

# Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

[www.lrwc.org](http://www.lrwc.org); [lrwc@portal.ca](mailto:lrwc@portal.ca); Tel: +1 604 738 0338; Fax: +1 604 736 1175

3220 West 13<sup>th</sup> Avenue, Vancouver, B.C. CANADA V6K 2V5

## Check Against Delivery

**Organization:** Lawyers Rights Watch Canada  
**Item:** Item 3 Interactive Dialogue  
**Speaker:** Paulo de Tarso Lugon Arantes  
**Date:** Thursday, 30 May 2013  
**Re:** Report of the Special Rapporteur on the Independence of Judges and Lawyers

## Oral Statement to the 23<sup>rd</sup> Session of the UN Human Rights Council from Lawyers' Rights Watch Canada (LRWC), a non-governmental organization in special consultative status

Mr. President:

Lawyers' Rights Watch Canada welcomes the report of the Special Rapporteur on the Independence of Judges and Lawyers and greatly appreciates its comprehensive articulation of State obligations regarding the right to legal aid.<sup>1</sup> We are encouraged by the Special Rapporteur's affirmation that an "independent judiciary should guarantee an efficient and effective administration of justice for all, without discrimination..." and that legal aid is "an essential component of a fair and efficient justice system."<sup>2</sup> We emphasize the Report's comments that the right to effective<sup>3</sup> legal aid extends not only to criminal proceedings but also to civil proceedings, including "any judicial or extra judicial procedure aimed at determining rights and obligations"<sup>4</sup> where individuals do not have sufficient means to pay for it."<sup>5</sup>

This report is relevant to Canada at a time when lack of access to affordable legal representation is cited as the primary reason that, in several Canadian provinces, between 60 and 80 percent of family law litigants now try to represent themselves with extraordinary difficulties.<sup>6</sup> LRWC is alarmed by a dramatically declining use of Canadian courts for civil cases<sup>7</sup> largely due to reduced access to legal aid<sup>8</sup> resulting from government funding cuts of legal aid programs. Marginalized groups, including women and children affected by domestic violence as well as indigenous women and children, are particularly disadvantaged by severely circumscribed legal aid for civil cases. Canada's provincial governments have largely failed to respond to recommendations of Treaty Bodies, including the CESCR (2006),<sup>9</sup> CEDAW (2008)<sup>10</sup> and CERD (2012)<sup>11</sup> that Canada ensure legal aid as part of the overarching duty to ensure equality before the law and equal protection of the law. Lawyers working pro bono and litigants resorting to self-help, have utterly failed to redress the inequality resulting from inadequate legal aid. We ask that States be urged to honour their primary obligation to guarantee equality by passing legislation and providing adequate funding to guarantee international human rights standards in the provision of legal aid. Thank you, Mr. President.

<sup>1</sup> Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaut, A/HRC/23/43, 15 Marcy 2013, para. 20.

<sup>2</sup> Ibid, para 3

<sup>3</sup> Ibid para. 41.

<sup>4</sup> Ibid para. 27

<sup>5</sup> Ibid para. 29.

<sup>6</sup> Julie Macfarlane, BA, LL.M, PhD, *The National Self Represented Litigants Project: Identifying and Meeting the Needs of Self Represented Litigants. Final Report* (National Self Represented Litigants Project, May 2013).

<sup>7</sup> British Columbia Civil Justice Reform Working Group, *Effective and Affordable Civil Justice: Report of the Civil Justice Reform Working Group to the Justice Review Task Force* (BC Justice Review Task Force 2006), at 71.

<sup>8</sup> Melina Buckley, LL.B, PhD, *Moving Forward on Legal Aid: Research on Needs and Innovative Approaches*, Canadian Bar Association, 2010 <<http://www.cba.org/cba/advocacy/PDF/CBA%20Legal%20Aid%20Renewal%20Paper.pdf>> at 2,

<sup>9</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), Concluding Observations, Canada, 22 May 2006, E/C.12/CAN/CO/4; E/C.12/CAN/CO/5, at paras. 11, available at: <http://www.unhcr.org/refworld/docid/45377fa30.html>;

<sup>10</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations: Canada, 7 November 2008, CEDAW/C/CAN/CO/7, at para. 9, available at: <http://www.unhcr.org/refworld/docid/494ba8ce0.html>;

<sup>11</sup> UN Committee on the Elimination of Racial Discrimination (CERD), Concluding observations: Canada, 4 April 2012, CERD/C/CAN/CO/19-20, at para.9, available at: <http://www.unhcr.org/refworld/docid/506183642.html>