

Submission To The
Select Standing Committee on Finance & Government Services

2008 PROVINCIAL BUDGET

Prepared by:

The CANADIAN BAR ASSOCIATION – BRITISH COLUMBIA BRANCH

OCTOBER 3, 2007

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

This is our fifth pre-budget submission.

Two years ago, your Committee recommended - with our input - that, *“The government examine the removal of the PST on legal services”*. Last year, the Committee recommended that the government give consideration to applying the proceeds of the tax to funding legal aid services.

Before I move much 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 issue. We value the dialogue we have had with you over the years.

However, my presence here today is evidence enough that, once again, despite your recommendations, despite our best efforts, and despite the growing body of

compelling evidence in favour of removing the PST from legal services, the government refuses to abolish it.

By now, you no doubt know the origins of the tax. Introduced in 1992, the seven per cent tax was intended originally to help fund legal aid. The tax has since that time been consistently applied to general revenue.

At the time of its introduction, the Liberal Finance Critic, the late Fred Gingell called it “*one of the most discriminatory taxes we have ever seen.*” He was right. When in opposition, the Liberal party consistently opposed the tax. But after being in government for the past 6 years, the tax remains.

Since we were last before the Committee a further legal challenge was heard by the Supreme Court of Canada. Our esteemed colleague, the late Dugald Christie, fought this battle on the grounds that the tax adversely affected the access of low-income persons to the justice system.

The Court decided that government has a constitutional right to continue to tax legal services. But it did not decide that it is fair, just or wise to do so; that is for the government to decide.

But allow me a moment first to explain to you why this bad tax should finally be abolished.

First of all, it's discriminatory and unfair. Legal services are the only professional services subject to a provincially-imposed tax. We defy anybody to explain why legal services should be taxed, when no other professional services are taxed.

Second, the tax is bad for business in B.C. The tax inflates the cost of doing business in BC relative to other jurisdictions. No other province targets legal

services for a special tax. 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.

Third, the tax is an example of 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.

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.

Fourth, the tax is 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 is a fundamental right, and there is no reason why any government would want to put in place another barrier against access. If one were to single out any professional service for taxation – legal services should be among the last to be considered. Access to justice is a fundamental principle that we should all seek to uphold.

In simple terms the government has the legal power to impose this tax. That principle was upheld by the *Christie* decision. Governments must avoid taxing unfairly and discriminatorily. The objective has to be to deliver greater fairness in BC's tax system– not to perpetuate unfairness. From the point of view of fairness the government should weigh two options- either tax all professional services, or none at all.

In fact, no one inside or outside of government has ever mounted any rational defence of the tax. It has been commonly conceded that the tax is indeed discriminatory, unfair, bad for business and does not make sense. And yet it remains.

To speak bluntly, the tax remains for one obvious reason: it raises money. But the government must also consider the damage the tax does, and the unfairness of it. Many unfair taxes would be successful at raising money. That alone is not enough to justify a tax.

Last year, the Committee recommended that the proceeds of the tax be applied to legal aid services. And while originally the tax was said to be for this purpose, the two things are unrelated. Why should individuals who are in need of legal services for whatever reason, and who already may have great trouble paying legal fees, also have to bear the burden of funding legal aid, while the general public pays nothing? This makes no sense; the late Fred Gingell made that point 15 years ago; he was right.

The B.C. Branch of the Canadian Bar Association believes that adequate legal aid funding is the responsibility of *all* taxpayers, not only those who use legal services. We believe that access to justice is no less important than healthcare and education. Taxing access to justice to pay for healthcare and education is wrong.

This year, as in past years, the Finance Minister has asked you to examine the many choices that face our province in relation to the Budget. To this we answer, yet again, eliminate the anomalous tax on legal services.

We say, act to restore equity and fairness.

Contribute to the province's continued growth and competitiveness.

Uphold principles of access to justice.

And show British Columbians that tax policy is guided by rational principles of evenhandedness and sensible tax policy.

In closing, 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. On behalf our membership, I thank you for the opportunity to appear before your Committee.

I would be very pleased to answer any questions that the Committee may have.