

**Hansard (official transcript)**

**Ontario Bar Association Presentation to 2007 Pre-Budget Hearings**

Remarks by OBA President James Morton

January 30, 2007

**The Chair:** Now I call on the Ontario Bar Association to come forward, please. Good morning. You have 10 minutes for your presentation. There could be five minutes of questioning. I ask you to identify yourself for our Hansard.

**Mr. James Morton:** Thank you so much, Chair. My name is James Morton. I am here in my capacity as president of the Ontario Bar Association. I'd like first to thank you for the opportunity to present our position and advice for the 2007 Ontario budget before the standing committee. The OBA is the voice of the legal profession in Ontario. We are a voluntary legal association representing over 17,000 lawyers, judges and law students in Ontario.

Over the course of your hearings, you will most certainly hear from several organizations about needed investments in health care and education. I will be limiting my comments to the third and, we say, equally important support of our society, our justice system. But please do not take this as suggesting that we don't see the critical importance and value of the other two supports. Our position really is that there are three fundamental supports for our society, and having two legs on a stool doesn't make such a good stool.

There are many issues that our membership would like me to raise today. I'm going to focus only on two of them in the context of the 2007 provincial budget. The first is the need to increase legal aid funding by \$30 million this year and \$20 million across the subsequent two years, thereby improving access to justice for many thousands of Ontarians and permitting the justice system to deal more efficiently with the ever-increasing number of matters coming before the courts. The second has to do with rules limiting those who can hold non-voting shares in legal professional corporations.

Turning to legal aid: It will come as no surprise to you that legal aid is in a financial crisis. The crisis reached an acute stage this fall when Legal Aid Ontario began drastic measures to deal with an anticipated \$10-million deficit. This resulted in delaying payments to lawyers and placing a spending cap on individual cases. The decision to temporarily delay the cap came down, but the circumstances leading to it have remained unchanged. The effect is that the scales of justice, we say, are tipping more and more away from those without the means to pay, and legal aid continues to fight for its piece of the justice budget.

The numbers speak for themselves. In 2006-07, one in three eligible family law applicants was turned away. In the same period, the number of family law applications refused increased by 26%. This means that a mother, in some circumstances, fighting to protect her children from an abusive father may not be successful. I'm not exaggerating here: 75% of legal aid family law clients are women, and 35% are single mothers.

Equally concerning is the rate of refusal in criminal matters, which has risen by 31% since 2004. This is particularly concerning because since 1999 the number of criminal matters heard by the Ontario Court of Justice increased by almost 40%, while in that period legal aid certificates increased by about half that rate. Our democracy and our justice system are founded on the presumption of innocence and the right to a fair trial, which can only be ensured if the legal aid system is properly funded.

Without adequate representation in court, a party is no match for a seasoned and sophisticated prosecutor. Even with judges' best efforts to ensure fairness, an innocent, unrepresented individual is going to make costly and potentially devastating mistakes. Our justice system works extremely well, but we have seen in Canada the problem of the wrongfully convicted, and that problem can only be aggravated by a lack of legal aid funding. The bottom line is that without access to legal representation, the chances for a factually wrong decision in criminal law, in family law, increase tremendously, and that impacts the entire society.

At every one of our town hall meetings, which we have held across the province from Brockville to Belleville to Barrie, we heard from a broad spectrum of people involved in the justice system saying that legal aid certificates are becoming a less and less viable option. In fact, during a town hall meeting we hosted in Barrie, Tom Bryce, an area family law lawyer, told those present that a lawyer working on a legal aid certificate would make half as much as a lawyer in regular private practice.

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I should take a moment to commend the government. They have identified the need to address this problem. They have addressed the problem and appointed Professor John McCamus to do a comprehensive and independent review of the legal aid system. But in our submission, we believe that funding for legal aid must be increased by \$30 million in 2007-08 and a further \$20 million over the next two years. This would allow Legal Aid Ontario to maintain current service levels without resorting to funding caps, and it would be possible then to reverse the trend of an ever-increasing number of refusals. If you put this dollar amount in the context of funding allocated for the equally important pillar of our society, health care, \$30 million represents just one per cent of the increase to the Ministry of Health's budget last year.

I recognize that time is fleeting. I will speak very briefly on the second issue. You do have our speaking notes. Under the Business Corporations Act, lawyers cannot issue non-voting shares to immediate family members. The medical profession can do that. Our submission is that this is unfair and inappropriate. There is no principled distinction

between lawyers and doctors, and this is an arbitrary and unjust distinction. Allowing non-voting shares to be given to immediate family members of lawyers can assist in making viable practices outside the major urban centres. People are surprised to hear this, but there is a shortage of lawyers outside the major urban centres. In our submission, this would be an appropriate change to make, and it is one that is simple fairness.

I think I've said all I need to say at this point about those two points. I thank you, Chair.

**The Chair:** We thank you for the submission. This round of questioning goes to the official opposition.

**Mr. Barrett:** Thank you, James, for testifying on behalf of the Ontario Bar Association. We had a presentation yesterday by Charles Spettigue, who practices criminal law in Hamilton. He gave us quite an extensive brief. It mirrors much of what you're saying and stresses, again, from the Hamilton perspective, that one third of the accused brought before our courts in many cases are legal aid, and in many cases are suffering from mental health problems or substance abuse or lack of affordability or viable income to foot the bill. He indicated that Attorney General Michael Bryant spoke to the Hamilton Criminal Lawyers' Association in October 2004 and announced his commitment to a robust and independent legal aid system.

Has there been any progress in the ensuing two or three years? I know there hasn't been any money in the last two years, as I recall.

**Mr. Morton:** There have been modest cost-of-living-type increases. Certainly we're very pleased with the appointment of Professor McCamus to look at the situation. We do think that legal aid really does need to have some focus. We recognize there are other important roles that government must play. But when you look at the amount of funding which is required, it's really quite small in terms of the other responsibilities of government.

One of the things I might note that may be useful for the future, and this is something where we're pleased to see both the federal government and the provincial government working together, is the streamlining of the justice process. I was in Winnipeg this last weekend and discovered that they have a legal aid system where the funding is not significantly greater on a per capita basis than our own, but they're able to service more generally. That seems to be largely because in Manitoba the court system works more quickly.

There are costs that are saved by having legal aid funding. An unrepresented accused makes a much longer trial. If the accused has representation, the trial can be shortened, and that saves money in other areas of the justice system. I hope that addresses it a bit, Mr. Barrett.

**Mr. Barrett:** Again, going back to the Hamilton presentation, they did a measure -- two years after the Attorney General's speech, legal aid is something like \$10 million in the

hole. I think you made reference to that. There was in a Toronto Star article last November. You're suggesting an increase in funding: \$30 million this year and \$20 million across the subsequent two years.

There have been a number of studies and reviews and commissions; you've made mention. There's an ongoing study right now. Are we going to get the results of that study in the near future or is this going to be after the election? When will we know?

**Mr. Morton:** I can't tell you the precise timing. I understand that Professor McCamus is working on it presently. My impression is that we would have it probably towards the end of the summer or beginning of the fall, which would be before the election. But that's my impression. I haven't spoken directly to Professor McCamus about his timing.

**Mr. Barrett:** Further to these kinds of reviews, I know the Ontario Bar Association hosted a number of town hall meetings across the province. We were hoping to have one in our area. We weren't able to get one organized.

**Mr. Morton:** We're still available; we'd love to.

**Mr. Barrett:** Some of the results of those town hall meetings -- what are your reviews telling us?

**Mr. Morton:** What we're seeing is that there are significant numbers of unrepresented people who really have a need of representation. As you indicated, in the criminal side, we see mentally challenged individuals, we see people with substance abuse, we see people who are just bewildered by the system. We also see in the family side -- and this is equally troubling -- unrepresented people going to court. There is a side effect of that, because often the people who suffer most from an incorrect or a poor decision in a family trial is not mom or dad, it's the kids. So a lack of legal aid funding impacts not so much on the parties as on someone who's not a party at all. We do think legal aid funding has to be addressed.

The numbers we've put here are not sort of pie in the sky, what we'd like for Christmas. We think these are the minimum respectable, responsible numbers that can address the system, and then, longer term, Professor McCamus's recommendations and perhaps changes to the streamlining of the system can help as well.

**Mr. Barrett:** Thank you, Mr. Morton.

**The Chair:** Thank you for the presentation.

**Mr. Morton:** I thank the committee.