : (613) 237-2925 Toll free/Sans frais : 1-800-267-8860 Fax/Télécop. : (613) 237-0185

Home Page/Page d'accueil : [www.cba.org](http://www.cba.org) E-Mail/Courriel : [info@cba.org](mailto:info@cba.org)



#### AFFORDABILITY OF LEGAL SERVICES

Even middle class Canadians can often not afford a lawyer when they most need legal assistance. They must go to court without the guidance of an experienced lawyer, with resulting delays and costs for litigants and for court administration. Lawyers, governments, judges and the public must work together to ensure that access to justice does not come at the price of a home, a child's university education, or a pension.

The CBA and other justice system stakeholders have formed the Action Committee on Access to Justice, chaired by Chief Justice of Canada, Beverley McLachlin, to take concrete measures to improve public knowledge about the justice system and the affordability of legal services. We hope your party will support federal government partnerships in the initiatives developed by the Action Committee.

#### PRO BONO LEGAL SERVICES

While not a 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 volunteer contributions to their communities, yet they are at less liberty than lawyers in private practice to participate in pro bono legal work. We hope your party will recognize the possibilities for pro bono work by government lawyers and encourage this practice in the public service.

#### **Respect for the Rule of Law**

##### DEATH PENALTY

The CBA is opposed to the death penalty and we believe that Canada must commit to seek clemency for all Canadians who face the death penalty in any country. A policy of not intervening, or of intervening only in selected cases, is inconsistent with Canada's fundamental opposition to the death penalty. Canadian law does not permit extradition of citizens to countries where they may face the death penalty. Ad hoc requests for clemency are unlikely to be favorably received by the other country if they implicitly suggest that Canada has judged the other country's justice system to be inadequate and undemocratic. The principled extension of Canada's rejection of the death penalty as a form of punishment requires government action whenever Canadians face the death penalty in other countries. We hope your party will support an unequivocal position that clemency will be sought for all Canadians facing the death penalty abroad.

##### REPATRIATION OF OMAR KHADR

Along with concerned citizens around the world, the CBA has called for the repatriation of Omar Khadr to Canada, to face justice by a competent, independent and impartial court of law. Mr. Khadr has been detained by U.S. authorities since he was 15 years old. The military authorities at Guantanamo Bay have failed to respect due process throughout his detention, or to consider his status as a minor at the time of the alleged offences. The U.S. and Canadian Supreme Courts have held that Mr. Khadr's rights under the *Charter* or international law were violated. Most recently, the military judge set to preside over Mr. Khadr's trial was replaced after skirmishes between the judge and prosecution over disclosure and setting a trial date, underscoring our



concern of whether he can receive a fair trial. The deck is stacked against him because the military tribunal can rely on hearsay or coerced evidence, and Khadr cannot meet freely with counsel, obtain full disclosure, or summon witnesses. Without procedural protections, the truth of what Mr. Khadr did or did not do may never be known. We hope your party will support his return 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.

### **Family Benefits**

The CBA believes that maternity and parental EI benefits should be extended to the self-employed. All parents should be able to take time away from their work to nurture their newborn or adopted children. The Quebec Parental Insurance Plan (QPIP), in place since 2006, is instructive as a progressive model. Under QPIP, beneficiaries can chose a higher rate of benefits for a smaller amount of weeks. Eligibility for QPIP is easier than EI, with only \$2000 of earnings (net income) in the past year required for self-employed, a higher maximum insured earnings, and higher maximum weekly benefits. Few self-employed persons can completely remove themselves from their business during maternity and parental leave. Our suggested features would ensure that EI benefits provide an income stream during maternity and parental leave so that businesses are still viable when mothers and fathers return. We hope your party will support this initiative and look forward to working with all parties to implement the program in a manner where benefits can be realistically accessed by the self-employed.

On behalf of the Canadian Bar Association, I thank you for taking the time to consider these issues and look forward to our constructive collaboration.

Yours very truly,

*(Original signed by J. Guy Joubert)*

J. Guy Joubert