



Justice for Small Business and Ontario Families

OBA Submission to the Pre-Budget Consultations
of the
Standing Committee on Finance and Economic Affairs

Date: February 1, 2011

Submitted to: **Pat Hoy**, Chair Standing
Committee on Finance and
Economic Affairs

Submitted by: **R. Lee Akazaki**, President



ONTARIO
BAR ASSOCIATION
A Branch of the
Canadian Bar Association

L'ASSOCIATION DU
BARREAU DE L'ONTARIO
Une division de l'Association
du Barreau canadien



Table of Contents

The OBA.....	2
I - Tax Issues	2
Lawyers are Small Business People	2
Access to Justice	2
Tax Treatment.....	2
The Harmonized Sales Tax (“HST”).....	2
Non-voting Shares in Professional Corporations	3
II - The Efficiency of a Unified Family Court.....	4
Federal Co-operation on the Issue.....	4
Protection of Women and Children.....	4
Access to Justice	5
Fiscal Responsibility.....	6



The Ontario Bar Association (“OBA”) appreciates the opportunity to provide this submission to the Standing Committee on Finance and Economic Affairs, as part of the pre-budget consultation process.

The OBA

As the largest voluntary legal organization in the province, the OBA represents 18,000 lawyers, judges, law professors and students in Ontario. OBA members practice law in no fewer than **36** different sectors and in **360** towns and cities across the province. In addition to providing legal education for its members, the OBA has assisted government and other policy-makers with many legislative and policy initiatives - both in the interest of the profession and in the interest of the public.

I - Tax Issues

Lawyers are Small Business People

Lawyers are small-business people. Over **8,000** of the OBA’s members practice in the small and medium sized businesses that drive Ontario’s economy. More than **3,000** of those members practice in rural areas and small towns, where they are leading members of their chambers of commerce. Their businesses are a crucial part of the local economy.

Access to Justice

Of course, in addition to their contribution as business people, these lawyers provide access to justice for the businesses and families of their communities. Women and children searching for equity, stability and safety in a marriage breakdown would be denied all three without the protection provided by their local lawyers. Small retailers and manufacturers are best served by local lawyers who can not only navigate the legal and regulatory environment but also understand the regional customs, vernacular and economic realities.

Tax Treatment

Despite the fact that lawyers’ offices, particularly in smaller centres and rural areas, fit the profile of a small business and provide a crucial service, they do not receive the tax advantages that other small businesses do. Inexplicably, they are even treated differently than other professional businesses.

The Harmonized Sales Tax (“HST”)

While we do not intend, in this submission, to dispute the need for, or advantages of, the HST generally, it must be recognized that it has a negative impact on the ability of lawyers, particularly in smaller centres, to provide affordable services to their clients and still make a living. While other



small businesses have the advantage of significant input credits that can allow for lower prices without eating away at profits, lawyers, of course, do not have that advantage. The overwhelming majority of value for legal services is based on input from in-house human resources - support staff and professionals. Input credits for supplies and outside services do not come close to counteracting the additional 8 percent now charged to clients as a result of the addition of the PST portion to the tax on legal services. To provide access to justice for many clients, the additional cost of the HST is being taken from the price of the legal advice, making small practices less and less viable. While we recognize that making legal services HST exempt is unlikely at this time, we have outlined below a solution that would counteract the effects of the HST to some extent and assist in the provision of affordable access to justice.

Non-voting Shares in Professional Corporations

In 2005, this Government prescribed Regulation 665/05 under the *Business Corporations Act*, which allows doctors and dentists in small practices to issue non-voting shares in their professional corporations to family members, in order to share income. Granting this same ability to lawyers in small and medium sized firms would allow them to operate financially viable practices while providing affordable legal services, particularly in small towns where incomes tend to be lower.

Access to health and dental care was recognized as one of the motivations for Regulation 665/05. It must be recognized that a failure to provide access to legal services can be as or more devastating than a failure to provide access to primary medical care or dental care. The well-being of a child is compromised if custody and support are not properly arranged after a marriage breakdown. A woman without access to the legal support that will help her flee an abusive marriage without spiraling into poverty is certainly as compromised as a woman without a dentist. Spending weeks in jail with no access to a lawyer to assist with bail could destroy someone's life – cost them their job and family. A small business without proper, affordable legal advice will fail.

While we recognize that fiscal restraint is necessary following the recent recession, a regulation allowing for the issuance of non-voting shares in legal professional corporations is an affordable way for the government to assist in providing crucial access to justice across Ontario. We ask that the government: amend regulation 665/05 to add lawyers to the list of professionals who can issue non-voting shares to family members; and make the necessary consequential amendments to the *Law Society Act*.



II - The Efficiency of a Unified Family Court

While there is no question that additional investments in the justice system are necessary, the OBA supports the Attorney General's determination to find relatively cost-neutral ways to improve the justice outcomes. A province-wide Unified Family Court ("UFC") is such an initiative. Currently, there are three courts in the Province of Ontario that provide the same or similar services to Ontario families in transition – the Ontario Court, the Superior Court and, in a patchwork of jurisdictions, a form of unified family court. This situation creates confusion and expense for families in already difficult circumstances and added cost for government. The unification of these courts into a single family court would create better justice outcomes and save Ontario tax-payer dollars.

Federal Co-operation on the Issue

While the OBA is advocating a UFC for Ontario only, the involvement of the federal government is required given that it has the jurisdiction to appoint certain judges under section 96 of the *Constitution*. These federal judges have exclusive jurisdiction to grant divorce and deal with the division of property on marriage breakdown. We are, therefore, requesting that the Ontario Government begin work with the Federal Government to achieve the creation of a UFC.

Protection of Women and Children

The unification of the family courts provides better protection for women and children in the following ways:

- The **specialized judges** who would sit on the bench of the UFC will have the experience necessary to consider a broader range of factors and develop a larger range of more creative solutions in custody matters. More exacting custody solutions will, in turn, provide better protection for children without placing on them the additional stress of unnecessary acrimony between their parents;
- A UFC would allow a single **dedicated judge** to follow a family's matter from inception through to completion and he/she would, as a result, have a more complete understanding of the family's issues. This would allow for more appropriate spousal support, child support and custody arrangements; and



- Given that women are, by an over-whelming majority, the victims in spousal domestic abuse cases and are, in the vast majority of cases, the more financially vulnerable party (as evidenced by the fact that they account for the vast majority of family law legal aid applications), having a specialized judge who is dedicated to the case from beginning to end protects women in critical ways, for example:
 - o Recognizing the effects of spousal abuse on the ability of a woman to return to the workforce, is critical to a fair spousal support settlement;
 - o The re-victimization effect of having to continually outline the abuse to a new judge with each new motion, application or hearing would be reduced where a single judge is dedicated to the matter; and
 - o Avoiding the necessity to re-argue issues or present the same facts again and again, would make a family law case much less expensive for the parties and make it more likely that financially vulnerable clients will receive the appropriate level of legal service.

Access to Justice

As mentioned above, the fact that a UFC could provide one consistent judge throughout a matter would make cases less expensive for all litigants. This would clearly enhance access to justice. In addition, a UFC would:

- reduce confusion for parties that is caused by having a patchwork of courts. A less confusing justice system is a more accessible one;
- support the provision of specialized, holistic family services such as family mediation and more sophisticated information services that would provide information on both court processes and non-court options such as collaborative family-law. These services make cases cheaper for the families involved and also free-up court time so that those who do have to go to a hearing have more timely access to courts; and
- allow for more efficient scheduling of judges in family cases so that justice is provided more quickly. The axiom “justice delayed is justice denied” is especially true in family-law matters. For example, it may be impossible to reverse the emotional and psychological effects on children who remain in custodial limbo for an extended period without proper financial support.



Fiscal Responsibility

A UFC is a more fiscally responsible way to provide family justice services, in that:

- it avoids the current duplication of staff, administration and paperwork involved in having the same or similar services being provided in three different courts in Ontario; and
- family law decisions rendered by a specialized court would ensure appropriate and timely spousal and child support and avoid unnecessary reliance on state assistance programs for spouses and children.