

Standing Up for Access to Justice

Submission by:

The Coalition of Legal Organizations

Coalition Members:

Ontario Bar Association
County and District Law Presidents' Association Executive
Ontario Trial Lawyers Association
The Advocates' Society
Canadian Defence Lawyers

Submission to:

Pat Hoy
Chair
Standing Committee on Finance and Economic Affairs
99 Wellesley Street West
Room 1405, Whitney Block, Queen's Park
Toronto, ON M7A 1A2

Introduction

This document is the submission of a coalition of legal organizations, comprising the Ontario Bar Association, The County and District Law Presidents' Association Executive, the Ontario Trial Lawyers Association, The Advocates' Society, and Canadian Defence Lawyers (the "Coalition").

The Coalition understands the Ontario government's need to replace the existing Retail Sales Tax (RST) with a new, Harmonized Sales Tax (HST). It will likely help Ontario businesses, making them more competitive in global markets. It will provide more certain and predictable revenue to the government. It will, however, do so at the direct expense of Ontario consumers.

Consumers hardest hit will be average income consumers of goods and services not previously taxed under the RST, who will find themselves paying an additional 8% of tax under the new HST.

One such group – and a very important group of Ontario consumers – is that diverse collection of average income Ontarians in critical need of access to justice and cost-effective legal services.

This group's members come from all across Ontario and include single mothers (and fathers) seeking family law assistance; the fixed-income senior citizen seeking estate planning advice or a basic Last Will and Testament; the economically disadvantaged young person struggling to find his or her way in the world, but faced with discrimination in the work place – to name just a few.

The Coalition speaks for those Ontarians who are concerned that the increased tax burden caused by applying the HST to legal services will mean that fewer Ontarians will be able to afford legal services, and their rights will thereby be compromised.

The Coalition implores the Ontario government to relieve Ontario's citizens of this additional and unwarranted burden by:

Zero-rating, for HST purposes, all legal services supplied to "consumers".¹

Our position can be better understood in the following context.

¹ The GST definition of "consumers" defines this term to mean an individual who acquires (or imports) property or services for his or her personal consumption, use or enjoyment (or the personal consumption, use or enjoyment of any other individual at the particular individual's expense). This definition also excludes individuals purchasing for any non-personal use.

Assuming the proposed HST uses the same architecture as the current GST, the intended effect of the Coalition's proposed change would be to ensure that Ontarians purchasing legal services for personal (not business) use are permitted to purchase the service free of the proposed 8% HST.

Access to Justice a Hallmark of the Rule of Law

The Coalition believes that access to legal services is a cornerstone of our civilized society. Today, access to legal services is more important than ever. The shrinking economy means increased job losses. With any economic down-turn, the demand for legal services increases (in criminal law and family law matters, to name only two), at the same time that household incomes decrease and pensions and other fixed incomes become less certain. The Coalition knows that imposing the HST on legal services will create a barrier to access to justice and legal services that neither Ontarians nor Ontario can afford.

A free and democratic society requires that citizens of all means must be able to assert their legal rights and defend incursions against their freedoms. Asserting those rights requires ready access to legal services of accredited lawyers. Any impediment – pecuniary or otherwise – to the assertion of those rights increases the democratic deficit.

The proposed 8% HST on legal services will increase the cost of asserting those rights, irrevocably. Those least able to incur an increase in the cost of legal representation are often those most in need of legal assistance – the working poor, single parents and seniors. They will bear the brunt of the effect of the HST on access to justice and legal representation.

The proposed 8% HST on legal services thus reduces access to legal services, increases inefficient self-representation, and places a further and unnecessary strain on already limited judicial resources, court services and legal aid.

The 8% HST Will Adversely Impact Many Ontarians

While in no way comprehensive of all the ways in which the 8% HST will affect Ontarians, the following vignettes demonstrate some expected impacts on Ontarians' access to legal services:

<p>On Child Custody & Support Disputes</p> <p>Andrew, a separated father of four children, had to represent himself in an 8-day trial with his former wife over custody of and access to his children because, paying his table child support amounts, he could only afford a lawyer for a short time.</p>	<p>On Common Law Family Issues</p> <p>Cathy was in a common law relationship for 15 years and had one child from the union. Since the relationship was common law, she does not have property rights under the <i>Family Law Act</i>. Cathy believes she can make a case for division of assets, but to do so, needs a lawyer. She does not have the financial resources to hire a lawyer for the entire process.</p>	<p>On Same Sex Matters</p> <p>Rebecca, a mother of three, is in the midst of a child custody case with her same sex partner. The issues are novel. Although her lawyer has substantially reduced his fees, and not charged for much of the learning curve, Rebecca is still having problems paying the growing legal costs.</p>
<p>On Pension Matters Involving Widows and Widowers</p> <p>Ms. Petras, 71, was involved in a pension battle with her own Pension Plan, over whether she was entitled to a portion of her ex-husband's pre-retirement death benefit. Ms. Petras ultimately obtained experienced pension counsel and the case went to the Ontario Court of Appeal, which upheld her right to the benefit – but only after her lawyers determined and dealt with very complex issues and expended significant time. Ms. Petras' battle was not one of her own making, but every dollar spent was a drain on her ultimate entitlement.</p>	<p>Insurance Litigation and the Disabled</p> <p>Carol is married with three young children. She is the sole support for her family, as her husband was injured many years earlier in a work place accident, and currently tends to the household. As a result of stress at work and home, Carol began suffering from depression and became herself unable to work. She applied for long-term disability benefits through her group insurer but the benefits have been denied. She received EI sick benefits but they ran out after 13 weeks. In order to survive, Carol has to bring an action against the disability insurer, but cannot afford to do so. Her access to the justice system will be denied.</p>	<p>On the Real Estate Transaction</p> <p>The associated transaction costs (surveyor, lawyer, real estate agent, inspector, etc.) on the average house deal may total \$30,000, resulting in \$2,400 in additional HST costs. The parties, assuming both stay in the real estate market, fund these increased costs from their down payments or equity and thereby incur increased mortgage costs. The HST cost effectively doubles, due to the interest burden over the amortization period.</p>
<p>On Estate and Trust Matters Involving Fixed Income Seniors</p> <p>Rob and Franceen are fixed income seniors, living on the income from years of savings and minimal CPP pensions. They are struggling with tax and estate planning issues. They need sophisticated legal advice, which will be costly, because of the complexity of the estate and tax rules. Every cent they spend on these services is a drain on their savings, and will affect their day to day ability to survive.</p>	<p>On Ontario's Hard Working Students</p> <p>William is an intelligent young man, recently graduated from an Ontario University with a Bachelor of Commerce degree. His student loans are coming payable, and he is paying them diligently. His employer discriminates against William, and fires him without good cause or notice. William knows this is improper, but needs the advice of a lawyer to determine what his next steps ought to be, and what he can expect from the process. Every dollar he devotes to vindicating himself is a dollar less he has to support his survival in the current economic times.</p>	<p>On New Families Starting Off in Life</p> <p>Jack and Brian are looking to purchase a new home together, their first as a couple, and to start a new life together. They find the perfect condo. It's modestly price for Ottawa real estate, but the down payment is significant. Beyond the issues involved in purchasing the condominium, the condominium agreement and related documents are complex. Only a lawyer can understand what they are about to get into, and they need that advice. Again, every dollar they are required to pay for these basic legal services is a dollar in the way of their dream.</p>

Eliminating the 8% HST on legal services will help each of these groups of constituents – and many thousands more.

Perhaps as important, eliminating the 8% HST on legal services is a simple technical task, and can literally be accomplished with a few simple strokes of a pen.

Eliminating the 8% HST on Legal Services will be a Simple Technical Task

The concept of “zero-rating” is a fundamental concept under the GST. It is used to free from value-added tax certain goods and services that, for tax policy reasons, the government decides should not be taxed.

Notable examples of current zero-rated items include: most basic foods and drink; most prescription drugs; certain medical devices; certain products of agriculture and fishing; Canadian goods sold for export to the international markets; and international travel.

Zero-rating is simply accomplished by making small changes to the tax charging provisions of the GST legislation, and listing the zero-rated supplies in a Schedule attached to the same legislation. The federal Department of Finance knows how to do this. It is an easy task.

Given the ease with which the problem can be solved, and the importance of the problem itself:

The partners of the Coalition implore the Ontario Government to elevate access to justice to this same level of importance, and zero-rate under the proposed 8% HST the provision of legal services to consumers.

Legal services should not be relegated to the same treatment as other taxable goods and services under the HST. Legal advice and representation are sought and provided in order to preserve, protect, defend or pursue the individual’s human and civil rights under our law. The rule of law – and, necessarily, access to the law – are at the foundations of our free and democratic society.

Introducing HST will more than double the tax to be paid on access to justice – at a time when commentators both inside and outside government, from the Chief Justice of Canada on down, have identified the high cost of legal services as a barrier to access to justice.

More than doubling the tax in these economic times would be unconscionable.