



April 7, 2010

Kathryn Sabo
General Counsel
International Private Law Section
Department of Justice Canada
284 Wellington Street
Ottawa, ON K1A 0H8

Dear Ms. Sabo,

Re: Agenda for Council on General Affairs and Policy of the Hague Conference

Thank you for seeking the views of the Canadian Bar Association's National Family Law Section (CBA Section) on proposed topics for future consideration by the Council on General Affairs and Policy of the Hague Conference on Private International Law (the Council). The CBA is a national association of lawyers, law students, notaries and academics, and our mandate includes improvement in the law and the administration of justice. The CBA Section consists of lawyers specializing in family law from every part of the country.

In our view, legislative reform to advance recognition of parent and child relationships is urgently needed. Current law to establish parentage of children varies widely across jurisdictions. Greater consistency and uniformity would ensure that children are treated more similarly regardless of where they are born. The Supreme Court of Canada has also recognized that birth registration is not only an instrument of prompt recording, but a means of affirming ties between a parent and a child.¹

Canadian courts are increasingly making orders of parentage that reflect the actual reality of families at this point in time. This reality includes changes to do with greater use of reproductive technologies and increasing numbers of same-sex families. In some provinces, legislation dealing with parentage has not yet dealt with such changes. For example, the Ontario Court of Appeal found that the legislative scheme of the *Children's Law Reform Act* contains a legislative gap, as it was drafted before the diversity of parent and child relationships was widely recognized or significant advancements were made in the science of reproductive technology. The Court there held that it was contrary to a child's best interest to be deprived of the legal recognition of a parent.² We understand that the Uniform Law Commission of Canada is also examining this issue with a view to possibly making recommendations for legislative reform.

¹ *Trociuk v. British Columbia* (Attorney General), [2003] S.C.J. No. 32.

² *A.A. v. B.B.*, 2007 ONCA 2.

For these reasons, the CBA Section supports consideration of filiation by the Council, believing it to be a pressing and timely topic for international consideration. If further study of the topic is undertaken, we urge that the approach focus on the best interests of children as the paramount consideration.

The CBA Section appreciates the opportunity to comment on the Council's agenda, and would be pleased to provide substantive feedback to assist with any subsequent study.

Yours truly,

(Original signed by Gaylene Schellenberg for Grant Gold)

Grant Gold
Chair, National Family Law Section