

SUBMISSION TO THE
SELECT STANDING COMMITTEE
ON FINANCE & GOVERNMENT SERVICES

2007 PROVINCIAL BUDGET

CANADIAN BAR ASSOCIATION
– BRITISH COLUMBIA BRANCH
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Submission to the
Select Standing Committee on Finance and Government Services

2007 Provincial Budget
(CHECK AGAINST DELIVERY)

Prepared by:
The Canadian Bar Association – British Columbia Branch
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As President of the Canadian Bar Association - British Columbia I am pleased to speak to you today on behalf of 6,000 practicing lawyers from across B.C.

This is the third time I have appeared before this Committee, and our third pre-budget submission. Last year, your Committee recommended - with our input - that, *“The government examine the removal of the PST on legal services”*. Before we move further into our presentation, I would like to thank you and your colleagues for the leadership that you have shown by raising this as an important issue.

I regret to say that despite your recommendations to the Minister of Finance in 2005, we are here again, even despite compelling and growing evidence in favour of removing PST from legal services.

For the benefit of those who perhaps are unfamiliar with the issue, I will provide you with a quick overview. In 1992, a 7% Social Service Tax on legal services was introduced. Initially intended to fund legal aid, the tax has consistently been applied to general revenue. The first legal challenge was launched within months of its enactment and since then there have been four successive challenges.

The tax has been widely condemned. In fact, it is very difficult to find anyone in government – elected or non-elected official - who speaks in favour of the tax. Business groups and social activists alike have condemned it.

The tax is:

Discriminatory and unfair – legal services are the only professional services in BC subject to a provincially-imposed tax.

A drag on BC's competitiveness – the tax inflates the cost of doing business in BC relative to other jurisdictions. In this regard, we find it inconceivable that the government of BC, when it states that competitive taxes are fundamental to the province's fiscal health, inflates the cost of legal services and singles-out and discourages the legal industry relative to key competing provinces, namely Alberta and Ontario.

Poor tax policy – the tax defies fundamental economic principles by taxing capital investment – put another way, it is a tax on what businesses have to pay in order to do business. Taxing legal services is not a tax on consumption, but a tax on investment which is, as economists explain, uniformly the most inefficient form of taxation.

Bad for the economy – the tax does not represent lost revenue for lawyers, but is instead a growing cost to the BC economy. The CBA–BC commissioned a study by well-known economist, Roslyn Kunin, who verifies this. We are pleased to share copies of this report with you by way of the Clerk.

Regressive – it has a disproportionate impact on low and modest-income individuals and small businesses who are the least able to afford it.

Access to Justice

Access to justice is a fundamental principle in our society. You may be aware of the work of the late Dugald Christie, and know of his commitment to the cause of more affordable access to justice for British Columbians. Early last year, Dugald's work was rewarded when the BC Supreme Court ruled that BC's tax on legal services is unconstitutional to the extent that it limits "the fundamental right of access to the court for low-income persons." Later last year, the Court of Appeal broadened that ruling to say that the tax on legal services "adversely affects all persons requiring legal services."

An appeal to the Supreme Court of Canada will be heard sometime after March 2007. And so, we remain in limbo, with lawyers and clients in every corner of the province struggling with increasingly complex layers of tax administration. I hear from lawyers all the time, trying to figure out which clients should be taxed...Which services to which clients?... What tax should be kept in trust?...and what's remitted to government? The confusion and frustration around this tax is completely contrary to the mandate of this government. This does not represent a simplification of the tax system in BC, nor does it provide the stability and certainty our economy needs.

The government claims it must defend its right to tax. But -- with respect -- this is the wrong tax on which to make that argument. Why waste money to defend a bad tax? Our view is simple -- when you are in a hole, stop digging! Yes, the government has the right to introduce a tax. It also has the right to remove a tax. This is an economic problem and a political problem, with an economic, political solution.

This year, the Minister of Finance asks, “What choices would you make?” To this we respond, to no one’s surprise, “Eliminate the tax on legal services”.

The Minister also asks us to consider how lost revenue can be replaced. We say that given recent court rulings, the government can no longer depend on the tax on legal services as a reliable source of funding. In short, there may be very little to be replaced.

We could also add that if the Minister of Finance is preoccupied with raising revenue to pay for important public services, then she should not be singling out the people and businesses that use legal services. Taxes should be applied fairly, either across all professional services or across all taxpayers. The objective has to be to deliver greater fairness in the tax system in BC – not to perpetuate unfairness. We oppose all taxes on legal services. But from the tax fairness point of view, the government has only two choices: either tax all professional services, or none. There is no rational justification for singling out legal services.

The tax on legal services must rank as the most anomalous and unfair tax in this province. When in Opposition, the BC Liberals railed against it. This Committee was right to recommend last year that the government consider its elimination, at last. That recommendation should be repeated.

On several occasions we’ve heard the government say that its hands are tied while this case is before the courts. However, that’s inaccurate – it can act now. If taking action results in the litigation being ended, so much the better.

In your deliberations, please remember that this is not income lost by lawyers – it is a cost felt across the BC economy. It is an unfair burden to low and middle

income citizens who struggle to access the legal system. It is a tax on capital that hurts business and makes B.C. less competitive. Specifically, we ask, through elimination of the tax on legal services, that the BC government make the tax system equitable, reduce a continued drag on our economy, and demonstrate that BC is open for business.

We look forward to reviewing your report and recommendations later this fall and hope that you will relay to the government, once again, the significance of addressing this important issue.