

**BRIEF  
BY THE BARREAU DU QUÉBEC**

**Pre-budget consultations for the 2018 federal budget**

Presented to the Standing Committee on Finance  
House of Commons – Ottawa

August 2, 2017

## **SUMMARY**

To promote access to justice and increase productivity and competitiveness for Canadians, the Barreau du Québec makes the following recommendations.

### **1 - TAX RELIEF FOR ACCESS TO JUSTICE**

Introduce new tax provisions to promote access to justice. This could take several forms: a deduction, a non-refundable tax credit, a refundable tax credit or a zero rate. Eligible costs would be defined by regulation and could include all court-related costs, including rates, professional fees, expert's fees, etc. These costs should also include all costs associated with private methods of dispute avoidance and resolution (mediation, conciliation and arbitration).

Specific provisions should target the middle class, which is not eligible for legal aid. A means test could be used to set a threshold for general assistance for access to justice.

### **2 - INCREASED FEDERAL SUPPORT TO PROMOTE ACCESS TO JUSTICE**

Provide additional federal support to promote access to justice and follow up on the final report of the Standing Senate Committee on Legal and Constitutional Affairs on reducing lengthy court delays.<sup>1</sup>

- a. Technology would promote better access to justice for citizens and ultimately reduce operating costs.
- b. Justice in the North requires greater federal involvement, especially in Inuit and Aboriginal communities.
- c. Legal clinics that specialize in multicultural and Aboriginal matters should receive targeted federal aid.
- d. Legal aid for immigration matters requires increased federal funding.
- e. The federal government must appoint more judges, in particular to the Superior Court of Quebec for criminal matters.

### **3 - WORK IN PROGRESS ACCOUNTING METHOD**

Take into account the distinct characteristics of the professional practice of law in implementing the new work in progress accounting method.

## **INTRODUCTION**

The Barreau du Québec believes that justice is an essential public service, like health care and education.<sup>2</sup> Individuals with unresolved legal problems face serious hardships, for example in terms of their health or work productivity. The benefits of spending on legal aid have been

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<sup>1</sup> *An Urgent Need to Address Lengthy Court Delays in Canada*, June 2017, online:

[https://sencanada.ca/content/sen/committee/421/LCJC/reports/Court\\_Delays\\_Final\\_Report\\_E.pdf](https://sencanada.ca/content/sen/committee/421/LCJC/reports/Court_Delays_Final_Report_E.pdf)

<sup>2</sup> See the speech on legal aid given on February 1, 2002, at the University of Manitoba by Supreme Court Chief Justice Beverley McLachlin, (2002) 29.1 *Manitoba Law Journal* 281.

demonstrated. A funding plan is needed to follow up on the final report of the Standing Senate Committee on Legal and Constitutional Affairs on reducing lengthy court delays in Canada.

## **1 - TAX RELIEF FOR ACCESS TO JUSTICE**

A large and growing number of taxpayers do not have the means to defend or exercise their rights. In Quebec, social assistance recipients and some low-income individuals are eligible for legal aid at no charge or by paying a small contribution. This program, which is critical for low-income individuals, is not available to all taxpayers, despite the increased eligibility threshold. Only high-income individuals, and there are not many of them, can therefore exercise their rights free of financial stress.

This stress is felt most by taxpayers - the average per capita income in Quebec is just \$32,000 a year for a woman and \$46,000 for a man<sup>3</sup> - which seriously hampers access to justice and recognition of their rights.

The other problem is the unequal tax treatment of court fees for entrepreneurs and for individuals. Entrepreneurs can deduct most of the court fees they incur defending their rights from their income, while the deductions an individual can make from their employment income are limited.

As to sales tax, businesses that provide taxable or zero rated goods and services can claim an input tax credit or an input tax refund that corresponds to the tax paid on goods and services acquired, while the individual, the last link in the commodity chain, assumes the final burden in the cost. For sales tax on professional fees, a business can apply for an input tax credit or an input tax refund if its purchases are taxable or zero rated. Individuals are not entitled to this. However, individuals are eligible for the solidarity tax credit, which includes a Quebec sales tax component, if their family income is below \$55,828 (for 2016).

It should be noted, however, that the legal fees paid by an individual to claim a support amount or professional fees incurred to fight an income tax assessment or appeal it before the courts are deductible under some conditions. The entrepreneur can claim a deduction for professional fees incurred and in the case of legal action if they are incurred for the purpose of earning income from a business or property.

In conclusion, the current Canadian and Quebec tax rules give entrepreneurs much easier and less onerous access to the justice system than individuals. The reality is that individuals, through income tax or sales tax, are funding a judicial system that is inaccessible to many of them. This tax imbalance must be reduced if not completely eliminated.

Tax relief to promote access to justice could take several forms: a deduction, a non-refundable tax credit, a refundable tax credit or a zero rate. Eligible costs would be defined by regulation and could include all court-related costs, including rates, professional fees, expert's fees, etc. These costs should also include all costs associated with private methods of dispute avoidance

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<sup>3</sup> Institut de la statistique du Québec, online: [http://www.stat.gouv.qc.ca/statistiques/conditions-vie-societe/revenu/revenu/mod1\\_p\\_1\\_2\\_4\\_0\\_.htm](http://www.stat.gouv.qc.ca/statistiques/conditions-vie-societe/revenu/revenu/mod1_p_1_2_4_0_.htm). [in French only]

and resolution (mediation, conciliation and arbitration), in accordance with the new culture of justice advocated in Quebec with the new *Code of Civil Procedure*.

Specific provisions should target the middle class, which is not eligible for legal aid. A means test could be used to set a threshold for general assistance for access to justice.

## **2 - INCREASED FEDERAL SUPPORT TO PROMOTE ACCESS TO JUSTICE**

The Barreau du Québec has identified the following priority areas for federal support in the area of justice and legal aid.

- (a) Technology: Federal support for technology and the digitization of judicial records would promote better access to justice for citizens and ultimately reduce operating costs. There is far too much paper and too many documents for staff to handle, which often causes unnecessary delays.

In the regions, communication technologies would improve access to justice by eliminating or significantly reducing unnecessary travel.

- (b) Justice in the North: The Barreau du Québec has participated in several missions to the Far North in collaboration with representatives of Quebec's courts and Quebec's Ministry of Justice.<sup>4</sup>

In criminal matters, there are more charges laid than inhabitants. There is a lack of judges, court workers, interpreters and adequate justice and detention facilities, especially in Inuit and Aboriginal communities. There is no doubt that increased federal support would improve justice in the Far North.

- (c) Specialized clinics: In the health care field, there are specialized clinics that take the clientele's specific cultural needs into account. Such an approach in the legal field can only be beneficial. In order to support the realities of multicultural and Aboriginal communities, specific federal assistance should be considered for these often marginalized communities by increasing funding for the legal aid provided by these specialized clinics.
- (d) Immigration: individuals who are eligible for legal aid involving immigration matters often face serious threats (deportation, expulsion, denial of citizenship, separation from family and friends, etc.). In recent years, the legislative requirements of immigration law have become more numerous and complex, resulting in lawyers taking more time to process cases. Parliament clearly has a responsibility in this regard. We encourage the federal government to take into account the new complexity and the new requirements in immigration law in its funding of legal aid.

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<sup>4</sup> Report on the Barreau du Québec's Missions to Aboriginal Communities in Québec's Far North, online: <http://www.barreau.qc.ca/pdf/medias/positions/2015/20150123-rapport-nord-an.pdf>.

- (e) Court appointments: There is a lack of federally appointed judges, especially in the Superior Court of Quebec for criminal matters. In view of the *Jordan* decision, this situation is causing cases to be significantly delayed or even withdrawn.

### **3 - WORK IN PROGRESS ACCOUNTING METHOD**

We have read the budget documents that were released on March 22, 2017. The measures concerning accounting methods based on work in progress<sup>5</sup> caught our eye and raise serious concerns.

#### **Lawyers**

This measure on the WIP accounting method will have a major impact on lawyers given the uneven and often unpredictable nature of litigious files. This impact is likely to affect the fees paid by clients and therefore access to justice.

Most law firms will likely have trouble valuing work in progress because the cost is made up of the time worked by both employees and associates. By excluding the value of work in progress for tax purposes, no effort is made to account for salary costs or general fees directly related to the work in progress. For example, fees can be negotiated at the end of a file, where income is not recognized before the end of such negotiations. In the case of flat-rate fees, income is recognized at the end of the file. In both of these cases, the value of work in progress should be reduced by the amounts associated with these types of files.

Tax legislation or regulations should therefore provide guidelines on calculating the cost of WIP in order to simplify the application of this new measure and ensure it is done correctly.

#### **Inadequate transition period**

The two-year transition period is far too short. In 2018, law firms will be required to include 50% of the value of their work in progress up to December 31, 2018. The other half has to be included in 2019. If adopted as is, these measures will cause significant financial hardship on numerous law firms by requiring them to pay tax on income they have not yet billed and may never bill.

The Barreau du Québec would like to see a transition period of 10 years, similar to that given for the measure introduced in 1995 to eliminate the deferral of taxes resulting from a fiscal period that does not coincide with a calendar year.<sup>6</sup>

#### **Protection of solicitor-client privilege**

To check whether work in progress was correctly calculated and declared, a tax auditor must have access to information that is generally protected by solicitor-client privilege. Solicitor-client

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<sup>5</sup> *Tax Measures: Supplementary Information*, p.27, online: <http://www.budget.gc.ca/2017/docs/tm-mf/tax-measures-mesures-fiscales-2017-en.pdf>.

<sup>6</sup> Former section 34.2 of the *Income Tax Act*.

privilege has a special status in our law and is subject to constitutional protection recognized by the Supreme Court of Canada.<sup>7</sup>

In conclusion on this issue, the new measures must sufficiently take into account the distinct characteristics of the professional practice of law.

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<sup>7</sup> See *Canada (Attorney General) v. Chambre des notaires du Québec*, 2016 SCC 20; *R. v. National Post*, 2010 SCC16; *Lavallée, Rackel & Heintz v. Canada (Attorney General)*, 2002 SCC 61.