

Submission:

Pre-Budget Consultation 2024

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ONTARIO
BAR ASSOCIATION
A Branch of the
Canadian Bar Association

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BARREAU DE L'ONTARIO
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Contents

Contents	2
Introduction.....	3
Comments.....	3
Welcome Investments and Support for Ongoing Reform Work	3
Investments to Combat Delay.....	4
Unified Family Court Expansion.....	4
Amendments to the <i>Consumer Protection Act, 2023</i>	5
Ontario Business Registry.....	6



Introduction

The Ontario Bar Association (“**OBA**”) appreciates the opportunity to provide comments as part of the 2024 Pre-Budget Consultation Process.

The OBA is the largest volunteer lawyer association in Ontario, with approximately 16,000 members, practicing in every area of law in every region of the province. We provide updates and education on every area of the law to combined audiences of 20,000 lawyers annually.

The members of our 40 practice sections include leading experts in their fields who provide practical advice to government and other decision makers to ensure the economy and the justice sector work effectively and efficiently to support access to high-quality justice for Ontarians. In preparing this submission, the OBA sought input from these sections.

Our submission focuses on proposals that would increase efficiency and fairness for families and businesses in Ontario.

Comments

Welcome Investments and Support for Ongoing Reform Work

Investment in justice system infrastructure and personnel remains critical, and we applaud the recent steps taken by the government to improve Legal Aid Ontario’s tariff system and to enable a robust digital platform in support of improved online court access in Ontario. These investments will have a meaningful impact on access to the justice system for Ontarians.

Over the last few years, with initiatives such as the Justice Accelerated Strategy and the Courts Digital Transformation initiative, the Attorney General has demonstrated a commitment to a responsive, accessible justice system and to supporting the sector through the many challenges faced in relation to the COVID-19 pandemic.

It is in that spirit that we welcome the government’s repeated commitment to reforms that will address the significant and growing problem of court delay throughout the court system in the province. We are pleased to be able to participate in the government’s review of the Civil Rules of Procedure through the work of an expert OBA Taskforce and the on-the-ground expertise of our members, and we will be submitting several recommendations for reform to the Ministry of the Attorney General over the coming months.



Investments to Combat Delay

Delays faced in all parts of our court system is the most pressing issue faced by our members, and its impact is being felt across all practice areas as people and businesses struggle to find resolution through the court system in a timely matter. Civil delays result in individuals and businesses being denied efficient remedies to rectify disagreements. If business disputes like contract enforcement or employment disputes can't be enforced in a timely matter, there is a detrimental impact on business operations. This renders Ontario a less effective and attractive environment for business and investment. In the family law context, the impact of delays has a significant societal impact. A delayed system prolongs acrimony and instability which can alter the relationship for families and children for years to come. It has a further effect of increasing poverty, particularly to women and children, when they are unable to get timely support orders they are entitled to.

For the health of our economy and society in Ontario, it is essential to make the investments in staff and infrastructure to reduce delays. Investments are needed not only for judicial appointments, but for staff resources, as court staffing and turnover continue to negatively impact the justice system. Investments in court infrastructure are equally pressing, as issues with maintenance and repairs (Milton Courthouse for example) cause additional systemic delays. Consideration should also be given to other targeted measures to increase efficiencies including expanding legal aid to civil cases; increasing the roster of associate judges and their mandates to address civil delay; and expanding the use of single-judge case management, which results in more efficient and timely resolutions.

Delays negatively impact all Ontarians and reduce the public's trust in the justice system. Resolving the issue of delays requires collaboration with government, courts, and justice sector stakeholders. We look forward to continuing to collaborate on measures to combat court delays to ensure Ontarians have fair and timely access to justice in the province.

Unified Family Court Expansion

The OBA reiterates its support for the full expansion of the Unified Family Court System across the province. The UFC model has the potential to reduce duplication and delay through the provision of a single court without jurisdictional confusion and overlap. A UFC model increases efficiency and utilizes judges specialized in dealing with sensitive family issues. The expected efficiencies would also reduce the pressure on the civil and criminal systems. This is crucial for supporting families during the difficult process of separation.



Amendments to the *Consumer Protection Act, 2023*

The OBA fully supports the motivation behind the recent changes to the consumer protection legislation, and the government's policy goal of modernizing and strengthening consumer protections for Ontarians.

The OBA submitted amendments to the *Consumer Protection Act, 2023* during the committee process, aimed at ensuring contractual fairness and certainty. There are crucial regulations and rules to be crafted to support the operation of the new *Act*, and the OBA would welcome the opportunity to provide advice and assistance as those are formulated.

For consideration as part of this pre-budget process, the OBA provides two legislative amendments aimed to ensure that the new *Consumer Protection Act, 2023*, when it comes into force, achieves its intended aim without unnecessary consequences. Firstly, we recommend the deletion of subsections 107(2)-(4) of the new *Act*. As written, these subsections may have opened the door to the application of regulations and parts of the *Act* in a manner that alters the fundamental rights and obligations of almost any consumer contract, on a go-forward and retroactive basis. These subsections inject significant and unnecessary uncertainty into the Ontario economic environment. We fully support the motivation behind the recent changes to consumer protection legislation and believe that the Government's stated intentions can be achieved without these subsections.

Secondly, we recommend reining in the scope of "purchase-cost plus leases" in the *Act*. Purchase-cost plus leases are currently defined as "a lease under which the total amount payable exceeds 90% of the estimated retail value of the leased goods". On its face, this would capture virtually all leases, as these types of leases typically reflect the total value of the leased goods (100% value), in addition to other leasing fees. Purchase-cost plus leases appear to be intended only to capture a certain subset of exploitative leases, requiring an amendment to the current definition. We note that defining "total amount payable" remains a potential route to address this issue, as subsection 1(1) leaves this definition open to future prescription. In our view, this is not the optimal route for this amendment. It would require defining "total amount payable" as something other than its plain meaning. Even the term "purchase-cost plus lease" suggests it means the purchase-cost (100%) *plus* some additional amount. We recommend amending the percentage threshold from 90% to somewhere above 120% to avoid capturing all leases.



Ontario Business Registry

The OBA appreciates continuing to work with the government to improve the Ontario Business Registry. The OBA and MPBSD have been working together for more than two years on this project. The OBA provides important practical feedback through our diverse membership that includes lawyers who act for everything from small family businesses to large multi-national companies. We look forward to continuing this important work to support the continuous improvement of the business and not-for-profit environment in Ontario.