



**Submission to the
Select Standing Committee on Finance and Government Services
2006 Provincial Budget Consultation
October 21, 2005**

The Canadian Bar Association - British Columbia (CBA-BC) is pleased to provide this submission to the Select Standing Committee on Finance and Government Services regarding the 2006/2007 provincial budget to be introduced in February 2006.

The CBA-BC is the voice of the legal profession in British Columbia. The Association is a professional, voluntary organization that represents lawyers, judges, academics and law students. Approximately 6,000 practicing lawyers from across B.C. belong to the CBA-BC. Across Canada, 34,000 lawyers are members of the Canadian Bar Association.

The CBA-BC is dedicated to improving and promoting access to justice. We provide many services promoting public legal education. We work closely with government, assisting in the review of legislation, and making submissions to the Legislature of British Columbia on legislation. We provide a legal perspective on issues of significance to both the legal profession and the public. Our members are active in all major areas of legal practice – touching every region and economic and social sector of B.C.

Response to the Budget 2006 Consultation Paper

As the Standing Committee's Budget 2006 Consultation Paper states, a positive economic and fiscal environment creates the opportunity to consider new choices for the allocation of government resources. B.C. has made great economic progress in recent years and outperforms



the rest of the Canadian economy measured across a number of sectors. Economists predict that B.C.'s economic growth will continue. The government's plan requires continued fiscal balance and predicts future surpluses and revenue increases. The strong economy also creates an opportunity to change tax and fiscal conditions in British Columbia to remedy unfairness, contribute to better economic performance, and limit the severity of cyclical downturns should they occur in future.

A key step in this respect will be the elimination of taxes that are inequitable, inefficient and impede economic activity. *Specifically, in this regard, the CBA-BC recommends that the provincial government eliminate the 7% Social Service Tax on legal services.*

In 1992, a 7% Social Service Tax on legal services was introduced. Initially intended to fund legal aid, the tax has consistently been applied to general revenue. There is in fact no rational connection between the users of legal services, who pay this tax, and the need for legal aid. While the tax has never been applied to fund legal aid, the tax has remained. In addition to being discriminatory and unjust, the tax is an impediment to doing business in British Columbia.

Legal services are the only professional services in B.C. subject to the B.C. sales tax. This makes the tax on legal services discriminatory. No such tax is imposed on the services of other professionals such as accountants, engineers, consultants, and so on. There is no logical justification for this. Indeed, if one were to pick a professional service that ought to be subject to tax, legal services might be the last one chosen.

Many people who need legal services or advice are people in need, who may already be in dire straits. A person who has been injured in a car accident and who is seeking compensation, or persons who are having domestic problems, or who are in need of professional legal advice or assistance of some kind, may be in no position to afford an extra tax on those professional services. Yet they are singled out for this special tax. This makes no sense.



The Supreme Court of British Columbia has ruled that the tax is unconstitutional, as being an unjustified barrier to access to justice, a fundamental constitutional right, as it pertains to low income people.

The tax is regressive. It has a disproportionate impact on low and modest-income households, and small businesses. According to Statistics Canada, a two-person household with an income of below \$30,000 will pay 0.23% of its income on legal services, on average. A household with a higher income will pay a smaller proportion of its income on legal services, according to Statistics Canada. For example, a household with an income of \$70,000 will pay 0.17%, on average. The same principle applies for small businesses and start-ups.

In general, there is little or no relationship between ability to pay and the imposition of the tax. Nor is there any “user pay” concept underlying the tax. The tax is arbitrarily imposed on this one service.

Businesses can deduct the tax from income. Individuals cannot.

Many large businesses, Crown corporations and institutions avoid the tax completely by employing in-house legal counsel. Smaller businesses and individuals cannot do so.

The tax is incompatible with the government’s goal of creating a competitive business environment in B.C. The tax inflates the cost of doing business in British Columbia, relative to other jurisdictions where no such tax is imposed, notably Alberta and Ontario. The tax puts B.C. lawyers and law firms at a competitive disadvantage, and promotes the export of legal services to other jurisdictions. It hampers B.C.’s efforts to attract highly mobile, knowledge-based industries to the province. High technology or creative industries such as bio-tech, software, and film can be expected to be heavy users of legal services.



Critically, a tax on legal fees is a tax on capital investment and business inputs and a drag on the provincial economy. Research commissioned by the CBA-BC indicates that while tax reduction results in positive economic gain generally, removing taxes on capital investment brings about the largest gain. A recent study conducted in Ontario indicated that for every dollar of tax revenue lost by eliminating provincial sales taxes on capital goods, GDP increases by \$3.50.

The tax on legal fees results in a hidden cost to the B.C. economy that is felt in reduced productivity, lower levels of employment and diminished levels of competitiveness. The tax imposes social costs in relation to access to justice for low or moderate income people, and in unfairly targeting anyone in need of legal services.

By any measure, the Social Service Tax on legal fees is a bad tax. It is discriminatory, unfair, irrational and harmful. The positive economic benefits associated with eliminating the tax will offset the cost to the provincial treasury in lost revenue. Now is the time to eliminate this tax.

In closing, the CBA-BC strongly urges that the Standing Committee recommends the elimination of this tax in the very next budget of the Province of British Columbia.



We thank you for giving us this opportunity to share our views with the Select Standing Committee on Finance and Government Services. We look forward to seeing the Committee's report later this year.