



CANADIAN FINANCE & LEASING ASSOCIATION
ASSOCIATION CANADIENNE DE FINANCEMENT ET DE LOCATION

By facsimile: (416) 325-0374
Original by courier

February 6, 2003

The Honorable Janet Ecker, M.P.P.
Minister of Finance
7 Queen's Park Crescent
Frost Building, South, Suite 700
Toronto, ON M7A 1Y7

Re: CFLA Recommendations for Ontario's 2003 Budget

Minister,

As you know, the Canadian Finance & Leasing Association (CFLA) represents the asset-based financing, equipment and vehicle leasing industry in Canada. A list of our 230 members is attached to this letter. Today, we estimate that over \$40 billion worth of financing is advanced to Ontario customers alone, of the \$100 billion that this industry has in place across Canada, with the majority going to small and medium sized businesses and consumers. Further, leasing provides financing for a wide variety of assets, ranging from personal computers and office equipment to light and heavy vehicles and machinery.

Our members support the Eves government stated policy objectives of reducing red tape, eliminating capital tax, maintaining and encouraging a level playing field for all businesses in Ontario. Our recommendations for Ontario's 2003 Budget include three key priorities: the elimination of capital tax, "vicarious liability" revisions and revised capital cost allowance structure and rates.

CFLA members provide substantial financing in support of the prosperity and growth of Ontario's small and medium sized businesses. Where small and medium sized businesses do not qualify for financing with traditional financing sources, our members, by way of leasing, make it possible for them to acquire equipment and vehicles to the enhancement of their businesses and their productivity. Leasing provides a flexible means for businesses to respond on a timely basis to the productivity and competitive challenges of technological obsolescence and product innovation.

After the traditional lenders (banks and credit unions), the asset-based financing and leasing industry is the most important supplier of financing to Canadians. Today, Ontario is the centre of the Canadian asset-based financing and leasing industry – to the benefit of all Ontarians, including direct and indirect job creation, taxation benefits to the Crown (individually and corporate), and the dynamic synergy created by having these members compete and contribute to Ontario's financial services sector.

Capital Taxes

“We will continue to work towards eliminating the personal income tax surtax and the capital tax. A new multi-year tax reduction plan, based on the advice we receive, will address these and other issues in the March Budget.” —The Hon. Janet Ecker, Ontario’s Minister of Finance, Standing Committee on Finance and Economic Affairs, January 27, 2003.

We acknowledge and certainly support the commitments and efforts that the Eves government has made towards lowering corporate taxes, reducing red tape, and eliminating capital tax. We know that you will continue to pursue an aggressive tax cut plan, similar to that of President George W. Bush’s, because tax cuts work. Recently, the Hon. John Manley, Canada’s Deputy Prime Minister & Minister of Finance said that, *“in 2001 alone our tax cuts pumped \$17 billion into our economy, supporting Canadian economic growth.”* Indeed, tax cuts work.

As part of the next phase in your government’s plan we are hopeful that you will, both through policy and a legislated timetable, eliminate capital taxes.

We were encouraged by your government’s 2001 Budget, where the Minister of Finance indicated that Ontario would have to eliminate capital taxes. Further, we were hopeful following Ontario’s Budget in 2002, when you indicated that you would be seeking input on how to implement a multi-year tax reduction plan, including capital taxes.

While we recognize the efforts that the Eves government has made in terms of eliminating capital taxes for a certain threshold, the benefits are enjoyed by a fraction of Ontario businesses and consumers. *The best case scenario would be for the Ontario government to move immediately to eliminate the capital tax for all businesses.* The benefits of eliminating capital taxes for all businesses would also have indirect benefits to all businesses, consumers, indeed taxpayers, as the spin-off would flow through and benefit the economy as a whole. *Certainly, the recent two-year implementation schedule similar to that followed by the government in British Columbia¹ is an option the Eves government should strongly consider.* Indeed, in order to maintain Ontario’s position as one of the leading engines for economic growth in North America, we must eliminate capital taxes.

In Ontario’s 2002 Budget, you acknowledged that, “we live and compete in a global, knowledge-based economy.” We are certain you will agree that in order to maintain our position as an engine of economic growth and prosperity in North America, Ontario must continue to enact policies that reflect the positions of competing jurisdictions. As you know, Alberta has no capital tax at all, and British Columbia eliminated its capital tax as of September 1, 2002. If Ontario fails to maintain a level playing field within its own borders and other jurisdictions, or between participants in the same industry, it will encourage increased costs to consumer and business customers, a loss of competition and/or the departure of capital and human talent to other more welcoming jurisdictions.

<http://www.rev.gov.bc.ca/itb/cct/cct.htm>

We also could not agree with you more that businesses, particularly small businesses, need access to capital to invest in new products and services and to create jobs. Minister, our members day-to-day business is to provide that capital, providing Ontario and indeed Canadian businesses with that much-needed competitive edge.

Canada's Secretary of State for International Financial Institutions, former Chair Standing Committee on Finance, the Hon. Maurizio Bevilacqua said, "*Capital taxes are a tax on innovation, productivity, on investment and ultimately on jobs.*" Certainly, if Ontario is to become one of North America's top-performing jurisdictions for research and innovation we must eliminate capital taxes. If we want to attract and retain the best and the brightest we must continue the journey begun in 1995 into the next phase, through the elimination of capital taxes, to ensure Ontario remains the best place to live, work and raise a family.

We urge you through policy and a legislated timetable to eliminate capital taxes.

"Promise for a Strong Ontario Economy Act (Budget Measures), 2002" (Bill 198)

On January 27, 2003, you told the Standing Committee on Finance and Economic Affairs that the Eves government had, "*eliminated more than 1,900 unnecessary and outdated regulations.*" That is undoubtedly a record to be proud of. However, the government must not rest on its laurels— there remains more work to be done.

Our vehicle lessor members include: GMAC Canada Limited, Ford Credit Canada Ltd., DaimlerChrysler Services Canada, Honda Canada Finance Inc., Toyota Credit Canada Inc., Nissan Canada Finance Inc., VW Credit Canada Inc., GE Capital Canada Fleet Services, PHH Arval and ARI Financial Services.

As you will know from our letter of, December 5, 2002, regarding the now adopted Bill 198, (amended, though not yet proclaimed), there are provisions related to the Insurance Act that perpetuate a serious problem for our members in the vehicle leasing industry in Ontario. We know that you are familiar with and appreciate the challenges facing the automotive industry, because in Ontario's 2002 budget you referred to the automotive sector as, "*a key building block of our economy.*" We agree.

Statutory provisions in Ontario generally, and those in Bill 198 in particular, which impose liability on "owners" over the use (or misuse) of vehicles should not apply to finance companies. In using the term "owner" of vehicles in Ontario's statutes, it is important to distinguish between the legal rights of "owners" to protect access to their asset and a statutory liability of "owner" over the customer's use of the vehicle. In the first case, statutory reference to "owner" is appropriate in relation to vehicle licensing and title retention, for example, as intended to protect the "owner's" legal right of access to their asset. On the other hand, where the term "owner" is used to establish a statutory liability over the daily use (or misuse) of the vehicle by a third party customer, it is inappropriate to include finance companies as "owners".

By way of example, if a customer in Ontario decides to purchase a vehicle with a loan, the legal transaction results in the customer, not the lender, being the “owner” of the vehicle. The lender has no statutory liability over the use of the vehicle. Quite properly, it is the customer’s liability as the person having daily control over the use of the vehicle. Our concern is that if that same customer chooses to lease that same vehicle, the essential nature of the lease transaction requires that the leasing company retain legal ownership of the vehicle for the term of the lease. In such case, as the “owner” of the vehicle, the leasing company is considered to have statutory liability for the lessee customer’s daily use (or misuse) of the vehicle.

When the acquisition of a vehicle is financed in Ontario, we can see no public policy justification for considering a leasing company statutorily liable for a customer’s use of that vehicle when a lender is not. We ask that this anomaly be addressed through immediate amendments to the liability provisions within Ontario statutes referring to vehicle “owner.”

Leasing has to be understood as an integral part of the vehicle manufacturing and production cycle. Leasing is a component part of that production cycle as it serves to help move vehicles off the inventory storage lots into the marketplace. If vehicles are not acquired inventories back up and the production cycle is seriously impacted. According to Automotive Industry Analyst, Dennis DesRosiers, “In 1990, only four percent of consumers leased their new vehicles, [but today] this figure is close to 50 percent.”

Our members lease vehicles to consumer and business customers. We estimate that our members own almost 1,000,000 vehicles in Ontario. The legal nature of the lease contract requires that the lessor retain ownership of the vehicle until it is purchased by the customer at lease end or returned and sold to a third party. A lessor’s ownership does not mean that a lessor has any control over the use of a leased vehicle. In this context, leasing is a form of financing.

Various legislation in Ontario imposes serious legal obligations on the “owners” of vehicles. These obligations were conceived well before the serious growth of leasing in Ontario. These provisions are based on the concept of individual owners who have actual daily control over the use of the vehicle, not remote legal owners who are financing the vehicle and who have no control over the use of the vehicle.

The widespread and inaccurate use of the term “owner” in legislation affecting the use of vehicles in Ontario denies the realities of the contemporary marketplace and exposes our members unfairly to significant potential legal risk.

The most recent example is presented in Section 120(1) of Bill 198, which amended Sections 267.5(3), and (4) of the *Insurance Act*. It states that the “owner of an automobile” may be liable “in an action in Ontario for damages for expenses that have been incurred or will be incurred for health care resulting from bodily injury arising directly or indirectly from the use or operation of the automobile” where the “injured person has died or has sustained (a) a permanent serious disfigurement; or (b) permanent serious impairment of an important physical, mental or psychological function.”

Our lawyers, Fasken Martineau LLP, have advised that these new provisions will lower the threshold of injury eligible for tort claims against vehicle drivers and *owners*. Today, “the owner of an automobile” involved in an accident that caused a “catastrophic” injury can be sued in tort by the injured party if the driver of the automobile is at fault. In other words, lawsuits for “catastrophic” injury are today outside the no-fault regime. The effect of the identified provisions of Bill 198 is to shift potential claims for undefined “permanent serious disfigurement” or “permanent serious impairment” against vehicle owners and drivers from the non-fault regime to tort liability. While Ministry of Finance representatives are of the opinion that these changes are not intended or expected to impact the leasing industry as feared, a number of recent events are crystallising industry concerns over this anomalous situation.

First, the 2002 US\$28 million judgement against a vehicle lessor in the State of Rhode Island (solely because the lessor was the owner of the vehicle involved in a serious accident) has caused lessors to review their potential exposure in all “vicarious liability” jurisdictions, including Ontario. It is reported that GMAC, among others, are considering a halt to leasing in at least three major states (Connecticut, New York and Rhode Island) later this year, unless those states repeal their laws that impose a “vicarious liability” on innocent lessors.

Second, the opportunity for lawyers in Ontario now to initiate lawsuits with contingency fees raises serious concerns for lawsuits being filed against the perceived “deep pockets” of lessors as “owners” of vehicles.

Third, autumn 2002, two opportunistic class action suits were filed in Quebec against all the vehicle manufacturers and their finance companies by a consumers’ group alleging inadequate disclosure in advertising of certain fees payable in vehicle leases. The damages claimed exceed \$300 million.

Clearly, these cases will be decided in due course before the courts. But the fact remains that the vehicle industry feels itself coming under siege by individuals and groups who see an industry with “deep pockets” and vulnerable to public attack. Part of that vulnerability relates directly to the widespread and inaccurate use of the term “owner” in legislation affecting the use of vehicles in Ontario.

Finally, this statutory confusion also gives rise to the prospects of artificially creating two classes of persons having differing liability under the law. By holding the driver and owner of a vehicle potentially liable, the lessee, the person who has the actual daily control over the use of the leased vehicle, may escape any liability if the lessee is not the driver involved in an accident. From a practical public policy standpoint, this is not a desirable outcome. Those with actual control over the use of a vehicle should carry the liability for exercising due diligence on the use of the vehicle.

We ask that, the government rectify this public liability and policy gap through immediate amendments to the liability provisions within Ontario statutes referring to vehicle “owner” especially in relation to the Promise for a Strong Ontario Economy Act (Budget Measures), 2002. Again, we recommend the government follow its own precedent in the approach

established with regard to vehicle impoundment, that is, statutory or regulatory references to the "owner of an automobile" should clearly indicate that in the case of a leased vehicle, the owner is the lessee. We are certain that this government will remain committed to making decisions that encourage prosperity, greater choice for consumers, accountability and a level playing field.

Revised Capital Cost Allowance

"In addition, we are beginning this year to depreciate assets in the same way that business does. "

—The Hon. Janet Ecker, Ontario's Minister of Finance, Standing Committee on Finance and Economic Affairs, January 27, 2003.

While the government reflects upon the process by which it should account for the depreciation of public assets, we urge that you also review the impact of the present Capital Cost Allowance (CCA) on business.

An overall review of the present CCA structure and rates is needed, but specifically there is an immediate need for a review in terms of information technology equipment. Present CCA rates are not in step with the rapid rate at which technology is advancing.

Currently, the "separate class" rules do provide some relief on disposition, but they do not provide for deductions that accurately reflect the depreciation of the equipment while it is in productive use.

Furthermore, a November 2000 Conference Board of Canada report strongly demonstrated the link between investment in information technology and increased productivity. Accelerating the rate at which CCA can be deducted for income tax purposes would encourage investment of this nature, and the resulting productivity gains would serve to increase the competitiveness of Ontario based companies.

Measures to enhance the deductibility of information technology equipment have recently been implemented in the United States where a bonus depreciation allowance of 30 percent is being allowed in addition to the usual annual depreciation.

We recommend that information technology equipment worth up to \$5000 would be deductible in the year of acquisition. Purchases above this amount should form part of a newly created class of assets, with a 50% CCA rate, along with continuation of the present "separate class" rules.

Again, we re-iterate our support for the commitments and efforts that the Eves government has made towards lowering taxes, reducing red tape, and eliminating capital tax. We know that you will continue to pursue an aggressive tax cut plan, similar to that of our biggest trading partner and competitor, the United States, because tax cuts work.

Like the government, we seek solutions and we are always willing to work in partnership with you to find solutions so that Ontario can continue to be a premier engine driving the North American economic landscape.

Yours very truly,

A handwritten signature in black ink, appearing to read "David Powell", written over a light grey rectangular background.

David Powell, President & Chief Executive Officer

Enclosures: membership list

Copies:

The Hon. Ernie Eves, Premier

The Hon. Jim Flaherty Minister of Enterprise, Opportunity & Innovation

The Hon. Tim Hudak Minister of Consumer & Business Services

The Hon. David Tsubouchi, Chair, Management Board of Cabinet & Minister of Culture

Marcel Beaubien, Parliamentary Assistant to the Minister of Finance

Ted Chudleigh, Parliamentary Assistant to the Minister of Finance

Steve Gilchrist, Chair, Red Tape Commission

Aimee Sulliman, Director, Policy & Planning, Canadian Finance & Leasing Association (CFLA)