

Highlights of Recent Developments in Estates and Trusts

Presented by: Lindsay Ann Histrop, LL.M
September 20, 2018



Ontario Disability Support Program (ODSP)

- *Ontario Disability Support Program Act, Income Support*
- Purpose is to help people with disabilities who are in financial need pay for basic living expenses
- To be eligible, person must be:
 - at least 18 years old,
 - an Ontario resident,
 - meet the program's definition of a person with a disability or be a member of a Prescribed Class, and
 - Meet severe income and asset limit requirements

ODSP –April 18, 2018 Proposed Amendments

- Ontario Regulation 281/18 to amend O. Reg. 222/98
- The original amendments would have changed:
 - Investments in RRSP and TFSA accounts would be exempt from asset limit
 - The \$10,000 limit on gifts in any 12-month period would be removed, allowing unlimited gifts and distributions from an estate or trust without affecting income limit
 - Income threshold limits would be increased
- The amendments would have been effective beginning September 1, 2018

ODSP – Amendments Cancelled

- On July 31, 2018, Ontario government announced that it would not proceed with certain initiatives in the previous government's 2018 Budget
- Proposed amendments have been cancelled
- Government July 31, 2018 press release said, “Over the next 100 days, Ontario will work on a plan to reform social assistance...”
- What will the new plan look like?

<https://news.ontario.ca/mcys/en/2018/07/helping-people-with-a-plan-to-reform-social-assistance.html>

ODSP: Henson Trusts and Inheritance Trusts

- Henson trusts are discretionary trusts that can be used to control the amount of income (and assets) included in the hands of a beneficiary for the purpose of qualifying for ODSP and other benefits
- Henson trusts will continue to be an important tool for families supporting an ODSP recipient
- For the time being, trust and estate distributions and gifts continue to be limited to \$10,000 in any 12-month period unless the payments are used to pay for certain expenses
- Inheritance Trust – up to \$100,000 of inherited funds may be contributed without losing ODSP benefits

Trust Reporting:

Trust Tax Return Reporting Developments

- February 27, 2018: the Department of Finance released its 2018 Federal Budget, which contained increased tax reporting requirements for trusts
- July 27, 2018: the Department of Finance released draft tax legislation that would implement the new trust reporting requirements
- The new trust reporting rules will be effective for tax years that end after December 30, 2021 (e.g., beginning for the December 31, 2021 tax year)
- Inevitable that some trustees will not be aware of these new rules

Trust Reporting: Section 150 and Historic CRA Policy

- Subsection 150(1.1), of the *Income Tax Act*: a trust is not required to file a tax return if it has no tax payable
- CRA's T3 Guide: a trust tax return is only required if the trust has any of:
 - tax payable,
 - a taxable capital gain,
 - income more than \$500,
 - a benefit to a beneficiary of more than \$100,
 - income allocated to a non-resident,
 - holds property subject to 75(2),
 - or is a deemed resident trust,
- Typically trusts with no income might not file until 21st year (e.g., principal residence trust; estate freeze trust).

Trust Reporting: New Subsection 150(1.2)

- New subsection 150(1.2): any “express trust” that is resident in Canada or deemed resident in Canada must file a T3 return
- “Express trust” is not defined but is suggested to arise from the instructions of a settlor or testator, as opposed to an equitable trust imposed by a court
- Will a bare trust be required to file?
- S. 104(1) deems a trust to not include arrangements where the trust is considered to act as agent for the beneficiaries – but it is not at all clear if/when a bare trust must file

Trust Reporting: Exceptions

- Subsection 150(1.2)- Trusts that are exempt from filing a return:
 - a) Those in existence for less than 3 months
 - b) Those having less than \$50,000 of liquid assets only throughout the year
 - d) A registered charity or not-for-profit club under 149(1)(l)
 - e) A mutual fund trust
 - i) A graduated rate estate
 - j) A qualified disability trust
 - k) An employee life and health trust
 - m) A DPSP, RSP, RDSP, RESP, RPP, RRIF, RRSP, or TFSA

Trust Reporting: Penalties

- New subsections 163(5) and (6) impose a penalty on:
 - A person who knowingly makes a false statement or omission in a return, or
 - A person who fails to file a return for a trust that is not exempt under subsection 150(1.2)
- The penalty is equal to the greater of (a) \$2,500 and (b) 5% of the highest fair market value at any time of all the property held by the trust

Trust Reporting: Section 204.2 of the Regulations

- New section 204.2 of the Regulations requires a person acting in a fiduciary capacity (the trustee) to provide:
 - the name, address, date of birth, jurisdiction of residence, and tax identification numberfor each
- trustee, beneficiary, settlor, and person who can exert influence over the appointment of income or capital of the trust (e.g., a “protector”)



Trust Reporting: Section 204.2 of the Regulations

- The requirement for information in respect of the beneficiaries is met if
 - (a) information is provided for each beneficiary whose identify is known or ascertainable with reasonable effort, and
 - (b) sufficiently detailed information to determine with certainty whether any particular person is a beneficiary is provided
- Where the class of beneficiaries is extensive, this will be an onerous responsibility for trustees

Importance of Confirming Domicile

Sato v Sato, 2018 BCCA 287

- Testator born in Japan, obtained a BSc and MBA in BC, worked in BC, Ontario, Cayman Islands, Tokyo, Guernsey, and finally Luxembourg
- Testator executed his last will in BC in 2011, while visiting, leaving estate to sisters
- Testator subsequently married in Luxembourg in 2013
- As of 2013, most assets and friends were in Luxembourg and he filed taxes there
- Testator died in Japan in 2015 seeking medical treatment
- Under BC's former *Wills Act*, marriage automatically revoked a will (the *Act* is since amended so this is no longer true)

Importance of Confirming Domicile

Sato v Sato, 2018 BCCA 287

- If Testator was domiciled in BC in 2013, his will would have been revoked, and estate would pass to widow on intestacy; domicile in Luxembourg, would not revoke will
- Domicile determined by both residency and intention
- Court considered Testator's 1999 CRA residency determination form stating intention to retire in Canada – trial judge called this the “Key Document”
- Court concluded Testator's domicile in 2013 was BC
- As a result, Testator's BC will was revoked, and intestacy rules applied
- Shows the importance of written and verbal expressions of domiciliary intention in determining domicile

Post mortem interest on unpaid legacies

Rivard v Morris, 2018 ONCA 181

- Testator's will favoured son over two daughters, giving son residue including 3 valuable, appreciating farms
- Daughters given legacies of \$530,000 each
- Daughters challenged will unsuccessfully and costs were awarded against them
- Daughters then sought interest to be paid on their cash legacies
- 3 Year delay in payment of legacies was caused, at least in part, to challenge by Daughters (who also acted as estate trustees)

Post mortem interest on unpaid legacies

Rivard v Morris, 2018 ONCA 181

- Court ruled that common law “rule of convenience” applied to allow interest on cash legacies because they were payable with no conditions under the will
- Awarded 5% simple interest from the first anniversary of father’s death based on the rate of interest carried by the rule of convenience at common law
- Shows importance of testator addressing interest payments on legacies if delay in payment anticipated
- Son seeking leave to appeal to the SCC

Joint accounts and Resulting Trust disputes

Brathwaite v Harding, 2018 ONSC 2488

- Deceased added H as joint owner of bank account to allow H to provide assistance and pay for bills
- Deceased sold home and deposited proceeds in joint bank account
- Deceased gifted \$250,000 out of proceeds to B
- After Deceased's death, H withdrew \$250,000 from joint account
- B argued that H's withdrawal should be considered an asset of the estate on the principle of resulting trust

Joint accounts and Resulting Trust disputes

Brathwaite v Harding, 2018 ONSC 2488

- H had onus to show that proceeds were intended as a gift and to rebut the presumption of a resulting trust
- H presented Court with Deceased's authorization of joint account at Bank, evidence of Bank employee involved in opening joint account, and statements by Deceased made while alive
- Court satisfied with H's evidence that the joint account constituted a gift passing outside estate
- Shows the importance of documenting transferor's intention in writing when establishing joint accounts

Testamentary Freedom and Public Policy

Free Expression v McCorkill, 2015 NBCA 50

- Testator's will left residue of estate to a white supremacist organization in the US
- Discussion on public policy and what may be considered to be a violation of public policy in terms of estate planning
- Court found that communications of the residuary beneficiary were illegal and in violation of public policy
- Court ruled that bequest was invalid because the purpose and activities of the beneficiary organization contravened Canadian public policy
- Shows courts are prepared to interfere with testamentary freedom on general moral grounds

Obligation to Disclose Trust Interest to Beneficiary

Valard v Bird, 2018 SCC 8

- Bird required subcontractor to obtain a labour payment bond. Bond allowed work provider who was owed money by subcontractor to sue surety company.
- Subcontractor hired Valard to provide construction work. Subcontractor became insolvent, leaving Valard's invoices unpaid.
- Bird did not notify Valard of the bond.
- Valard asked Bird about bond and filed a claim outside of specified notice period. Surety company denied claim.
- Valard sued Bird for breach of trust

Obligation to Disclose Trust Interest to Beneficiary

Valard v Bird, 2018 SCC 8

- SCC held that bond created an express trust
- Beneficiary of trust has right to hold trustee accountable for administration of property and to enforce terms of trust
- In some circumstances, this right can only be exercised if the beneficiary is informed of the existence of the trust
- “In general, wherever ‘it could be said to be to the unreasonable disadvantage of the beneficiary not to be informed’ of the trust’s existence, the trustee’s fiduciary duty includes an obligation to disclose the existence of the trust.”
- This principle is expected to be applied in the private trust context, raising the trustee’s responsibility to be proactive

Proprietary Estoppel

Cowper-Smith v Morgan, 2017 SCC 61

- Sister promised Brother that if he moved back to the family home and provided care for their aging mother, Sister would sell her share of mother's estate to Brother
- Sister reneged on her promise
- Trial Court found all elements of proprietary estoppel had been established:
 - Sister made the promise
 - Brother relied on the promise to move in with mother
 - Brother suffered as a result of his reliance leading to an unfair result

Proprietary Estoppel

Cowper-Smith v Morgan, 2017 SCC 61

- BC Court of Appeal ruled that proprietary estoppel could not be applied because Sister did not have an interest in the estate property when she made her promise
- SCC restored trial judge's decision and concluded that ownership at the time of representation is not a prerequisite to the doctrine of promissory estoppel
- As soon as G received interest in the property, promissory estoppel would attach
- Expect more disappointed beneficiaries to plead this remedy

Priority of CRA Over Other Claims in Insolvent Estate Re Evans Estate, 2018 NSSC 68

- Insolvent estate owed debts to creditors and CRA
- Under *Probate Act* (NS), tax debts appear to rank after certain other expenses including funeral expenses, probate taxes, and trustee and professional fees
- Common law also prioritizes funeral and testamentary expenses in insolvent estates
- Under *Income Tax Act* (Canada), tax debt must be paid or trustee is held personally liable

Priority of CRA Over Other Claims in Insolvent Estate Re Evans Estate, 2018 NSSC 68

- Court cited principle of Crown Prerogative, which presumes that government is not bound by statute unless otherwise expressly stated
- Principle of paramountcy – federal law takes priority over provincial law where there is a conflict
- Court ruled that income tax debt should be paid in priority to other debts, overruling probate court instructions
- Creates practical challenges for insolvent estates in debt to CRA if trustees, professionals and funeral cannot be paid from the estate assets

Uncertainty Leading to Invalidity of Multiple Wills

Milne Estate (Re), 2018 ONSC 4174

- Testator’s Primary (probate) Will: “all property owned by me at the time of my death EXCEPT ... [certain named assets and] any other assets for which my Trustees determine a grant of authority by a court of competent jurisdiction is not required for a transfer or realization thereof”. (emphasis added)
- Testator’s Secondary (non-probate) Will: “all property owned by me at the time of my death INCLUDING ... [certain named assets and] any other assets for which my Trustees determine a grant of authority by a court of competent jurisdiction is not required for a transfer or realization thereof” (emphasis added)

Uncertainty Leading to Invalidity of Multiple Wills Milne Estate (Re), 2018 ONSC 4174

- Held Secondary Will covers ALL property of Testator
- Primary Will grants the executors the entire discretion to determine retroactively which assets are (not) vested under it
- Secondary Will found to be valid; Primary Will found to be invalid
- Primary Will found to lack certainty of subject matter
- Part of probate process is for the court to examine the validity of a will

Uncertainty Leading to Invalidity of Multiple Wills Milne Estate (Re), 2018 ONSC 4174

- “The testator must settle upon the Estate Trustees assets that are specifically identified or are *objectively* identifiable by reference to the intention of the testator and not the subsequent decision of the Estate Trustees.”
- Principle of certainty of subject matter offended
- Technique of excluding assets which do not require a certificate of appointment (probate) from the will to be probated is a commonly employed drafting style

Uncertainty Leading to Invalidity of Multiple Wills Milne Estate (Re), 2018 ONSC 4174

- “The Primary Will seeks to carve out a variable subset of the property that is and remains subject to the Secondary Will without subtracting such property from the secondary estate and to do so based upon the subsequent, subjective determinations of the Estate Trustees as to what is desirable. In my view, this cannot be done.” (emphasis added)
- “If multiple wills are to be employed ... the property that is subject to each must be ascertainable objectively based upon the expressed intent of the testator without regard to discretion of the Estate Trustees exercised afterwards.” (emphasis added)

Uncertainty Leading to Invalidity of Multiple Wills Milne Estate (Re), 2018 ONSC 4174

- Question remains, if the determination of assets disposed of under each Will was not expressly delegated to the discretion of the Estate, would the Will still be invalid on the basis that the subject was uncertain?
- Certainty dilemma best illustrated where the residual beneficiaries under the two Wills are different
- Meanwhile, countless multiple wills with similar language have successfully gone through the probate process in Ontario and Certificates of Appointment have been issued for only the intended “probate” will

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Highlights of Recent Tax-Related Cases

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Topics to Discuss

1. Introduction:
2. *Wheaton Precious Metals Cases*
3. *Gagliese Case*
4. *Landbouwbedrijf Case*
5. *Kau Case*

Wheaton Precious Metals Tax Cases

- The Canadian public company previously known as Silver Wheaton is in the business of providing financing to mining companies in return for a share of their production (a so-called “streaming company”)
- The CRA audited Wheaton and its wholly-owned Cayman subsidiary for the period 2010-2015, and reassessed on the basis that Wheaton had violated the Transfer Pricing Rules
- As a result, the Cayman income of \$715 million was attributed to the Canadian parent, which was assessed for \$310 million of taxes, interest and penalties

Wheaton Precious Metals Tax Cases...cont'd

- Wheaton made timely disclosures of the CRA proposals and actual reassessments, but management stated that the audit was not expected to have a material adverse effect on the company, and that the company's financial statements were in compliance with the International Financial Reporting Standards
- Immediately following the disclosure, the stock price fell about 20%
- Shareholder class actions were commenced in civil courts both in the U.S. and in Canada, seeking punitive damages of \$10 million, among other things

Wheaton Precious Metals Tax Cases...cont'd

- Wheaton's Annual Information Form filed with the OSC proclaimed that the "Corporation's profit is derived from its subsidiary, Silver Wheaton Cayman, which is incorporated and operated in the Cayman Islands, the Corporation's profits bear no income tax".

This is like waiving a red flag in front of the CRA bull



Wheaton Precious Metals Tax Cases...cont'd

- The allegations in the cases are that the Cayman company had inadequate substance to be able to conduct the business from which it claimed to be generating profits for itself as opposed to for its parent company in Canada
- The plaintiffs allege that Wheaton violated securities laws by failing to disclose material adverse facts about the company's business, operations, prospects and performance

Wheaton Precious Metals Tax Cases...cont'd

- The IFRS apparently requires a company to record as an uncertain tax-position liability in its financial statements an estimate of the obligations if it was “more likely than not” that the CRA audit would result in additional taxes
- In addition, the plaintiffs allege that management made false and negligent misrepresentations about the severity of the reassessments, inducing shareholders to buy its stock at inflated prices

Wheaton Precious Metals Tax Cases...cont'd

- What lessons can be learned from these cases ?
 - Compliance with the Transfer Pricing Rules is critical for any company with international operations
 - Public disclosure about tax minimization must be managed with an expectation that the CRA will read it and react
 - Even if the company believes it has a good defensible position, it must be conservative and realistic in representing the risks to the public
 - Tax issues are no longer a private matter for public companies

Rocco Gagliese Productions Inc. v. The Queen

When a company earns royalties, can it still claim the small business deduction from carrying on an active business ?

- Rocco Gagliese is a writer, performer and recorder of music for television programs; in fact he won an Emmy Award for his music
- He incorporated a company of which he was the sole shareholder, director and officer through which to produce his music and obtain limited liability protection

Rocco Gagliese Productions Inc. v. The Queen...cont'd

- He assigned to his corporation his rights to receive revenue in respect of the music he composed, performed or recorded
- When this revenue was received as “royalties” from the collecting agent SOCAN (the Society of Composers, Authors and Music Publishers), the CRA denied the corporation the small business deduction on the basis that it earned income from property (copyright in the music) and not from an active business (the provision of services)

Rocco Gagliese Productions Inc. v. The Queen...cont'd

- The Tax Court noted that this issue has come before the court because the CRA revoked its previous published position, which stated:
- *Although royalty income is generally from a source that is property, where it can be established that the royalty income is related to an active business carried on by the recipient corporation, or the recipient corporation is in the business of originating property from which the royalties are received, such income will be considered to be income from an active business. Therefore, if a company is in the business of composing music, the income it earns with respect to its copyrighted music would generally be considered active business income.*

Rocco Gagliese Productions Inc. v. The Queen...cont'd

- The Court found on the facts that Mr. Gagliese validly assigned to his corporation the rights to receive revenue from the music he wrote, performed or recorded
- Counsel for the taxpayer corporation argued that the corporation in fact carried on an active business, and that in any event it did not fall within the definition of an “investment business” which requires the principal purpose of the corporation to be the earning of income from property, which was not the case here

Rocco Gagliese Productions Inc. v. The Queen...cont'd

- Counsel for the Crown argued that the court must be bound by the legal character of the revenue: *royalties* come from the use of property
- However the Court found that the principal purpose of the corporation's business was to earn income from Mr. Gagliese's daily activities of originating and recording music tracks for individual television episodes
- Accordingly, it was carrying on an active business from providing services and, thus, was entitled to claim the small business deduction

Rocco Gagliese Productions Inc. v. The Queen...cont'd

- What we can learn from this case is that while the legal character of a payment is important, it will not govern the taxability, if the taxpayer can show that value was created from an activity that differed from the label that was assigned to the payment
- In addition, we are reminded that interpretations put forward by the CRA or withdrawn by them do not constitute the law, but only their views, which may be overturned by a court where the evidence is clearly in the taxpayer's favour

Landbouwbedrijf Backx B.V. v. The Queen

When a Dutch company realizes a capital gain from the sale of partnership interest in a Canadian farm, can it be liable for tax as a resident of Canada?

- The corporate taxpayer (“LB”) is a limited liability company incorporated under the laws of the Netherlands
- It disposed of its partnership interest in an Ontario farm, and the CRA assessed the capital gain under Part I as though it was a Canadian resident and also under Part XIV (branch tax) as though it was a non-resident

Landbouwbedrijf Backx B.V. v. The Queen...cont'd

- The original Dutch resident shareholders and directors of LB were Michiel Backx and his wife, Marian Backx
- When the Backx immigrated to Canada they formed a 51/49 partnership with LB to acquire the Ontario farm
- The Backx resigned as directors of LB in favour of Marian's sister, but remained as shareholders
- They also established an Ontario corporation, Backx Dairy Farms Limited ("BD"), to which LB transferred its 49% interest in the farm partnership for proceeds of \$4.5 million, paid by a note, resulting in a capital gain of \$1.7 million

Landbouwbedrijf Backx B.V. v. The Queen...cont'd

- The memorandum of agreement approving the transaction was signed by Marian's sister on behalf of LB
- BL followed the procedure under s.116 of the ITA disclosing the transaction and claiming the capital gain was tax exempt as being "treaty-protected property" under the ITA and the Canada-Netherlands Tax Treaty, on the basis that the farm partnership carried on a business and the capital gain realized on the transfer of the partnership interest was only taxable in the Netherlands

Landbouwbedrijf Backx B.V. v. The Queen...cont'd

- The Tax Court found that all the instructions for buying and selling the Ontario farm property came from the Backx in Canada, and that Marian's sister in the Netherlands was a mere nominee who carried out clerical and administrative functions on behalf of the Backx
- Marian's sister admitted that she had no experience in farming and no prior business experience. She accepted the title of director to assist her sister and brother-in-law, and received remuneration of €500 per year
- Moreover, the correspondence among the Backx, their Canadian and their Dutch advisors disclosed that the Backx assumed effective and independent control of LB- indeed most of the correspondence was not copied to Marian's sister

Landbouwbedrijf Backx B.V. v. The Queen...cont'd

- In analysing whether LB was a resident of Canada, the Court adopted the long-standing central management and control test (See the decision of the Supreme Court of Canada in *Garron Family Trust (Trustee of) v. R.*)
- While central management and control is usually found to reside in the Board of Directors, if significant management decisions are taken by a person who is not a director, the place where that person resides or operates may be determined to be the residence of the corporation
- The Court found that LB had not ceased to be a resident of the Netherlands; accordingly, it was a dual resident, in which case the “competent authorities” under the Treaty not the Court must resolve the conflict

Landbouwbedrijf Backx B.V. v. The Queen...cont'd

- What we learn from this case is that even with expert tax advice in both Canada and the Netherlands, it is possible to overlook the fundamental facts on how a corporation actually operates and the resulting tax risks
- One always needs to go back to “basics”
- In any cross-border transaction, one must be clear on where the parties are resident for tax purposes based on the actual facts, not just on the tax plan proposed by the advisors

Anibal Kau v. The Queen

When does a purchaser of real property from a vendor satisfy the test of making “reasonable inquiry” as to whether the vendor is a non-resident ?

- The taxpayer, Anibal Kau (“Kau”) purchased a Toronto condominium unit from a vendor with a California address for service
- No application was made for a section 116 clearance certificate from the CRA

Anibal Kau v. The Queen...cont'd

- The dispute arose from the assessment of the purchaser of 25% of the purchase price on the basis that the purchaser did not make “reasonable inquiry...to believe that the non-resident person was not resident in Canada”
- The Court carefully examined the evidence presented by the parties to determine whether the taxpayer met the statutory test
- Leading up to the closing, the taxpayer visited the condo and determined that the vendor did not live there, a tenant did, and that it was an investment property for the vendor
- In addition, the taxpayer’s lawyer found that the vendor’s address for service was in California

Anibal Kau v. The Queen...cont'd

- The vendor in front of a California notary declared (but did not solemnly swear) in an affidavit: “I am not a non-resident of Canada...”
- The taxpayer himself did not make enquiry as to the residency of the vendor; he did however hire a real estate lawyer to act for him, which presumably includes avoiding tax liability under the ITA
- The Court found that the lawyer knew about the California address for service for the vendor, the possession of the condo by a tenant not the vendor, the so-called “affidavit” – these should have been viewed as “red flags” to the lawyer to make further inquiries and dig deeper into the apparent facts

Anibal Kau v. The Queen...cont'd

- It was incumbent on the lawyer in these circumstances to make additional inquiries, such as asking for the permanent residential address of the vendor, not just the address for service, and for a copy of the vendor's driving license
- These and other inquiries might have led the lawyer to conclude that the taxpayer ought not to rely on the vendor's documents, and instead not close without the clearance certificate

Anibal Kau v. The Queen...cont'd

What can we learn from this case ?

- Even in apparently conventional purchase and sale transactions, the tax risks must be carefully evaluated
- Appropriate steps must be taken to mitigate such risks by examining the statutory exculpatory language, and using common sense and the perspective of how a court might look at the conduct of the taxpayer years after the event
- What needs to be done will always be dictated by the context of the law and the particular facts, but the approach to risk mitigation in the tax minefield should have the highest priority



Questions?



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Recent Developments Affecting Charities and Non-Profits

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September 20, 2018



Non-share Corporations to hold Personal Assets

- perpetual existence
- no twenty-one year rule
- avoid estate administration tax
- defer capital gains tax
- flexibility
- Lash case involving family dispute
- CRA position on members as shareholders and benefit issues
- need for tailor-made by-laws, “lease” payments, etc.

Charitable Donation “Schemes”

- previous jurisprudence says no credit or deduction for cash portion of “donations” under “buy-low donate high arrangements”
- arrangement treated as an “investment” rather than gift with donative intent
- recent *Cassan* decision of TCC reviews earlier cases and law and finds in favour of taxpayers to limited extent
- under appeal to FCA

Political Activity

- Harper government initiatives
- controversy
- public consultation
- report from committee
- government response and plan to amend legislation and administration
- Canada Without Poverty decision and uncertainty
- government will appeal
- draft legislation introduced on September 14, 2018 to amend ITA

“Social Investments” in Ontario

- *Charities Accounting Act*
- *Trustee Act*
- income tax issues
- program related investments (for tax purposes)
- guidance
- PGT

Remuneration Payable by Charities to Directors

- case law and practice of PGT in Ontario
- prohibition against payment to director in any capacity
- often misunderstood or overlooked
- attempt by PGT to provide relief
- regulation under CAA
- section 13 orders
- guidance from PGT
- restrictions
- PGT guidance

Current Issues With Respect to CNCA

- ongoing issues
- current situation
- implications

Current Status of ONCA

- further delay in implementation
- enactment of parts of ONCA by amendments to *Corporations Act*
- ongoing issues

Cultural Property

- valuation of cultural property
- *Heffel Gallery* case
- interpretation of “outstanding significance” and “national importance”

2018 Budget Changes

- changes dealing with gifts to foreign universities
- comparison to Canada - U.S. Treaty
- extended definition of “eligible donee” includes municipalities for relief from revocation tax

Miscellaneous

- gifts by executors
- ineligible individuals
- CRA website address required on official receipts
- valuation of gifts in kind
 - *Balkwill* case
 - duelling experts
 - bootlegging issue
- amendment of NPO tax exemption

Miscellaneous

...cont'd

- extended definition of “charitable purposes” in CAA
 - extends common law and income tax concept
 - PGT position
- disputes among directors and/or members
 - *Wall* case
 - *Mount Pleasant* case
 - others
- *Humboldt Broncos* case and crowdfunding

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