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Hon. Mickey Amery, ECA, KC
Minister of Justice & Deputy House Leader
Legislature Building, 10800-97 Ave.
Edmonton AB T5K 2B6
Via Email: ministryofjustice@gov.ab.ca

January 7, 2026

Dear Minister Amery:

The Canadian Bar Association - Alberta Branch ("CBA Alberta") is writing on behalf of its members to express concern with respect to legislation passed by the Government in the fall 2025 legislative session. It is our view that, cumulatively, this legislation has the dangerous potential to weaken our institutions and erode the rule of law in Alberta.

Use of the Notwithstanding Clause

This past legislative session, the government invoked the Notwithstanding Clause twice when passing the *Back to School Act* and the *Protecting Alberta's Children Statutes Amendment Act*. Together, these Acts shield four pieces of legislation from *Charter* scrutiny.

The Canadian Bar Association, both in Alberta and across the country, has long held the position that the Notwithstanding Clause should be used as a measure of last resort. *Charter* rights are already subject to limitation by Section 1, which allows a government to limit *Charter* guarantees as long as the governmental measures are "demonstrably justified in a free and democratic society." Section 1 and its associated jurisprudence create a mechanism that allows governments to achieve legitimate policy objectives while ensuring that those objectives are balanced against the rights guaranteed by the *Charter*.

The Notwithstanding Clause was intended to give the elected legislature the last word in the case of a disagreement with the courts. However, preemptive invocation of the Notwithstanding Clause bypasses judicial oversight entirely. To quote former Premier Peter Lougheed, one of the original architects of the Notwithstanding Clause:



“The approach ... preempting judicial review in advance, should be disallowed. In my mind, such an action is undemocratic in that the purpose of Section 33 was ultimate supremacy of Parliament over the judiciary, not domination over or exclusion of the judiciary’s role in interpreting the relevant sections of the *Charter of Rights*.¹

In particular, CBA Alberta is troubled by the use of the Notwithstanding Clause in Bill 9 *Protecting Alberta’s Children Statutes Amendment Act* to insulate three Acts from *Charter* scrutiny. As we have written before (“[CBA Alberta’s Response to Bills 26, 27, and 29](#)”), the governmental measures have significant implications for privacy, dignity, equality, and access to care deemed medically necessary by Alberta physicians. By preventing the courts from assessing whether these restrictions comply with the *Charter*, the Act removes essential safeguards designed to protect vulnerable individuals from disproportionate or discriminatory government action. Legislation that profoundly affects the rights of young people should not be insulated from judicial scrutiny.

CBA Alberta urges the Government of Alberta to adopt an approach that respects legal rights and upholds the rule of law for all Albertans, regardless of their age, occupation, or gender. A restrained use of the Notwithstanding Clause is essential to preserving the guarantees enshrined in the *Charter*.

Independence of Institutions

Bill 14, the *Justice Statutes Amendment Act* (“JSAA”) introduced several justice-related legislative changes. Taken as a whole, a consequence of these changes appears to be a move towards increased Ministerial control of historically independent institutions. CBA Alberta requests that the Government of Alberta ensure these organizations remain free from political influence and asks the Government to reconsider the extent to which the political branch should be involved in the oversight of these institutions.

The JSAA grants the Minister the new power to mandate education and training requirements for all lawyers in Alberta. Section 7(3) of the *Legal Professions Act* would now allow the Minister to “make regulations respecting education and training requirements.” CBA Alberta has previously commented on the extent to which the Law Society of Alberta’s ability to dictate training needed to be circumscribed (“[CBA Alberta Response to the Government of Alberta’s Survey on Regulation of the Legal Profession, dated November 29, 2024](#)”). Even so, the JSAA and the new *Regulated Professions Neutrality Act* operate to curtail the scope of the Law Society’s education and training. It seems unnecessary, and potentially overreaching, to grant the Minister unilateral ability to mandate training and education requirements, especially after curtailing the independent regulator’s ability to do the same.

¹ The Honourable Peter Lougheed, “Why a Notwithstanding Clause?”, Inaugural Merv Leitch QC Memorial Lecture, originally delivered at the University of Calgary on November 20, 1991, published online by the Centre for Constitutional Studies (Edmonton, 1998) <online: <https://www.constitutionalstudies.ca/wp-content/uploads/2020/08/Lougheed.pdf>>



Furthermore, the JSAA has also substantially affected the Alberta Law Foundation (“ALF”), by giving the Minister the ability to make Bylaws on behalf of the Foundation, the ability to issue mandatory directives to the Foundation, and the ability to control the appointment process for the two members of the Foundation’s Board that were formerly directly appointed by the ALF Board. Collectively, these changes give the Minister a level of control over ALF that is unlike any other Canadian Law Foundation. As we have noted in our previous correspondence on this issue ([“Amendments impacting the operations of the Alberta Law Foundation,” dated March 13, 2025](#)), ALF currently funds a myriad of on-the-ground *pro bono* legal service providers that are instrumental to the delivery of justice in Alberta. CBA Alberta encourages the Government of Alberta to ensure that any changes to ALF governance do not compromise the funding received by these service providers.

Finally, the JSAA has changed the language respecting the agreement between the Law Society of Alberta, Legal Aid Alberta, and the Minister, now providing that an agreement “shall” be entered into instead of “may.” It’s unclear how this updated wording will operate in the event that the parties cannot reach an agreement. CBA Alberta recommends a clarification to this provision that preserves the independence and autonomy of Legal Aid Alberta.

Extraordinary Legislative Intervention in Court Proceedings

Related to our comments above detailing concerns with increased governmental involvement with historically independent institutions, CBA Alberta is deeply concerned that the JSAA purported to halt the judicial proceedings related to the *Citizen Initiative Act* while the litigation was still active in Court. This legislative measure was extraordinary and difficult to reconcile with our foundational notions of judicial independence and respect for the rule of law. Moreover, the *Citizen Initiative Act* litigation was prioritized by the Court system at the expense of other deserving litigants. CBA Alberta implores the Government of Alberta not to normalize legislating a conclusion to active court litigation.

Canadian democracy rests on a clear distinction between political questions, resolved through democratic processes, and legal questions, resolved by independent courts. When that boundary is blurred, history shows that societies become less fair, less stable, and less secure.

CBA has long been, and always will be, an unapologetic champion for the rule of law, and for an independent judiciary and legal profession in Canada. CBA Alberta values the opportunity to provide feedback on the issues that matter to our members and trust that we can continue to engage in frank dialogue on the issues that matter to Albertans. We are pleased to continue to make ourselves available



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to discuss these concerns, and to assist, where helpful, in identifying options that support public confidence in Alberta's justice system.

Thank you for your attention to these matters.

Sincerely,
Canadian Bar Association– Alberta Branch

A handwritten signature in black ink.

Christopher N. Samuel
President