

2019 BRITISH COLUMBIA TAX CONFERENCE & LIVE WEBCAST

TOPIC OUTLINE

MANAGING RISK IN TAX PRACTICE

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This session will highlight the commonalities and differences between tax practice by lawyers and CPAs, and the professional standard that both professions will be held to. You will learn some of the tools and practices to document your tax plan to meet your professional obligations and to keep the plan under the protection of privilege. This session will also canvass the claims that often arise against tax professionals, as well as the ways the courts have interpreted limitation periods to allow for lengthy time frames under which a taxpayer can sue their tax professionals. You will also receive practical advice on common areas of risk and how to discharge your duty of care and protect yourself when implementing a tax plan or providing advice.

1. Differences and similarities between the professions in providing tax planning advice:

- a. Both CPAs and lawyers engaging in tax planning will be held to a common standard of care.
- b. In either case, a written tax plan where the assumed facts and potential risks are clearly documented is of key importance.

2. Steps to keep the documented tax plan under the protection of solicitor client privilege using the intersection of CPA tax and legal advice

3. Claims against tax professionals and how to manage the risk of a claim:

- a. Competence mistakes – failure to understand the ITA and the law.
 - i. Common to those who are generalists and not expert in tax advice.
- b. “Pioneering” – developing a complex (sometimes aggressive), untested tax plan.
 - i. Such claims take the longest to resolve, dragging on for years.
 - ii. Even if you are correct CRA may reassess, which results in a claim to preserve the limitation period while the case goes through the tax courts.

4. Contractual limitations of liability:

- a. The availability and role of limitation provisions in engagement letters.

5. Limitation periods:

- a. The old *Limitation Act* gave 6 years for the client to sue from the ‘discovery’ of the claim versus the new *Limitation Act* (covering services provided after June 2013) limits that to two years.
- b. How does the court define ‘discovery’, and can a contractual limitation period overcome that potentially lengthy discovery period?