

2019 BRITISH COLUMBIA TAX CONFERENCE & LIVE WEBCAST

TOPIC OUTLINE

CURRENT CASES

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A review of recent decisions that affect owner-managed businesses and private companies.

This presentation will cover recent case law directly relevant to tax practitioners. In each category the intention is to outline for attendees the current state of the jurisprudence, the reasons these areas of jurisprudence are of focus in the current tax environment, and the effect of the jurisprudence on everyday tax practice.

The cases we have selected can be categorized into three main areas: (A) CRA Audit Powers; (B) the focus on Real Estate; and (C) Rectification post-*Fairmont*.

A. CRA Audit Powers

Various practitioners, judges, and academics have noted the recent increased focus of jurisprudence on questions of procedure. In this vein, the past year has seen important case law released which investigates the power of the CRA to compel interviews, working papers, and documents. This continues to be an evolving area in both the jurisprudence and interpretations thereof.

The cases we will focus on in this category will be: *Lin*, 2019 FC 646, 2019 DTC 5067 (Federal Court); *Cameco*, 2019 FCA 67, 2019 DTC 5042 (Federal Court of Appeal); and *Atlas*, 2018 FC 1086, 2018 DTC 5124 (Federal Court), currently under appeal.

The case law has also considered the limits and boundaries of the Minister's discretion under the Act and to demonstrate this we will be considering *Revera Long Term Care Inc.*, 2019 FC 239, 2019 DTC 5025 (Federal Court).

B. Real Estate Focus

The Canada Revenue Agency (“**CRA**”) indicates that it has made over \$1 billion of audit assessments (including penalties) as a result of audit activities related to real estate in British Columbia and Ontario between April 2015 and March 2019. In Budget 2019, the Minister of Finance also announced increased funding to create new dedicated residential and commercial real estate audit teams in British Columbia and Ontario. Thus, it is no surprise that tax disputes relating to real estate are starting to become more prevalent.

We will explore more recent cases decided in this area, such as *Lounsbury*, 2019 TCC 109 (Informal Procedure); and *Ngai*, 2019 FCA 181. We will also explore the use of unnamed requirements in *Roofmart*, 2019 FC 506, how these requirements may be used with respect to assignment sales, and possible defences in light of non-real estate cases such as *Hydro-Quebec*, 2018 FC 622, 2018 DTC 5082 (Federal Court).

C. Rectification The Supreme Court of Canada’s decisions in *Fairmont Hotels Inc.*, 2016 SCC 56, [2017] 1 CTC 149 and *Jean-Coutu Group (PJC) Inc.*, 2016 SCC 55, and [2017] 2 CTC 93, confirmed the circumstances in which rectification is available and expressly overruled previously decided seminal cases. The cases we consider in this section examine the decisions in British Columbia which consider rectification in a post-*Fairmont* world. Specifically, we will consider: *Crean*, 2019 BCSC 146, 2019 DTC 5016 (British Columbia Supreme Court) and 5551928 *Manitoba Ltd. (Re)*, 2018 BCSC 1482, 2018 DTC 5102 (British Columbia Supreme Court).