

2011 Ontario Pre-Budget Submission

to the

Legislative Assembly of Ontario

Standing Committee on Finance and Economic Affairs

February 2011



Executive Summary

- Professional financial advisors help Ontarians to save and plan for their future financial needs. People who do not use financial advisors, save less than those who do rely on financial advisors. People who receive advice accumulate more financial wealth and are better prepared for retirement than people who do not receive advice.
- Advocis strongly supports reforms to facilitate retirement saving and improve retirement income adequacy for all Canadians now and in the future. The Government should implement practical reforms now which can improve the ability of Ontarians to save for their retirement.
- Advocis believes that Ontario should follow the lead of Alberta, Saskatchewan and Manitoba in protecting consumers who are sold creditor mortgage insurance, creditor disability insurance and other forms of incidental insurance by implementing regulations. Advocis recommends that sellers should be required to be trained, licensed and supervised and should have errors and omissions insurance. The companies and individuals selling these products should also be required to comply with consumer disclosure requirements.
- Professional financial advisors make a significant contribution to Ontario's economy. They are a vital resource, working with Ontarians to enable them to reach their financial goals and ensure their long-term financial security. Unfortunately, regulation imposes ever-increasing compliance burdens on small business financial advisors, and professional financial advice is becoming less affordable and less accessible for consumers.
- Ontarians are best served by a competitive market for financial services that continues to offer consumers a range of choices, including access to small business financial advisors.
- Financial services regulation should protect consumers without burdening financial advisors with unnecessary regulatory compliance requirements that have no proven consumer protection benefit.
- Governments and regulators should, in regulating the financial services industry, recognize the contribution of professional associations such as Advocis in helping financial advisors meet high standards for education, proficiency and ethical conduct.

Summary of Recommendations

RECOMMENDATION 1: The Ontario Ministry of Finance should help small business financial advisors and planners remain a vital part of a diverse and competitive financial services sector that offers consumers ample choice as to products and providers, and access to professional, independent financial advice.

RECOMMENDATION 2: Advocis believes that employees and employers should be encouraged to participate in retirement savings plans. Specifically:

- a) Public policy should focus on how to modernize the regulatory environment for defined contribution plans as the focus has largely been, to date, on defined benefit plans;
- b) Regulations for defined contribution plans, including locking-in rules, should be harmonized between provinces and federally, to reduce complexities and costs for employers and employees;
- c) Barriers to participation should be removed and incentives put in place which will facilitate employers offering pension- plans for their employees and result in more employees being members of a plan;
- d) Improvements to the financial literacy of Canadians (both employers and employees) with respect to saving for their retirement should be supported;

- e) Public policy should foster an expansive role for professional financial advice in order to ensure that Canadians can meet their retirement income and other financial goals.
- f) The Province should encourage the federal government to consider a number of tax changes to place DC plans on a more equitable footing with DB plans and improve the situation for those who contribute to RRSPs (such as increasing contribution limits to defined contribution plans and RRSPs, contributions to RRSPs being determined on a life-time average basis; the ability to make past service contributions to defined contribution plans; increasing the age limit for contributions to retirement savings plans; and mandatory withdrawals from locked-in retirement accounts should be lowered).

RECOMMENDATION 3: Advocis is calling on the government to introduce strong regulation concerning the incidental selling of insurance such as creditor mortgage insurance, creditor disability insurance and other forms of incidental insurance sold at financial institutions, car dealerships, and travel agencies, including:

- a) Sales representatives for these products should be required to hold a provincial license, pass certain educational courses and be adequately supervised;
- b) Individual licensees should participate in continuing education, and carry errors and omissions insurance like all other insurance agents in the province; and
- c) Companies and individuals selling these products should comply with enhanced consumer disclosure requirements so that consumers can be adequately protected. Such measures should include a reasonable “cooling off” period and a requirement to inform consumers that similar products are available through other distribution channels along with an explanation of the underwriting process and when the underwriting will occur

RECOMMENDATION 4: The Ministry of Finance should encourage its financial services regulators (including the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA), to make regulation appropriate to a range of business models, including small business financial advisors.

RECOMMENDATION 5: The Ministry of Finance should encourage financial services regulators to take more principles-based and less prescriptive approaches to regulating small business financial advisors that do not primarily operate within the framework of a large institution.

RECOMMENDATION 6: The Ministry of Finance should require regulators, when they propose new regulatory requirements, to:

- identify the problem that the regulation is supposed to address;
- undertake objective cost-benefit analysis that takes into account compliance burdens on market participants as well as costs and benefits to consumers; and
- consider less prescriptive outcomes-based approaches.

RECOMMENDATION 7: The Ministry of Finance should encourage financial services regulators to ensure that financial advisors (e.g., insurance agents and representatives of IIROC dealer members and of MFDA dealer members) who are likely to be directly affected by regulatory proposals are consulted at an early stage in the policy development process.

I. Introduction

Advocis appreciates the opportunity to make a pre-budget submission to the Legislative Assembly of Ontario Standing Committee on Finance and Economic Affairs (the “Committee”).

Advocis – who we are

Advocis, The Financial Advisors Association of Canada, is the largest and oldest voluntary professional membership association of financial advisors and planners in Canada. Our association was founded in 1906, as the Life Underwriters Association of Canada.

Six thousand members of Advocis in Ontario provide comprehensive financial planning and investment advice, retirement and estate planning, risk management, employee benefit plans and disability coverage, to more than a million Ontario households and businesses. Our members are provincially licensed to sell life and health insurance and mutual funds and other securities. Many Advocis members are independent owners and operators of small businesses, entrepreneurs who create thousands of jobs in communities across the province and Canada.

Advocis members maintain lasting relationships with their clients based on trust. They help clients, young and old, individuals, families and businesses, to set financial goals, manage risks, save consistently and invest prudently.

Advocis members embody professionalism based on education, best practices, and high standards of proficiency and ethics. Advocis promotes the professionalism of financial advisors through:

- Advocis’ Code of Professional Conduct;
- Guidance on best practices;
- Errors and omissions insurance coverage that protects consumers;
- Professional designations supported by a comprehensive curriculum and rigorous standards – Advocis’ Chartered Life Underwriter (CLU) and the Registered Health Underwriter (RHU); and educational support for the attainment of the Certified Financial Planner (CFP); and
- Mandatory competency-based continuing education.

Advocis believes that:

- 1. Ontarians should have ample access to professional financial advice, products and services and should be able to choose among a diverse range of financial service providers.**
- 2. Independent-minded, entrepreneurial, small business professional financial advisors provide valuable service to Ontarians in delivering professional financial advice, products and services and have a significant place in the financial services sector.**
- 3. The existing regulatory framework, and the direction in which regulation is being developed, does not favour choice and a diverse range of choices for Ontarians and is limiting access to professional financial advisors. The**

regulatory framework and the compliance burdens that are being imposed are skewed in favour of larger, integrated financial institutions.

RECOMMENDATION 1: The Ontario Ministry of Finance should help small business financial advisors and planners remain a vital part of a diverse and competitive financial services sector that offers consumers ample choice as to products and providers, and access to professional, independent financial advice.

There are approximately 30,000 financial advisors and planners in the province of Ontario that help millions of people and businesses in their communities. They are a vital part of the financial services marketplace and of their communities. Many are self-employed proprietors of small businesses that employ many people in their communities. Many advisors work for mid-to-large sized financial institutions and dealers.

Advocis members develop long lasting relationships with their clients and assist them through all economic and financial market cycles.

Advocis is not calling for less regulation, but for more appropriate and effective regulation that will protect the public without making it more difficult for professional financial advisors to serve their clients.

Consumer protection, access and choice

We believe regulation should:

- Protect consumers from the pressures that arise in the context of tied selling;
- Protect consumers' privacy;
- Require that individuals who sell insurance products, including incidental insurance such as creditor insurance, are proficient, licensed and appropriately supervised;
- Support an effective consumer redress system.

Value of financial advice

We believe public policy should recognize the value that consumers derive from professional financial advice, helping them meet their long-term financial goals.

Professional financial advisors help Ontarians to save and plan for their future financial needs. People who do not use financial advisors, save less than those who do rely on financial advisors. People who receive advice accumulate more financial wealth and are better prepared for retirement than people who do not receive advice. This has been shown to be the case, regardless of the age and annual income of individuals. [This has been documented in a report, *The Value of Advice*, July 2010, published by the Investment Funds Institute of Canada (http://www.mackenziefinancial.com/en/pdf/ific_voa_report.pdf).]

Professional financial advisors are financial educators. No one spends more time with consumers, explaining financial concepts and products, than the financial advisor.

Financial literacy and financial education should complement professional financial advice. Consumers should not be expected to serve as their own financial experts; they need access to affordable professional financial advice to help them achieve good financial outcomes and achieve their financial goals over the long term.

II. Improving Retirement Income and Financial Security of Canadians

Pension coverage and retirement income adequacy are major public policy issues. We commend the Ontario governments for making it a priority to strengthen the retirement income system. Reforms should be implemented to improve pension coverage and retirement income adequacy so that more Canadians can retire with adequate retirement income now and in the future.

Advocis believes that employees and employers should be encouraged to participate in retirement savings plans. Barriers to participation should be removed and incentives put in place which will facilitate employers offering retirement savings plans for their employees and result in more employees being members of a plan.

Advocis support reforms to the third pillar of the retirement income system to encourage greater participation in private sector pension plans, including Capital Accumulation Plans (“CAP Plans”) Plans (group RRSPs, deferred profit sharing plans and defined contribution (“DC”) plans and defined benefit (“DB”) plans.).

Advocis strongly believes that professional financial advice is needed by the majority of Canadians in order to lead to good consumer financial outcomes, in the area of retirement income savings and in a whole host of other areas as well such as planning for a child’s education and long-term health care needs. Advocis is of the view that individual professional financial advice is needed to determine such matters as whether to join a given pension plan, the level of contributions and the selection of investments. Reforms need to ensure that individual financial advice will become an integral part of the pension framework in order that consumers will have sound financial outcomes and pension coverage.

Advocis also urges governments to implement reforms so that DC plans can be put on a more equitable footing with DB plans and make necessary reforms to improve RRSPs as a savings vehicle. For example, contribution limits for CAP plans and RRSPs should be increased, the age limit for contributions to retirement savings plans should be increased from age 71 to age 75., contributions to retirement savings plans should be determined on a life-time average basis and the required withdrawal of amounts upon retirement from locked-in retirement accounts should be lowered.

As pension and retirement income reforms are contemplated, we encourage the Government of Ontario to consider Advocis’ contribution to this important issue. Advocis will continue to be actively involved in the consultation process.

RECOMMENDATION 2: Advocis believes that employees and employers should be encouraged to participate in retirement savings plans. Specifically:

- a) Public policy should focus on how to modernize the regulatory environment for defined contribution plans as the focus has largely been, to date, on defined benefit plans;

- b) Regulations for defined contribution plans, including locking-in rules, should be harmonized between provinces and federally, to reduce complexities and costs for employers and employees;
- c) Barriers to participation should be removed and incentives put in place which will facilitate employers offering pension plans for their employees and result in more employees being members of a plan;
- d) Improvements to the financial literacy of Canadians (both employers and employees) with respect to saving for their retirement should be supported;
- e) Public policy should foster an expansive role for professional financial advice in order to ensure that Canadians can meet their retirement income and other financial goals.
- f) The Province should encourage the federal government to consider a number of tax changes to place DC plans on a more equitable footing with DB plans and improve the situation for those who contribute to RRSPs (such as increasing contribution limits to defined contribution plans and RRSPs, contributions to RRSPs being determined on a life-time average basis; the ability to make past service contributions to defined contribution plans; increasing the age limit for contributions to retirement savings plans; and mandatory withdrawals from locked-in retirement accounts should be lowered).

III. Regulation of the Incidental Selling of Insurance

All too often, consumers who take out a mortgage or loan are sold insurance by individuals who are not licensed and not adequately trained and supervised. All too often, consumers who believe they were paying for peace of mind for themselves and their families, find out later, when coverage is denied, that the peace of mind was an illusion.

Currently, the sale of incidental insurance such as creditor mortgage insurance, creditor disability insurance and travel insurance, sold at financial institutions, car dealerships, travel agencies and other entities that sell insurance incidental to the sale of another product, is not regulated in Ontario. This is a major regulatory gap.

Consumers are at risk of having their insurance claim denied as a result of inadequate disclosure and the lack of any individual accountability on the part of the seller. This can have a devastating impact on consumers and their families if they discover, months or years down the road, that their claim on the insurance is denied.

For example, Peter Chisholm was denied his travel insurance claim after his heart attack in Barbados on the basis he had a pre-existing condition. This is despite having disclosed that he had an angioplasty eight months before the trip. No one told him that certain exclusions would apply. He was denied coverage for the \$33,000 claim due to his taking a new prescription drug during the six months before the trip.

Alberta, Saskatchewan and Manitoba have introduced regulations (Manitoba's regulations are still in draft form, as of today) to protect consumers who purchase incidental insurance products. To date, Ontario has done nothing in this area. Ontario should seize the opportunity and lead the way by establishing the highest standard of consumer protection in this area.

Consumers that purchase insurance through licensed insurance advisors are adequately protected and have the comfort that they are dealing with a qualified individual for their life and health insurance needs. It is unfair to consumers who purchase incidental insurance products that they do not have the same protections.

Advocis strongly believes that restricted licensing of the individuals selling ISI, rather than of business entities, would ensure optimal consumer protection. If individual sellers of ISI are licensed, they can be personally subject to regulatory discipline, which encourages compliance with the rules and best practices in the sale of insurance. This also would enhance regulatory accountability and promote professionalism.

RECOMMENDATION 3: Advocis is calling on the government to introduce strong regulation concerning the incidental selling of insurance such as creditor mortgage insurance, creditor disability insurance and other forms of incidental insurance sold at financial institutions, car dealerships, and travel agencies, including:

- a) Sales representatives for these products should be required to hold a provincial license, pass certain educational courses and be adequately supervised;
- b) Individual licensees should participate in continuing education, and carry errors and omissions insurance like all other insurance agents in the province; and
- c) Companies and individuals selling these products should comply with enhanced consumer disclosure requirements so that consumers can be adequately protected. Such measures should include a reasonable “cooling off” period and a requirement to inform consumers that similar products are available through other distribution channels along with an explanation of the underwriting process and when the underwriting will occur.

Advocis believes that individual licensing is the only real way to ensure individual accountability in the sale of insurance products, including incidental insurance.

IV. Supporting the Business of Financial Advisors

A diverse financial services sector, with a range of business models and choices for consumers, is essential to consumer access to professional financial advice. Consumer access to professional financial advice is threatened by the increasing burden of regulation. Increasing compliance costs are more easily borne by large financial institutions and their compliance departments, which benefit from economies of scale, than by small business financial advisors.

Professional financial advice is becoming less affordable and less accessible. Regulated financial service providers must cover a wide range of costs: legal and regulatory advice, compliance staff, regulatory fees, SRO membership, increased liability risks, time spent explaining forms to clients, etc. The increasing regulatory burden and cost of compliance for smaller market participants is contributing to increased concentration in the delivery of financial products and services. Ever fewer, large financial entities offer consumers less provider choice, particularly in smaller communities.

Skewed regulation disadvantages smaller enterprises

In our experience, financial services regulators prefer to regulate large enterprises. It is administratively simpler and more efficient to deal with a few large organizations, than with many smaller ones.

In developing regulatory policy, regulators often seem indifferent to the impact of regulation on small practitioners. Regulation that requires enterprises to hire dedicated compliance staff,

lawyers, accountants, information and records managers, are not a problem for the larger players.

Regulation that only “works” for large enterprises threatens the long-term viability of smaller players such as small financial advisory businesses. Just as the capital markets regulators across Canada accommodate small issuers and do not apply a “one size fits all” approach to the raising of capital, so too should securities and mutual fund regulators accommodate smaller enterprises by ensuring that regulation also works for smaller enterprises.

RECOMMENDATION 4: The Ontario Ministry of Finance should help small business financial advisors and planners remain a vital part of a diverse and competitive financial services sector that offers consumers ample choice as to products and providers, and access to professional, independent financial advice.

RECOMMENDATION 5: The Ministry of Finance should encourage its financial services regulators (including the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA), to make regulation appropriate to a range of business models, including small business financial advisors.

V. The Need for Smarter Regulation

We believe a better, smarter approach to regulation is required.

More rules from financial market regulators (OSC, MFDA, IIROC) and increasing compliance costs present a competitive challenge to small, independent financial advisors, that threatens consumer access to independent financial professionals.

We believe regulators should focus on enforcement and punishing misconduct and fraud in the marketplace.

As an example of smarter regulation, insurance regulators in Ontario and across Canada have worked with the insurance industry to implement a largely principles-based approach to conflict of interest and product suitability applied to insurance advisors and companies when recommending insurance products to clients. The insurance industry has successfully implemented three core principles developed by the Canadian Council of Insurance Regulators (CCIR):

1. Priority of the client’s interest;
2. Meaningful disclosure of real or perceived conflicts of interest; and
3. Product suitability.

RECOMMENDATION 6: The Ministry of Finance should encourage financial services regulators to take more principles-based and less prescriptive approaches to regulating small business financial advisors that do not primarily operate within the framework of a large institution.

Justifying regulation should be mandatory

Regulators should justify all regulation that they propose.

Whenever rules and regulations are proposed, they should be supported by credible cost-benefit analysis and consideration of less burdensome alternatives. All too often, prescriptive regulation has been proposed and implemented without serious consideration of costs and benefits and without consulting all relevant key stakeholders, including consumers.

RECOMMENDATION 7: The Ministry of Finance should require regulators, when they propose new regulatory requirements, to:

- identify the problem that the regulation is supposed to address;
- undertake objective cost-benefit analysis that takes into account compliance burdens on market participants as well as costs and benefits to consumers; and
- consider less prescriptive outcomes-based approaches.

VI. Improving the Policy Development Process

The policy development process of the OSC and through the OSC's recognized SROs, the MFDA and IIROC (the SROs), would be improved, if financial advisors were recognized as important stakeholders, who should be at the table, especially at the early stages of regulatory policy development. [See APPENDIX A, Financial Services Regulation in Ontario: The Key Players for an outline of the regulatory framework of financial advisors].

The SROs understandably look to their member firms as their primary stakeholders when consulting on regulatory proposals. Historically, the regulatory staff of the SROs has given little consideration to the impact of regulatory proposals on financial advisors. Financial advisors are not usually consulted about initiatives that will affect them directly, especially in the early stages of regulatory policy development.

Financial advisors deal directly with consumers, and would bring an important perspective to the table. We strongly believe that any initiative that will change how financial advisors interact with their clients should have their input. As the largest association of financial advisors, Advocis wishes to be involved in developing, reviewing and commenting on proposals that will affect our members, the advisor community and consumers.

It is our hope that the OSC and other Canadian regulators will follow the example set by insurance regulators as a model for undertaking meaningful public consultations with consumers, financial advisors and other market participants. Our experience has been that insurance regulators interact with stakeholders much more effectively at early stages of regulatory policy development. The Financial Services Commission of Ontario does a significant amount of work in identifying problems or potential problems, and in gathering the appropriate information and statistics to support its views in cooperation with the industry before it proposes regulatory changes.

Ontario's ongoing role in securities regulation

We favor the Government of Ontario's support for the establishment of a national securities regulator.

We believe the Government of Ontario should continue to have a role in shaping securities law and policy in Canada, through the new national securities regulator.

We note that the structure of the proposed Canadian Securities Regulatory Authority (CSRA) allows the Ontario Minister of Finance to influence regulatory policy development at the national regulator, through participation in the Council of Ministers and through the participation of a member of the Council of Ministers on the CSRA's Regulatory Policy Forum.

We urge the Government of Ontario to continue to work with the federal government and the Canadian Securities Transition Office, to ensure that Ontario continues to have a meaningful role in policy development.

RECOMMENDATION 8: The Ministry of Finance should encourage the OSC to ensure that financial advisors (e.g., insurance agents and representatives of IIROC dealer members and of MFDA dealer members) who are likely to be directly affected by regulatory proposals are consulted at an early stage in the policy development process.

VIII. Conclusion

Government should offer ongoing direction to regulators to ensure that Ontarians have access to professional financial advice and choice in financial services. Accordingly, we urge the Ministry of Finance to offer direction to the Ontario Securities Commission, and through the OSC to MFDA and IIROC, with the primary goals of:

- preserving consumer choice and access to professional financial advisors and to a range of choices in the financial services marketplace;
- ensuring that financial regulation is even-handed and does not favour large players and their economic model over small, entrepreneurial financial advisors;
- ensuring that independent financial advisors are consulted as key stakeholders in respect of proposed regulatory initiatives that affect them;
- ensuring that new rules and compliance burdens are only imposed when necessary to address clearly identified problems, and only after less costly principles-based approaches have been considered; and
- encouraging regulators to conduct objective cost-benefit analysis of regulatory proposals before implementing them.

Advocis urges the Ontario government to put in place regulations for the sale of incidental insurance products in order to protect consumers in Ontario.

As provincial and federal governments work towards cooperative approaches to the issue of reform of the retirement income system, Advocis urges the government to consider its recommendations in order to encourage employees and employers to participate in retirement savings plans.

Advocis would welcome the opportunity to work with the Ontario Ministry of Finance to provide further input regarding our recommendations.

APPENDIX A

Financial Services Regulation in Ontario: The Key Players

The Ontario Securities Commission (OSC) is the Ontario government agency that administers the Ontario Securities Act and regulates investment and mutual fund dealers and their salespersons who distribute financial products. The primary mandates of the OSC are investor protection and fostering of fair and efficient capital markets. The OSC is accountable to and subject to oversight by the Minister of Finance. OSC rulemaking is subject to approval by the Minister.

The Financial Services Commission of Ontario (FSCO) is the Ontario government agency responsible for administering the Insurance Act and regulating the insurance industry, in particular the distribution of insurance products to consumers. FSCO reports to the Minister of Finance.

Much of the day-to-day regulation of investment dealers and mutual fund dealers and their sales forces is undertaken by two self regulatory organizations (SROs), the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA).

Both IIROC and the MFDA have been formally recognized as SROs by the OSC. They are subject to regulatory oversight by the OSC and other provincial securities regulators.

Oversight

The OSC and FSCO, as government agencies, are responsible for carrying out their legislative mandates and are subject to direction by the Minister of Finance. They also are responsible for carrying out their mandates in a manner that is consistent with government policy.

The Government of Ontario historically has accorded wide latitude to the OSC and FSCO in carrying out their mandates, and does not interfere in their exercise of the agencies' quasi-judicial functions. The Government also has historically refrained from other, "political" interference in the agencies' activities.

Ultimately, the government through the Minister of Finance is responsible for supervising these government agencies (and their oversight of the SROs) so that they carry out their mandates in a manner that is consistent with the goals of government policy.

The Province of Ontario is participating in the initiative to establish a Canadian Securities Commission (CSC), which, if fully implemented, will supersede the OSC.