
The Honourable Donald G.H. Bowman— A Judge’s Journey

This special issue of the *Canadian Tax Journal* is dedicated to the significant contributions made by Donald G.H. Bowman to Canadian tax, not just as a distinguished judge and former chief justice of the Tax Court of Canada, but also as a protagonist in various roles during possibly the most dynamic period in the evolution of Canada’s modern income tax system.

This is a unique undertaking for the Canadian Tax Foundation and the *Canadian Tax Journal*. But, then, Donald Bowman has been a unique fixture on the Canadian tax scene. He began his legal career in 1962 as a Department of Justice counsel. In that capacity he argued many cases, the outcomes of which no doubt helped to shape perceptions of and attitudes about the Canadian tax system as well as specific aspects of the law. His professional life evolved in the early 1970s as he switched sides to take the taxpayer’s perspective. Entering private practice in 1971, he joined Heward Stikeman, Fraser Elliott, and former Ontario premier John Robarts in establishing the new Toronto law firm of Stikeman Elliott Robarts & Bowman. He remained in private practice for the next 20 years. Here, his contribution to the law was equally penetrating. Interestingly, during this time, the Canadian tax system itself was developing from a relatively conceptual, and by present standards, “brief” code that left much to the interpretive responsibility of counsel and the courts, into a much more prescriptive regime that contemplates in the statutory text many more particular instances of its application.

It was a natural evolution of this exemplary counsel’s career that he succeeded to a public role as an arbiter and adjudicator in the Tax Court of Canada. Appointed as a judge of the Tax Court in 1991, he was named associate chief justice in 2000 and ultimately chief justice in 2005. He retired in 2008, when he reached the mandatory retirement age. During his tenure, Justice Bowman distinguished himself not merely as a decision maker with respect to substantive tax issues of considerable systemic influence, but also as the decider of cases affecting more routine applications of the income tax law that were nevertheless of profound significance to those directly affected by them. He was a steward of the Tax Court as it matured to become a superior court of record, and a pioneer, not only in fostering the stature of the court, but also in encouraging the use of the informal procedure approach to trying tax cases.

Complex matters are often fundamentally simple. As a counsel and as a judge, Bowman would return (taking us with him) to the fundamental framework of an income tax system, questioning such basic notions, for example, as the nature of income and the characteristics of capital. He would find thematic points of reference in one of his favourite texts on income tax law, the venerable *Principles of Income Taxation* by Hannan

and Farnsworth.¹ His scholarly, inquisitive, plain-thinking, and plain-speaking approach helped to strip income tax law of much of its mystery and mythology. He accomplished this with equanimity and not infrequently with a brand of humour that helped to keep the system and its various constituencies grounded and suitably self-conscious.

Another notable aspect of Bowman's life in the law, also reflected by the various vantages from which he has observed it, has been his practice as a lawyer first and a tax practitioner second. He has understood that the income tax system floats atop the legal system. It is the general law that informs—defines, actually—the relationships and events to which tax law applies and on which it depends. He has demonstrated that to be an excellent tax practitioner, one must be thoughtful and free of preconceptions as to the outcome of one's inquiry and deliberation, as well as being well versed in the law.

Donald Bowman, throughout his career, has demonstrated another important dimension of the public aspect of practice. It is perhaps easy, on reflection, to understand this in terms of career turns that took him into, out of, and then back into public service. He understood that even as a private practitioner, he always had two clients—as he would put it, the ones paying his fees and, with respect, her majesty. In effect, he would explain, a responsible adviser should be prepared to advance and defend a position in the presence of both clients and expect to garner respect for it from both—even if one might have less affection for it than the other. That healthy outlook on the law has served him, and us, well.

It is for these reasons that the Canadian Tax Foundation has chosen to honour Donald Bowman by publishing this special issue of the *Canadian Tax Journal*, in recognition of his contribution to Canadian tax law. This project has been some time in gestation, since the chief justice's retirement from the Tax Court in July 2008. The articles that follow address a cross-section of issues, mostly of basic and fundamental significance, which in one manner or another Bowman touched as a Crown counsel, a taxpayer's counsel, or a judge. Aside from capturing his abiding interest in the fundamentals of income taxation, our aim is to present a glimpse of the metamorphosis of a distinguished lawyer's thinking over a long period of practice, as it was tested and shaped by the changing interests he served and the perspectives, discipline, and intellectual maturity that necessarily resulted. Our goal is not merely to present a historical portrait of Bowman's achievements, but also (or perhaps rather) to make accessible examples of the insight that informed his thinking and has become part of our tax law. We hope, in this way, to influence other practitioners' attitudes about and approaches to the tax law, and thus to further contribute, albeit vicariously, to Donald Bowman's valuable legacy.

1 J.P. Hannan and A. Farnsworth, *The Principles of Income Taxation: Deduced from the Cases* (London: Stevens, 1952).

This issue of the journal is the work of many who are proud to have had the opportunity to participate in this project. They include government and private tax practitioners, many of whom are not only Donald Bowman’s professional acquaintances and colleagues, but also his friends. We have enjoyed putting this collection together, and hope that our readers will share our enthusiasm for it. While the contributors were asked to write “reflections” informed by Bowman’s experience on particular issues and their perceptions of his contributions, rather than to labour over scholarly treatises, the articles in this issue are indeed scholarly in their insight. Together, they cast light on the mind of a tax lawyer and practitioner as it contributed to and grew with the development of the law. They also reveal in their accounting of Donald G.H. Bowman’s work a mindset that usefully would inform any application of the tax law.

J. Scott Wilkie
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