

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant/respondent on cross-appeal
(Appellant/respondent on cross-appeal)

and

BRITISH COLUMBIA INVESTMENT MANAGEMENT CORPORATION

Respondent/appellant on cross-appeal
(Respondent/appellant on cross-appeal)

and

**HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA**

Respondent/respondent on cross-appeal
(Respondent/respondent on cross-appeal)

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PART I: OVERVIEW AND FACTS

A. Overview

1. The central issue in this case is whether the provincial Crown's immunity from federal taxation under section 125 of the *Constitution Act, 1867* extends to shield property belonging to private parties that is placed with a Crown agent to hold in trust. Immunity to taxation is constitutionalized to prevent one order of government from appropriating to its own use property belonging to the other. This Court has previously recognized that the immunity is not intended to protect private property held by the Crown in trust. The Court of Appeal's decision in this case unduly extends British Columbia's constitutional immunity from GST beyond that principle.
2. In reorganizing the legal framework for administering and managing the investment of provincial public sector pension funds, the Province of British Columbia positioned itself, through the British Columbia Investment Management Corporation ("**bcIMC**"), a statutory Crown agent, as a provider of investment management services to pension plans. Pension monies are invested with bcIMC which in turn uses those funds to acquire investment assets. Those assets are held pursuant to a statutory trust and they do not belong to the provincial Crown. bcIMC recovers its operating costs out of the asset pools, which reduces the value of the pension plans' investments.
3. The provision of investment management services is subject to GST and HST. In making taxable supplies of those services, bcIMC is expressly bound under the *Excise Tax Act* to collect and remit GST. The *Excise Tax Act* gives legal personality to a trust and attributes the actions of the trustee to the trust, in recognition that a trustee may act in their capacity as trustee of the trust rather than in their own right. The relevant provisions function to recognize a trustee's provision of services in relation to trust property as a supply of services to the trust. The trust, not the trustee, is treated as the recipient of those services and is liable to the tax. Those provisions apply to bcIMC acting as a trustee just as they would apply to any other person.

4. The Court of Appeal erred by relieving bcIMC from the application of those provisions of the *Excise Tax Act*. The outcome is contrary to the scheme and intent of the *Excise Tax Act*, and to fundamental principles of Crown immunity. It undermines the application of the *Excise Tax Act* to provincial government bodies and creates an unwarranted imbalance in the application of a national sales tax.
5. The chambers judge should have declined to exercise his jurisdiction over the immunity claim in the first instance. bcIMC is a GST registrant and it makes taxable supplies of services. The immunity issue arose in the application of the *Excise Tax Act* to bcIMC. The issue was central to GST assessments and could have been resolved in the comprehensive statutory appeal process prescribed by the statute, which includes an appeal to the Tax Court of Canada. Without acknowledging the importance of that statutory regime, the chambers judge issued a declaratory remedy that displaced the Tax Court's jurisdiction. The Court of Appeal ought to have set that declaration aside.

B. Statement of facts

i. bcIMC and British Columbia's public sector pension scheme

6. bcIMC is a provincial Crown corporation that was created in 1999 by the *Public Sector Pension Plans Act*, SBC 1999, c. 44 (the "PSPPA"). bcIMC was created to carry on trust business and investment management services.¹
7. The PSPPA states bcIMC's purpose as follows:

18 (2)The purpose of the investment management corporation is to provide funds management services, including the making of investments and loans, for funds placed with the investment management corporation.
8. Subsection 16(6) of the PSPPA provides that bcIMC is an agent of the provincial government

¹ PSPPA, s. [16\(1\)](#). Refer to the Reasons for Judgment of the British Columbia Court of Appeal, [2018 BCCA 47](#) ("BCCA Reasons"), paras 4 and 6 (**Appellant's Record**, Tab 2).

with the same liability for taxation as the government:

16 (6) The investment management corporation, as an agent of the government, is not liable for taxation except as the government is liable for taxation.

9. bcIMC was created in the course of a restructuring of British Columbia's public sector pension system that began in 1999. The PSPPA itself declares the following statutory purposes:

2. The purposes of this Act are as follows:

- (a) to establish an agency which must provide pension plan administration services to the pension boards;
- (b) to establish an agency which may provide investment management services to the pension boards;
- (c) to provide pension plan governance and risk and reward sharing alternatives for the management of the pension plans and pension funds;
- (d) to provide benefits to eligible plan members under the pension plans.

10. A key element of that restructuring was that ownership and control of British Columbia's public sector pension funds was vested in arm's length boards of trustees formed to govern each of the four public sector pension plans (the Public Service Pension Plan, the Teachers' Pension Plan, the Municipal Pension Plan, and the College Pension Plan). The boards of trustees are comprised of representatives of the relevant employers and plan member employees for each plan. The boards are responsible for holding the pension funds and for making investment decisions relating to them. bcIMC was created as an agent of the provincial government to provide investment management services to the pension boards and other bodies in the provincial public sector.

11. The PSPPA also created a Crown corporation (the British Columbia Pension Corporation) to provide pension plan administration services to pension boards.²

² PSPPA, ss. [5](#) and [7](#).

12. The PSPPA requires both bcIMC and the British Columbia Pension Corporation to operate on a cost-recovery basis.³ The PSPPA mandates that bcIMC recover its operating costs and capital expenditures as follows:

24(1) The investment management corporation must recover its operating costs and capital expenditures from one or more of the following:

- (a) amounts charged to the funds for operating costs and capital expenditures necessarily incurred by the investment management corporation on behalf of the funds it manages;
- (b) amounts charged to persons, organizations and other clients for services provided by the investment management corporation;
- (c) income accruing from investments made by the investment management corporation on its own behalf.

13. Prior to the PSPPA, the British Columbia Ministry of Finance held investment portfolios directly and performed the investment management function, and boards of trustees for the pension plans did not exist. Boards of trustees and bcIMC were created, in part, to ensure that investment decisions were made independently of political considerations.⁴

14. The PSPPA contemplates that each pension plan is to be jointly managed by the relevant employer(s) and the plan members pursuant to “joint trust” arrangements. The PSPPA initially imposed statutory joint trust arrangements for each pension plan pending the negotiation of contractual joint trust agreements. Upon the successful conclusion of those agreements, the PSPPA joint trust provisions were repealed.⁵

15. The joint trust agreements govern the investment and management of the pension monies. Their purpose is to provide for the prudent management of the pension plans and monies in a framework where the plan members and employers share responsibility for plan governance

³ PSPPA, ss. [13](#) and [24](#).

⁴ PSPPA, s. [18\(4\)](#). Also refer to the Reasons for Judgment of the British Columbia Supreme Court, [2016 BCSC 1803](#) (“**BCSC Reasons**”), para 10 (**Appellant’s Record**, Tab 1).

⁵ For example, refer to PSPPA, [Schedule A, s. 16.1](#) (ss. 2-16 were repealed). Also refer to [BCCA Reasons](#), para 9 (**Appellant’s Record**, Tab 2).

and the financial risks and rewards of plan sponsorship, including responsibility for plan shortfalls and entitlement to plan surpluses.⁶

16. Joint trust agreements were concluded for each of the pension plans between 2000 and 2011. The pension boards subsequently entered into written services agreements with bcIMC. The joint trust agreements granted the pension boards the discretion to retain an alternate investment manager (which could be a private sector investment manager), but to date no pension board has opted for an investment manager other than bcIMC.⁷

17. The written services agreements between the pension boards and bcIMC provide for bcIMC to deliver investment management services to the boards, provide that funds placed with bcIMC for investment are held by bcIMC in trust, and provide for bcIMC to charge fees to the pension boards.⁸

ii. bcIMC's investment management function and pooled investment portfolios

18. bcIMC's statutory purpose is to provide funds management services for funds placed with it. The PSPPA authorizes various provincial public sector bodies – most notably the pension boards, but also other provincial public sector bodies and the British Columbia government itself – to place money or securities with bcIMC as an agent for investment.⁹

⁶ Public Sector Pension Plan Joint Trust Agreement; see recitals, preamble, and Articles 10.3(b) and (c), Exhibit A to Affidavit #1 of Claudine Gagnon (“**Gagnon Affidavit**”) (**Appellant's Record**, Tab 20); also PSPPA, [Schedule C, ss. 18\(2\)\(f\)](#).

⁷ [BCCA Reasons](#), paras 9-10 (**Appellant's Record**, Tab 2); Articles 7.2 and 7.3 of the Public Sector Pension Plan Joint Trust Agreement, Exhibit A to the Gagnon Affidavit (**Appellant's Record**, Tab 20).

⁸ Articles 2.1, 3.2, and Schedule A to the Teachers' Pension Plan Funds Management and Investment Agreement dated Sept. 1, 2004, Exhibit F to the Gagnon Affidavit (**Appellant's Record**, Tab 20).

⁹ PSPPA, ss. [18\(3\)](#); Affidavit #1 of Stuart Newton (“**Newton Affidavit**”), paras 9-13 (**Appellant's Record**, Tab 25).

19. bcIMC holds assets and investments through a variety of investment structures. Most investments are held in “pooled investment portfolios”; others are held in segregated investments operated like standard investment or brokerage accounts for clients.¹⁰
20. Only pooled investment portfolios are at issue in this appeal.
21. A pooled investment portfolio is an investment structure whereby bcIMC holds investment assets in a portfolio and investors in the portfolio are issued proportionate units representing their interest in the portfolio. The value of each unit is determined by reference to the value of the underlying net assets of the portfolio. Pooled investment portfolios exist pursuant to a provincial regulation, the *Pooled Investment Portfolios Regulation* (the “**Regulation**”).¹¹
22. Under joint trust agreements, pension monies (comprising employee and employer pension contributions) are the property of the pension board to hold for the sole benefit of the current and former employees who are plan members. Pension boards place those funds with bcIMC as an agent for investment pursuant to the written service agreements. In its capacity as investment agent for the pension boards, bcIMC then acquires units of pooled investment portfolios on their behalf. In its capacity as legal owner of the portfolios themselves, bcIMC then uses the contributed monies to acquire assets within the portfolios.
23. The vast majority of bcIMC’s pooled investment portfolio assets are funded by the pension boards. Other more minor amounts are placed with bcIMC by provincial bodies such as the Workers Compensation Board, and by the British Columbia government directly with funds from the provincial Consolidated Revenue Fund (also pursuant to written services agreements which contemplate a fee for service arrangement).¹² In 2013, bcIMC was the fourth largest pension fund manager in Canada, managing close to \$103 billion in assets. For the year ended March 31, 2013, bcIMC had gross revenues of approximately \$202 million.¹³

¹⁰ Affidavit #2 of David Woodward, para 17 (**Appellant’s Record**, Tab 19).

¹¹ [BC Reg. 447/99](#); formerly the *Pooled Investment Portfolios Regulation*, BC Reg. 84/86.

¹² Amended Petition, para 6; Newton Affidavit, paras 8-10 (**Appellant’s Record**, Tab 25).

¹³ Affidavit #1 of Richard Young, para 7 (**Appellant’s Record**, Tab 18).

24. The PSPPA and the Regulation provide that bcIMC holds the assets in a pooled investment portfolio in trust, but no statutory provisions identify for whose benefit those assets are held. The Regulation states that ownership in any asset in a portfolio must not be attributed to a “participating fund”; however, the Regulation also provides that the assets in a portfolio must be identified separately from other property of bcIMC, and that when a portfolio is terminated the net proceeds are paid to the unit holders in that portfolio:

4 (1) All the assets of a portfolio are held in trust by the investment management corporation.

...

(3) The investments of a portfolio must be identified separately from other property of the investment management corporation, with each investment recorded to show clearly the portfolio to which the investment belongs.

(4) Ownership in any asset in a portfolio must not be attributed to a participating fund.

14 The chief investment officer may terminate a portfolio and distribute to the unit holders the net proceeds realized.

25. As required by the PSPPA, bcIMC recovers the net cost of operating pooled investment portfolios directly from the assets and investment returns generated in those portfolios.¹⁴ Although not charged directly to unit holders as fees, those cost recoveries reduce the unit holders’ returns and the value of their units in the portfolios.

iii. bcIMC and the Excise Tax Act

26. Part IX of the *Excise Tax Act*, RSC 1985, c. E-15, as amended (the “**ETA**”) imposes liability for paying, collecting, and remitting federal GST. The ETA also levies HST in provinces where HST is applicable. British Columbia was an HST-participating province from July 1, 2010 to March 31, 2013.¹⁵

¹⁴ [BCCA Reasons](#), para 13 (**Appellant’s Record**, Tab 2).

¹⁵ For simplicity, this factum will refer to GST throughout but all references are equally applicable to HST.

27. Under Part IX, GST is payable on “taxable supplies” of property and services. The tax is payable by the recipient of a taxable supply. Suppliers who are registered under the ETA are required to collect the tax and to remit to the federal Crown the “net tax” (essentially tax collectible less various credits and rebates) for prescribed reporting periods. Suppliers are deemed to be agents of Canada for the purpose of collecting and remitting the applicable GST, and they are liable to Canada if they fail to remit the correct amount of net tax in a reporting period.¹⁶

28. By virtue of paragraph 122(b) of the ETA, the collection and remittance obligations under Part IX of the ETA are expressly binding on Her Majesty in right of a province when the province makes taxable supplies of property or services:

122. This Part is binding

...
(b) on Her Majesty in right of a province in respect of obligations as a supplier to collect and to remit tax in respect of taxable supplies made by Her Majesty in right of the province.

122. La présente partie lie

...
(b) Sa Majesté du chef d’une province en ce qui concerne une obligation à titre de fournisseur de percevoir et de verser la taxe relative aux fournitures taxable qu’elle effectue.

29. In the *Reference re Goods and Services Tax*,¹⁷ this Court held that imposing GST collection and remittance obligations on a province acting as a supplier does not infringe section 125 of the *Constitution Act, 1867*, which provides:

125. No Lands or Property belonging to Canada or any Province shall be liable to Taxation.

125. Nulle terre ou propriété appartenant au Canada ou à aucune province en particulier ne sera sujette à la taxation.

30. There is no dispute that the investment management services that bcIMC is mandated to supply are taxable for GST purposes. Accordingly, bcIMC has been a GST registrant since January 1, 2000. It collects and remits GST in respect of investment management service fees charged to clients who invest through segregated investment accounts. bcIMC does not,

¹⁶ ETA, ss. [123\(1\)](#) (“taxable supply”), [165](#), [221\(1\)](#), [225\(1\)](#), [228\(1\) and \(2\)](#), [238](#), and [313\(1\) and \(1.1\)](#).

¹⁷ [\[1992\] 2 SCR 445](#) [“*GST Reference*”] at 478-481.

however, collect GST in respect of investment management services in relation to pooled investment portfolios.¹⁸

iv. GST compliance audit, challenge, and reassessments

31. On September 5, 2013, the Minister of National Revenue (the “MNR”) opened an audit file concerning bcIMC for its GST reporting periods from April 1, 2010 to March 31, 2013. On December 18, 2013, an auditor advised bcIMC of his intention to commence audit field work. Two days later, bcIMC filed a petition seeking declaratory relief from the provincial superior court.¹⁹
32. The petition sought declarations that (a) as a provincial Crown agent, bcIMC is immune from GST in respect of the assets that it holds in pooled investment portfolios, and (b) bcIMC is not bound by agreements between Canada and British Columbia under which the Province purports to bind its agents to pay GST from which they would otherwise be immune. Those agreements are the Reciprocal Taxation Agreement and the Comprehensive Integrated Tax Coordination Agreement. The Attorney General of Canada and the Province were the named petition respondents.
33. The binding effect of the Reciprocal Taxation Agreement and the Comprehensive Integrated Tax Coordination Agreement is the subject of the cross-appeal brought by bcIMC in this matter. In its petition, bcIMC alleged that it believed that Canada would rely on those agreements to require it to pay GST in respect of the pooled investment portfolio assets even if those assets were immune from federal tax under section 125.²⁰
34. Canada brought a preliminary motion to strike the petition in 2014. Canada argued that the immunity issue was within the exclusive jurisdiction of the Tax Court of Canada, and that the issue respecting the tax agreements was premature and did not disclose a reasonable cause of

¹⁸ [BCCA Reasons](#), para 31 (**Appellant’s Record**, Tab 2).

¹⁹ [BCCA Reasons](#), para 32 (**Appellant’s Record**, Tab 2). The petition was filed on December 20, 2013, not December 13, 2013 as stated by the Court of Appeal.

²⁰ Amended Petition, para 18 (**Appellant’s Record**, Tab 7).

action. The Province supported Canada's application. The application to strike and a subsequent appeal were dismissed.²¹

35. Before the petition proceeded to a hearing on its merits, the MNR completed the GST audit. On November 30, 2013, the MNR reassessed bcIMC for approximately \$40.5 million of net tax (plus interest and penalties). The MNR included additional GST collectible in respect of taxable supplies of investment management services made in managing the pooled investment portfolios during the audit period. In addition, the MNR made adjustments to GST collectible in relation to investment management services supplied in respect of segregated investments and in relation to supplies of employee parking.²²

36. On February 25, 2016, bcIMC filed notices of objection to the GST reassessments under the ETA, asserting immunity from GST but claiming to do so without prejudice to its ability to pursue declaratory relief in the provincial superior court.²³

37. The MNR's reassessments are based on the technical application of the ETA to bcIMC. The MNR found that, for purposes of the ETA, bcIMC makes taxable supplies of services when it manages pooled investment portfolios, and bcIMC receives consideration for those services in the form of cost-recoveries paid out of portfolio assets. The MNR then applied the following rules under the ETA: (a) a trust is treated as a separate person from its trustee; (b) the recipient of a supply is the person who is liable to pay consideration for the supply; and (c) services received by a trustee in their capacity as a trustee are deemed to be received by the trust.²⁴

²¹ [2014 BCSC 1296](#), affirmed [2015 BCCA 373](#). See [BCCA Reasons](#), paras 33-36 (**Appellant's Record**, Tab 2).

²² Affidavit #1 of Virginia Kwok, redacted by Order of the British Columbia Supreme Court reported at [2016 BCSC 2554](#) ("**Kwok Affidavit**"), paras 17, 25, and 26 (**Appellant's Record**, Tab 23).

²³ [BCCA Reasons](#), paras 37-39 (**Appellant's Record**, Tab 2).

²⁴ Kwok Affidavit, paras 17 and 22, and Exhibit E (**Appellant's Record**, Tab 23); Also ETA, ss. [123\(1\)](#) definition of "person" and "recipient", and s. [267.1\(5\)\(a\)](#).

38. The application of these ETA rules led the MNR to conclude that: (a) the ETA treats a pooled investment portfolio, which is a trust, as a person separate from bcIMC; (b) because the pooled investment portfolio assets are the source of the cost-recovery payments, the person represented by the portfolio is the recipient of the services for GST purposes; and (c) the ETA deems services received by bcIMC as trustee on behalf of the trust to be received by the trust itself. Accordingly, the MNR concluded that when bcIMC cost-recovers monies from the pooled investment portfolios it is obliged to collect GST.²⁵
39. The MNR concluded that the assets of a pooled investment portfolio, which bcIMC holds in trust, do not “belong to” the Province within the meaning of section 125 of the *Constitution Act, 1867*, and are not immune from federal taxation. Therefore, bcIMC must collect tax on investment management service cost-recoveries from the portfolios even though it is a Crown agent.²⁶
40. The MNR did not rely on either the Reciprocal Taxation Agreement or the Comprehensive Integrated Tax Coordination Agreement in reassessing bcIMC. The MNR concluded that those agreements were not applicable in this case because, by operation of the ETA, bcIMC was liable for failing to collect and remit GST as a supplier, not for failing to pay GST as a recipient of taxable supplies of services.²⁷

v. *The chambers judge’s decision*

41. Before the chambers judge, Canada again challenged the provincial superior court’s jurisdiction to grant declaratory relief respecting bcIMC’s liability for GST. Canada argued that the procedure provided for under the ETA, culminating in an appeal over which the Tax Court has exclusive jurisdiction, is the statutorily prescribed process to challenge assessments. In this case, reassessments were outstanding, the statutory appeal process under the ETA had already been engaged, and the immunity issue was central to that process. All parties agreed that, although the Tax Court does not have jurisdiction to grant declaratory

²⁵ Kwok Affidavit, Exhibit E (**Appellant’s Record**, Tab 23).

²⁶ Kwok Affidavit, Exhibit E (**Appellant’s Record**, Tab 23).

²⁷ Kwok Affidavit, para 30 (**Appellant’s Record**, Tab 23).

relief, it does have jurisdiction to vacate assessments on constitutional grounds in disposing of an appeal under the ETA.

42. The chambers judge dismissed the jurisdictional challenge and granted bcIMC’s petition in part. He held that the provincial superior court has jurisdiction to grant a declaration of immunity from GST. He characterized the immunity issue as a “threshold issue” of the applicability of the legislation, rather than an issue going to bcIMC’s liability. He did not agree that bcIMC was using the petition to challenge reassessments. He held that the declarations concerning immunity and concerning the Canada-British Columbia taxation agreements were linked, and as the tax agreement issue was entirely within the provincial superior court’s jurisdiction, he invoked judicial economy as a reason to exercise jurisdiction over the entire petition.²⁸
43. The chambers judge declared bcIMC immune from taxation under the ETA in respect of the pooled investment portfolio assets. He held that bcIMC is the legal owner of those assets, and that Canada may not rely on provisions of the ETA to “separat[e] the Crown from its assets” or to tax indirectly what it could not tax directly. The chambers judge rejected Canada’s ETA-based argument as an attempt to “change the trust into something it is not”.²⁹
44. After granting the declaration of GST immunity, the chambers judge dismissed the claim relating to the taxation agreements. He held that subsection 16(6) of the PSPPA makes bcIMC liable to taxation when the Province is so liable, which it is under those agreements.³⁰

vi. The Court of Appeal’s decision

45. Before the Court of Appeal, Canada conceded that a grant of exclusive jurisdiction to a federal statutory court such as the Tax Court does not oust the provincial superior court’s

²⁸ [BCSC Reasons](#), paras 89-95 and 98-99 (**Appellant’s Record**, Tab 1).

²⁹ [BCSC Reasons](#), paras 126-137 (**Appellant’s Record**, Tab 1).

³⁰ [BCSC Reasons](#), paras 166-167 (**Appellant’s Record**, Tab 1).

inherent constitutional jurisdiction. Canada maintained, however, that the chambers judge ought to have declined to exercise that jurisdiction in favour of the Tax Court.³¹

46. The Court of Appeal held that the chambers judge’s decision to exercise jurisdiction over the immunity claim was a discretionary decision entitled to deference. The Court of Appeal held that the standard of review is whether the chambers judge gave sufficient weight to all relevant considerations. The Court of Appeal held that the chambers judge’s exercise of discretion was supportable. In so doing, the court agreed that the petition was not primarily an attack on the GST reassessments.³² The court also distinguished this Court’s decision in *Addison & Leyen Ltd.*³³
47. The Court of Appeal then upheld the declaration of immunity from GST. The court distinguished decisions of this Court and of the Privy Council which hold that a private beneficial interest in property held in trust by the Crown may be subject to tax.³⁴ The court acknowledged those principles but held that the assets that bcIMC holds in trust cannot be subject to federal taxation because the statutory regime does not recognize a clear beneficial interest in those assets that is distinct from bcIMC’s legal interest.³⁵
48. The Court of Appeal also held that, absent the application of the statutory provisions in subsection 123(1) and paragraph 267.1(5)(a) of the ETA, the transactions whereby bcIMC supplies investment management services in relation to pooled investment portfolios would be exempt from the ETA. The court refused to apply those provisions because, in its view, those provisions render bcIMC’s property taxable and reduce the scope of the Province’s immunity to federal taxation.³⁶

³¹ [BCCA Reasons](#), paras 50 and 52 (**Appellant’s Record**, Tab 2).

³² [BCCA Reasons](#), paras 59 and 67-68 (**Appellant’s Record**, Tab 2).

³³ [“*Addison & Leyen Ltd.*”], [2007 SCC 33](#).

³⁴ [Calgary & Edmonton Land Co. v Alberta \(Attorney-General\) \(1911\), 45 SCR 170](#) [“*Calgary & Edmonton Land Co.*”]; and [Smith v Vermillion Hills \(Rural Municipality\), \[1916\] 2 AC 569 \(PC\)](#) [“*Smith v Vermillion Hills*”].

³⁵ [BCCA Reasons](#), para 109 (**Appellant’s Record**, Tab 2).

³⁶ [BCCA Reasons](#), paras 110-113 (**Appellant’s Record**, Tab 2).

49. Finally, the Court of Appeal upheld the chambers judge's decision that the Canada-British Columbia tax agreements bind bcIMC to pay GST where the Province has so committed. The court held that the agreements were intended to create legally binding relationships.³⁷ Accordingly, the court dismissed both Canada's appeal and bcIMC's cross-appeal.

PART II: ISSUES

50. This appeal raises the following issues:

- a. To what extent do the provisions of Part IX of the ETA apply to bcIMC when it makes taxable supplies of investment management services?
- b. Are the investment management services supplied by bcIMC in relation to assets held in the pooled investment portfolios subject to GST without offending section 125 of the *Constitution Act, 1867*?
- c. In any event, should the British Columbia Supreme Court have declined to exercise jurisdiction over the immunity from GST issue in favour of the Tax Court of Canada?

PART III: ARGUMENT

51. The Court of Appeal made two fundamental errors of law in its immunity analysis. It confused constitutional immunity from paying GST under section 125 with immunity from the application of provisions of the ETA. The Court of Appeal wrongly held that the provisions of the ETA dealing with trusts are inapplicable because bcIMC, the trustee of the pooled investment portfolios, is a provincial Crown agent.

52. These two questions are discrete inquiries. When it acts as a supplier, bcIMC has no immunity from the application of the provisions of the ETA that relate to obligations to

³⁷ [BCCA Reasons](#), paras 142-155 (**Appellant's Record**, Tab 2).

collect and remit GST. Those provisions include the provisions that apply to trusts. Those provisions apply equally to a trust where the trustee is a Crown agent. Immunity from paying tax under section 125 might arise because of the nature of the trust property which would bear the tax, but it would not bar the application of those ETA provisions.

53. Second, the Court of Appeal erred by failing to give effect to the statutory trust imposed by the Regulation. bcIMC cannot be both legal and beneficial owner of trust property at the same time. The statutory trust (and other features of the statutory regime) implicitly recognizes that bcIMC is not the beneficial owner of the pooled investment portfolio assets. That conclusion is sufficient to render section 125 inapplicable, whether or not the statutory provisions specify a discrete beneficial interest in those assets.

A. bcIMC has no immunity from the provisions of Part IX of the Excise Tax Act as a supplier

54. bcIMC's status as a Crown agent does not relieve it from the obligation to collect and remit GST in accordance with Part IX of the ETA when it makes taxable supplies of services. The Court of Appeal's holding that subsection 123(1) and paragraph 267.1(5)(a) of the ETA do not apply to bcIMC because it performs its functions as an agent of the provincial Crown and discharges a function previously performed by the provincial Minister of Finance is unfounded. Those provisions necessarily apply when bcIMC acts as a supplier because they are part of the statutory framework that determines when tax becomes collectible. bcIMC could not perform its GST collection obligations as a supplier if those provisions did not apply.

55. Subsection 123(1) of the ETA treats a trust as a person separate from the trustee for purposes of Part IX of the ETA. Paragraph 267.1(5)(a) then deems anything done by the trustee in their capacity as trustee to have been done by the trust (i.e., by the notionally separate person represented by the trust) and not by the trustee. The effect of these provisions is to separate the trust from the trustee for tax purposes.³⁸ The rationale for these provisions is to recognize that the trustee, although one person at law, may act sometimes on their own account and sometimes for the benefit of the trust. These provisions ensure that the incidence of tax is

³⁸ [Fundy Settlement v Canada, 2012 SCC 14](#) at paras 10 and 13.

borne by the trust property and those entitled to benefit from it, not by the trustee or by the trustee's property. A trustee who may not benefit from the property held in trust should not bear tax on the trust's behalf. In addition, separating the trust from the trustee ensures that valuable services performed by a trustee for the benefit of the trust property do not go unrecognized for tax purposes on the basis that a trustee cannot transact with herself.

56. As a supplier, bcIMC has no immunity from these provisions. These provisions apply whether a trustee is a Crown agent or a private person. They do not transform bcIMC into something that it is not. Rather, they recognize that bcIMC is two things at the same time – a service provider providing services as an agent of the provincial Crown, and a trustee of property for the benefit of others who have invested with it. The provisions create a notional recipient of bcIMC's investment management services for tax purposes. The consequence of the statutory trust imposed by the statutory scheme is that bcIMC does not provide its investment management services for its own benefit, but for the benefit of the trust property that it holds (and, ultimately for the benefit of the unit holders entitled to share in that trust property).
57. Constitutional immunity might prevent tax from being collectible from trust property where the trust property is Crown property within the meaning of section 125, but it does not prevent the application of the provisions of the ETA that recognize the provision of services by a trustee for the benefit of a trust. Those provisions merely determine when tax will be collectible. They apply independently of considerations of constitutional immunity from taxation.
58. Accordingly, the Court of Appeal's holding confuses Crown immunity from the application of a statute and the provincial Crown's constitutional immunity from taxation. Those doctrines are distinct bases of immunity.
59. Statutory immunity flows from section 17 of the *Interpretation Act*, which codifies a common law principle that the Crown will not be bound by a statute except by express

statutory language or by necessary implication.³⁹ Section 17 provides that an enactment is not binding on Her Majesty, and does not affect Her Majesty or Her Majesty's rights or prerogatives in any manner, except as mentioned or referred to in the enactment.⁴⁰

60. When it supplies investment management services relating to trust assets, therefore, there is no scope for bcIMC to assert statutory immunity from the ETA because paragraph 122(b) of the ETA provides the necessary express wording. That provision is clear that all of Part IX is binding in respect of obligations as a supplier. No clearer statutory authority is needed on which to base the application of subsection 123(1) and paragraph 267.1(5)(a). When the Province elected to reorganize the administration and management of its public sector pensions, it cast itself as a service provider through its agent. By doing so, the Province brought itself within the ambit of paragraph 122(b) of the ETA.
61. The authority to impose GST collection obligations on a province when it acts as a supplier extends to deeming the province to be an agent of Canada for the purpose of collecting and remitting tax payable under the ETA, and to imposing liability for failing to do so. Paragraph 122(b) is the foundation of this legislative scheme. In the *GST Reference*, this Court found that paragraph 122(b) does not engage the taxation of provincial government property.
62. Generally, the legislative scheme treats a provincial government making taxable supplies of property and services identically to a private supplier. This treatment flows from the definitions of “commercial activity” and “taxable supply” in subsection 123(1) of the ETA, under which government bodies, not just private entities, may engage in commercial activities, and from paragraph 122(b). The proper operation of this legislative scheme requires that provisions of the ETA that function to recognize a taxable event (such as the trust provisions at issue in this case) must apply when a provincial government or its agent makes taxable supplies. The ETA could not achieve its purpose if only some of its provisions

³⁹ [*Alberta Government Telephones v Canadian Radio-Television and Telecommunications Commission*, \[1989\] 2 SCR 225](#) at 274 and 276-278.

⁴⁰ RSC 1985, c. I-21, s. [17](#).

applied to a provincial Crown or its agent who makes taxable supplies. Part IX must be read and applied as a coherent whole.

63. In refusing to apply the trust provisions of the ETA because the result would be that tax would become payable out of property held by a Crown agent, the Court of Appeal conflated the statutory immunity principle with constitutional immunity from taxation under section 125 of the *Constitution Act, 1867*. The Court of Appeal should have held that subsection 123(1) and paragraph 267.1(5)(a) of the ETA apply such that, for purposes of the ETA, bcIMC makes taxable supplies of investment management services when it manages the pooled investment portfolio assets that it holds in trust, and tax therefore becomes collectible. The Court of Appeal should have severed this question from whether tax is ultimately payable on constitutional grounds.
64. By not doing so, the Court of Appeal eroded the application of the ETA to provincial governments acting as suppliers of property and services. To hold that the ETA does not apply to property and services supplied by an agent of the Crown in right of a province when it acts as a supplier is an error of law and is contrary to this Court's reasoning in the *GST Reference*. The constitutional issue that arises because bcIMC has legal title to the property that bears the tax has no effect on the application of the taxing provisions of the ETA to its supply of services.
65. The Court of Appeal's interpretation of the ETA creates an unwarranted competitive advantage for provincial governments and their agents who provide property and services that are also provided by private sector suppliers. For example, if one of British Columbia's public sector pension plans replaced bcIMC with a private investment manager (which the joint trust agreements would permit them to do), that manager's fees would be subject to GST. The application or non-application of GST to an otherwise taxable supply of services should not depend on whether the service provider is a Crown agent.

B. Taxing the management of pooled investment portfolios does not offend section 125

66. The chambers judge and the Court of Appeal misapplied section 125 of the *Constitution Act, 1867* to extend the provincial Crown's immunity from federal taxation to property other than

Crown property. The lower courts extended the scope of that immunity to include property held in trust by a Crown agent for the benefit of private parties (the members of the public sector pension plans). The result is that private citizens enjoy an unintended tax advantage by virtue of the fact that they receive services from a Crown agent instead of from a private supplier. This result offends the fundamental principle of neutrality embodied in the ETA. A government service provider should not enjoy a competitive advantage over private sector suppliers.⁴¹

i. Section 125 immunity extends only to land and property that belongs to the Crown

67. Land and property which belong to, or which are held in trust for, the federal or a provincial government are immune from taxation by the other level of government.⁴²

68. While it was initially intended to protect the federal and provincial governments' primary source of revenue, section 125 immunity today ensures the proper functioning of Canada's federal system by granting each level of government sufficient operational space without interference in the exercise of its constitutionally mandated functions.⁴³ Section 125 preserves that operational space by protecting the property of each order of government from incursion or interference by the other. This ensures the ability of each to exercise the respective legislative jurisdictions conferred on them by sections 91 and 92 of the *Constitution Act, 1867*.⁴⁴

⁴¹ 1989 Department of Finance GST Technical Paper, Taxnet Pro No. TP0889, Part C, section 9.1, p 72 (**Appellant's Book of Authorities**, Tab 4).

⁴² *Constitution Act, 1867*, s. [125](#); [Montreal \(City\) v Montreal Port Authority, 2010 SCC 14](#) at para 12; [Reference re Exported Natural Gas Tax, \[1982\] 1 SCR 1004](#) at 1067 and 1078.

⁴³ [Westbank First Nation v British Columbia Hydro and Power Authority, \[1999\] 3 SCR 134](#) ["*Westbank First Nation*"] at paras 17, 19, and 33; also [Reference re Exported Natural Gas Tax](#) at 1065.

⁴⁴ G.V. LaForest, *The Allocation of Taxing Power Under the Canadian Constitution*, 2nd ed (Toronto: Canadian Tax Foundation, 1981) ["LaForest"] at p 182 (**Appellant's Book of Authorities**, Tab 2).

69. Section 125 also furthers a core value of democracy by preventing one level of government from deciding whether money belonging to the other should be appropriated and spent.⁴⁵
70. The protection of section 125 will extend to a Crown agent when the agent holds property on behalf of the Crown and when it carries out its statutory mandate by discharging a government function.⁴⁶ The immunity protects public property held and used for those purposes.⁴⁷ It does not, however, extend to a Crown agent when the agent holds property in trust for the benefit of persons other than the Crown.⁴⁸ A Crown agent should not benefit from the Crown's immunity from taxation in respect of property to which it is not beneficially entitled and which cannot be used in the exercise of the government's legislative jurisdiction.⁴⁹
71. In the *GST Reference*, this Court held that the obligation to collect and remit GST as an agent of Canada that is imposed on a provincial Crown when it makes taxable supplies does not infringe section 125. The GST is a tax on the consumption of property and services supplied by the province, not a tax on the provincial Crown itself or on its property. This is so even if the collection and remittance obligations have incidental effects such as imposing on the province an administrative burden requiring a reasonable expenditure, reducing government revenues, or rendering an activity carried out by the province less commercially attractive. This is still the case even if the legislation imposes a liability on the provincial Crown for failing to collect and remit a tax for which another person is liable.⁵⁰

⁴⁵ [Westbank First Nation](#) at para 19.

⁴⁶ [Reference re Exported Natural Gas Tax](#) at 1078-1080; [Quirt v the Queen \(1891\)](#), 19 SCR 510 at 518; [Regina Industries Ltd. v City of Regina](#), [1947] SCR 345 at 355-357; [City of Halifax v Halifax Harbour Commissioners](#), [1935] SCR 215 at 231.

⁴⁷ LaForest, *supra* at pp 186-187 (**Appellant's Book of Authorities**, Tab 2).

⁴⁸ [Calgary & Edmonton Land Co.](#) at 179-180 (per Davies J.) and 191 (per Anglin J.); [Smith v Vermillion Hills](#) at 86.

⁴⁹ *Bank voor Handel en Scheepvaart N.V. v Administrator of Hungarian Property*, [1954] AC 584 at 618 (HL) (**Appellant's Book of Authorities**, Tab 1).

⁵⁰ [GST Reference](#) at 480-481, 483, 495, and 497.

72. The key issue for the application of section 125, therefore, is not whether the federal tax attaches to the Province or its agent, but whether the tax attaches to property “belonging to” the Province or its agent, such that, in pith and substance, it results in an appropriation of money from the Consolidated Revenue Fund of the Province without legislative authorization.

ii. Pooled investment portfolio assets purchased with pension fund monies do not “belong to” the provincial Crown

73. In applying section 125, a court must look beyond the fact that bcIMC is the legal owner of the pooled investment portfolio assets that are held in trust. A court must inquire into whether those assets belong to the Province in the substantive sense. To do otherwise is to allow constitutional protection to turn on legal forms. This Court cautioned against precisely that in the *Natural Gas Tax Reference*: “the fundamental constitutional protection framed by s. 125 cannot depend on subtle nuances of form.”⁵¹ This Court repeated similar sentiments in its recent *Comeau* decision.⁵²

74. Under the post-PSPPA framework governing the management of British Columbia’s public sector pension plans, pension fund monies are not property “belonging to” the Province as contemplated by section 125. The joint trust regime implemented in the 1999 reorganization vested ownership, management, and administration of pension fund monies in boards of trustees. Those boards are intended to operate at arm’s length from the provincial government.⁵³

75. The joint trust agreements clearly provide that the pension monies belong solely to the pension plan members, who are private citizens. The trust agreements are private, contractual arrangements and the pension boards are private, not public, bodies.⁵⁴ The joint trusteeship system was intended to transfer responsibility for pension fund monies, including the

⁵¹ [Reference re Exported Natural Gas Tax](#) at 1078.

⁵² [R. v Comeau, 2018 SCC 15](#) at para 98.

⁵³ [Ehrcke v Public Service Pension Board of Trustees, 2004 BCSC 757](#) [“*Ehrcke*”] at paras 20 and 62.

⁵⁴ [Ehrcke](#) at paras 57-63.

attendant risks and rewards, from the provincial government to the plan members and employees.

76. Funds held in trust for private citizens by a pension board do not become Crown property when, pursuant to a services agreement, the board places those funds with a Crown agent like bcIMC for investment. Nor do those funds become Crown property when the investment agent uses those funds to acquire and hold units of an investment portfolio on behalf of the pension board. Finally, assets acquired by the investment agent as the operator of the investment portfolio, using monies contributed by the pension board in exchange for units of the portfolio, which assets are then held in trust, do not become Crown property either.
77. Under the statutory and regulatory framework, bcIMC holds the pooled investment portfolio assets for the benefit of the portfolio unit holders, not on its own account or for the benefit of the Province (except to the extent that the Province invests monies from its Consolidated Revenue Fund in pooled investment portfolio units). Neither bcIMC nor the Province has any ability to appropriate or to benefit from the portfolio assets. Numerous features of the statutory regime reinforce this conclusion:
- a. The stated reason for the PSPPA, which establishes bcIMC and governs its activities, and which authorizes the Regulation governing pooled investment portfolios, is to provide benefits to pension plan members (who are private persons).⁵⁵
 - b. Although bcIMC, as trustee, is the legal owner of the assets held in a pooled investment portfolio, no statutory provision confers a beneficial interest in those assets on bcIMC or on the Province.
 - c. Neither bcIMC nor the Province are legally entitled to appropriate those assets for their own purposes.

⁵⁵ PSPPA, para. [2\(d\)](#).

- d. Pooled investment portfolio units issued to participating funds represent their proportionate ownership of the underlying assets in the portfolio.⁵⁶
- e. Assets in a pooled investment portfolio must be identified and tracked separately from other property of bcIMC.⁵⁷
- f. Unit holders are entitled to an annual proportionate allocation of a pooled investment portfolio's income and net capital gains, which may be paid to the unit holder or reinvested in additional units.⁵⁸
- g. The statutory provisions requiring bcIMC to recover operating costs and capital expenditures incurred "on behalf of the funds it manages" recognizes (a) that bcIMC does not incur those amounts in relation to pooled investment portfolios on its own account, but for the benefit of someone else, and (b) that bcIMC may make investments on its own account which are separate from the funds that it manages.⁵⁹
- h. Other than recovering its costs and capital expenditures, bcIMC has no entitlement to share in the income and capital gains realized in a portfolio.
- i. On the termination of a pooled investment portfolio, the net proceeds of the portfolio assets are payable only to the unit holders. No part is payable to bcIMC or to the Province.⁶⁰

78. The fact that the Regulation prevents ownership of any asset in a pooled investment portfolio from being attributed to unit holders does not mean that those assets are beneficially owned by bcIMC. It simply means that the unit holders of a portfolio are collectively entitled to all assets in the portfolio on a proportional basis without possessing ownership rights in any

⁵⁶ Regulation, ss. [5\(1\) and \(3\)](#).

⁵⁷ Regulation, s. [4\(3\)](#).

⁵⁸ Regulation, ss. [10](#) and [11](#).

⁵⁹ PSPPA, paras. [24\(1\)\(a\) and \(c\)](#).

⁶⁰ Regulation, s. [14](#).

particular asset. A pooled investment portfolio is, therefore, conceptually similar to a mutual fund trust.

79. A province cannot extend its constitutional immunity from federal taxation to property belonging to private citizens that is placed with a Crown agent to hold in trust. This is a corollary to the long-established principle that a beneficial interest in property that has previously devolved from the Crown no longer enjoys constitutional protection from taxation when the Crown holds legal title to the property in trust.⁶¹ To hold otherwise would wrongly extend the umbrella of the Crown’s constitutional immunity from taxation to benefit select private citizens.
80. Neither the chambers judge nor the Court of Appeal adequately explored the statutory and regulatory framework governing bcIMC and the pooled investment portfolios. If they had done so, they could not have concluded that bcIMC is the “owner” of the pooled investment portfolio assets in the substantive sense required to attract constitutional immunity from taxation under section 125.
81. The Court of Appeal acknowledged the principles articulated by this Court and the Privy Council in the *Calgary & Edmonton Land Co.* and *Smith v. Vermillion Hills* decisions. The Court of Appeal then, however, erred in declining to apply those principles on the basis that the pooled investment portfolio assets belong to bcIMC because the regulatory framework does not identify a “clear beneficial interest” in the assets that is distinct from bcIMC’s legal interest.⁶² The application of section 125 turns on whether bcIMC or the provincial Crown is the beneficial owner of the assets, not on whether the statute clearly identifies a separate beneficial interest. The statutory framework makes clear that bcIMC is not the beneficial owner of the assets. If the Crown or its agent is not the beneficial owner, then a private party must be.

⁶¹ [Calgary & Edmonton Land Co.](#) at 179-180 (per Davies J.) and 191 (per Anglin J.); [Smith v Vermillion Hills](#) at 86.

⁶² [BCCA Reasons](#), para 109.

82. The Court of Appeal’s interpretation fails to give effect to the statutory trust that the Province itself imposed on the pooled investment portfolio assets in the PSPPA and the Regulation. A trust is characterized by a separation of legal and beneficial ownership of the trust property.⁶³ It is fundamentally incompatible with the existence of a trust relationship for bcIMC to be both the legal and the sole beneficial owner of the trust property at the same time. Accordingly, the Court of Appeal’s interpretation deprives the provisions of the PSPPA and the Regulation of their intended meaning and proper effect. A statute should not be interpreted so as to render a statutory provision inoperative or redundant.⁶⁴
83. The conclusion by the chambers judge and the Court of Appeal that the ETA provisions deeming a trust to be a person have the effect of separating the provincial Crown from its assets⁶⁵ fails to give effect to the relationships underlying the statutory trust imposed by the provincial legislation. In this case, the ETA did nothing to separate the provincial Crown from its assets. That separation resulted from the nature of the assets themselves and from the provincial statutory regime. The trust relationship merely reflects that underlying separation. Accordingly, this case is unlike the *Natural Gas Tax Reference* where Parliament did separate the provincial Crown from its property through federal legislation.

C. The chambers judge should have declined jurisdiction in favour of the Tax Court

84. bcIMC’s claim for a declaration of immunity from GST represented an indirect challenge to its liability for failing to collect and remit GST. That issue could have been decided under the comprehensive, mandatory statutory appeal process created by the ETA in the course of an appeal from the GST reassessments issued by the MNR. That process leads to an appeal to the Tax Court, which has jurisdiction to vacate assessments on constitutional grounds.⁶⁶ By

⁶³ Mark Gillen, Lionel Smith & Donovan WM Waters, *Waters’ Law of Trusts in Canada*, 4th ed (Toronto: Thomson Reuters Canada, 2012), Chapter 1, Part IV, p 9 (**Appellant’s Book of Authorities**, Tab 3).

⁶⁴ [Placer Dome Ltd. v. Ontario \(Minister of Finance\), 2006 SCC 20](#) at para 45; *Interpretation Act*, RSBC 1996, c. 238, s. 8.

⁶⁵ [BCSC Reasons](#), para 130; [BCCA Reasons](#), para 113.

⁶⁶ For purposes of Part IX of the ETA, “assessment” includes a “reassessment” and therefore the terms are practically interchangeable; [ETA s. 123\(1\) \(“assessment”\)](#).

the time bcIMC's petition was heard on its merits, that appeal process had been commenced. By exercising his discretion to take jurisdiction over the immunity claim, the chambers judge effectively determined bcIMC's challenge to the reassessments and usurped the jurisdiction of the Tax Court.

85. Taxpayers should not be permitted to circumvent the Tax Court by artfully framing a challenge to their tax liability as a broader constitutional issue any more than they may circumvent the Tax Court by failing to object to an assessment and seeking declaratory relief instead,⁶⁷ by framing a liability issue as an administrative law issue,⁶⁸ or by seeking a declaratory judgment in lieu of a remedy quashing assessments.⁶⁹

86. In *Addison & Leyen Ltd.*, this Court emphasized the importance of protecting the integrity and efficacy of the system of tax assessments and appeals created by Parliament, and cautioned against permitting incidental litigation to circumvent that system and the Tax Court's jurisdiction:

11. Reviewing courts should be very cautious in authorizing judicial review in such circumstances. The integrity and efficacy of the system of tax assessments and appeals should be preserved. Parliament has set up a complex structure to deal with a multitude of tax-related claims and this structure relies on an independent and specialized court, the Tax Court of Canada. Judicial review should not be used to develop a new form of incidental litigation designed to circumvent the system of tax appeals established by Parliament and the jurisdiction of the Tax Court. Judicial review should remain a remedy of last resort in this context.⁷⁰

87. Although *Addison & Leyen Ltd.* concerned a taxpayer's attempt to circumvent the appeal process under the *Income Tax Act* through an application for judicial review, this Court's comments are equally applicable to an application for declaratory relief and to the appeal process under the ETA. By exercising his discretion to exercise jurisdiction over bcIMC's

⁶⁷ [Canada v Domtar Inc., 2009 FCA 218](#) ["Domtar"] at paras 30 and 35.

⁶⁸ [Canada \(National Revenue\) v JP Morgan Asset Management \(Canada\) Inc.](#), 2013 FCA 250 ["JP Morgan"] at para 49.

⁶⁹ [Horseman v Canada, 2016 FCA 252](#) ["Horseman"] at para 6; [Johnson v Canada, 2015 FCA 51](#) ["Johnson"] at paras 37-39 (leave to appeal denied [2015] 3 SCR viii); [GLP NT Corp. v Canada \(Attorney General\) \(2003\), 65 OR \(3d\) 840 \(ONSC\)](#) ["GLP NT Corp."] at para 21.

⁷⁰ [Addison & Leyen](#) at para 11.

immunity claim, the chambers judge permitted bcIMC to bring precisely the kind of incidental litigation that this Court rejected in *Addison & Leyen Ltd.*

i. The standard of review

88. The chambers judge’s decision to exercise jurisdiction to grant declaratory relief from GST was discretionary. The applicable standard of review is that an appellate court must generally defer when a judge at first instance has given sufficient weight to all relevant considerations and the exercise of jurisdiction is not based on an erroneous principle.⁷¹

89. In this case, the chambers judge failed to give sufficient weight to all relevant considerations. The chambers judge did not give sufficient weight to the following considerations: (1) that the essential nature of the immunity declaration was a determination of bcIMC’s liability for failing to collect GST; (2) that the immunity issue could have been resolved in a complete and comprehensive regime had bcIMC pursued its statutory appeal rights; and (3) that there was no compelling reason to displace the Tax Court’s jurisdiction by granting declaratory relief. Accordingly, his exercise of discretion is not entitled to deference and should have been set aside.

ii. The essential nature of the immunity claim was to relieve bcIMC of liability for GST

90. This Court recently confirmed that, when jurisdiction is in issue, a court must be mindful of the essential nature of a claim.⁷² The essential nature of a claim should be determined based on a realistic appreciation of the practical result sought. A statement of claim should not be read blindly at face value. A court should look beyond the words used and the facts alleged to the remedy sought.⁷³

⁷¹ [Reza v Canada, \[1994\] 2 SCR 394](#) [“Reza”] at 404; citing [Friends of the Oldman River Society v Canada \(Minister of Transport\), \[1992\] 1 SCR 3](#) at 76-77; see also [Canada \(Attorney General\) v Fontaine, 2017 SCC 47](#) at para 36.

⁷² [Windsor \(City\) v Canadian Transit Co., 2016 SCC 54](#) [“Windsor”] at para 84.

⁷³ [Windsor](#) at para 26.

91. Stripped to its essence, what bcIMC sought in this case was a determination that it is not liable for GST. The practical result that bcIMC sought, therefore, is relief from, or a determination of, its tax liability. This is a matter over which Parliament has conferred exclusive jurisdiction on the Tax Court. The chambers judge drew a false distinction between the applicability of the ETA and liability for GST in order to characterize the constitutional immunity issue as a “threshold” issue. In reality, the applicability question is at the heart of bcIMC’s defence to its liability.
92. Practically speaking, bcIMC’s immunity claim arises and has practical importance only in the context of determining whether bcIMC is required to collect and remit GST in relation to the pooled investment portfolios. Outside of this context, the declaration has no practical utility to bcIMC. As a result, a declaration does not provide bcIMC with a remedy that is superior to a determination by the Tax Court that the reassessments are invalid. A Tax Court decision could be relied on for GST purposes in the same manner as a declaration from the provincial superior court.
93. The immunity claim was clearly brought to pre-empt the audit process notwithstanding that bcIMC is a GST registrant, and to prevent any reassessments from being made. This became obvious once the MNR issued reassessments in 2015: at that point, the petition was a collateral attack on the foundations of those reassessments. The chambers judge recognized this reality when he observed that granting the immunity declaration would make “the underpinnings of the assessments disappear”.⁷⁴ Indeed, it could be argued that such a declaration from the provincial superior court would determine the outcome of any appeal to the Tax Court since the Tax Court does not have jurisdiction to revisit orders of other superior courts in the course of deciding appeals under tax legislation.⁷⁵ The declaration of immunity left the Tax Court with no jurisdiction to exercise in relation to that element of the reassessments.

⁷⁴ [BCSC Reasons](#), para 91 (**Appellant’s Record**, Tab 1).

⁷⁵ [Dale v Canada, \[1997\] 3 FC 235 \(FCA\)](#).

94. In the circumstances, it was unreasonable for the chambers judge to conclude that the essential nature of the immunity claim was other than a claim for relief from GST. It was equally unreasonable for the Court of Appeal to defer to that characterization.

iii. The superior court should have deferred to the comprehensive statutory appeal process

95. As a section 96 provincial superior court, the British Columbia Supreme Court possesses inherent constitutional jurisdiction which is not ousted by a grant of exclusive jurisdiction to a federal statutory court such as the Tax Court.⁷⁶ However, that inherent jurisdiction need not always be exercised. Where a court like the Tax Court, established pursuant to s. 101 of the *Constitution Act, 1867*, has a broad enough jurisdiction in a comprehensive statutory appeal process, a provincial superior court may – and should – decline to exercise its jurisdiction in favour of the statutory court.

96. Indeed, even when a constitutional argument is raised, a provincial superior court generally should decline to hear a claim when another court has concurrent jurisdiction to hear the claim, expertise in and experience with the core issues of that claim, and an exclusive statutory mandate over matters in which the claim arises.⁷⁷ Failure to do so raises concerns about forum-shopping, inconsistency, and multiplicity of proceedings.

97. The chambers judge gave no weight to the fact that the immunity issue could have been decided in the comprehensive system of tax appeals created by Parliament, which includes an appeal to the Tax Court. The Tax Court is a specialized superior court of record forming part of a comprehensive, mandatory statutory framework for determining GST liability.⁷⁸ That

⁷⁶ [Canada \(Attorney General\) v McArthur](#), 2010 SCC 63 at para 14; [Northern Telecom Canada Limited v Communication Workers of Canada](#), [1983] 1 SCR 733 at 740-741; [Canada Labour Relations Board v Paul L'Anglais Inc.](#), [1983] 1 SCR 147 at 158; [Attorney General of Canada v Law Society of British Columbia](#), [1982] 2 SCR 307 at 326-329.

⁷⁷ [Reza](#) at 403-405; see also [Strickland v Canada \(AG\)](#), 2015 SCC 37 at paras 40-44.

⁷⁸ *Tax Court of Canada Act*, RSC 1985, c. T-2, s. 3.

process includes the review and assessment of net tax by the MNR, a right of objection to the MNR herself, and a right of appeal to the Tax Court.⁷⁹

98. The *Tax Court of Canada Act* grants the Tax Court exclusive original jurisdiction to hear and determine GST appeals.⁸⁰ That grant of jurisdiction is exclusive and, save for constitutional matters, it ousts other superior courts' jurisdiction to determine matters relating to the validity and correctness of GST assessments in clear and unambiguous language.⁸¹

99. The Tax Court's jurisdiction is broad and encompasses all questions of fact or law that are relevant to the validity or correctness of an assessment, including constitutional questions.⁸² In fact, the Tax Court has previously determined appeals on grounds of provincial Crown immunity.⁸³ No party to this proceeding disputed that the Tax Court would have jurisdiction to decide the immunity issue raised by bcIMC if an appeal came before it.

100. In this case, bcIMC is a GST registrant that collects GST in respect of some of its services. It remits that GST and files GST returns. bcIMC is clearly subject to the ETA as a supplier. The purpose of the audit was to verify whether bcIMC collected all GST as required by the ETA. The issue that bcIMC raised was squarely within the scope of the application of the ETA and would properly be determined in the statutory appeal process, including in the Tax Court.

101. In addition, the relief that bcIMC sought is inconsistent with the self-assessing nature of the ETA regime. Under the ETA, a registrant must file a GST return and report net tax for each

⁷⁹ ETA, ss. [296\(1\)](#), [301\(1.1\)](#) and [\(3\) to \(5\)](#), [306](#), and [309](#).

⁸⁰ *Tax Court of Canada Act*, ss. [12\(1\)](#).

⁸¹ [Sorbara v Canada \(Attorney General\), 2009 ONCA 506](#) at paras 7-11 (leave to appeal denied [\[2009\] 3 SCR x](#)).

⁸² [Horseman](#) at para 7; [Johnson](#) at paras 23-25 (leave to appeal denied [\[2015\] 3 SCR viii](#)); [JP Morgan](#) at para 82; [Domtar](#) at paras 36-39; [Canada \(Attorney General\) v Campbell, 2005 FCA 420](#) at para 23; [GLP NT Corp.](#) at paras 12-15.

⁸³ [Toronto District School Board v Canada, 2009 TCC 39](#), affirmed [2009 FCA 324](#); [Surrey City Centre Mall Ltd. v R, 2012 TCC 346](#); [The Ottawa Hospital Corporation v The Queen, 2010 TCC 53](#); [Nova Scotia Power Inc. v The Queen \(2002\), 56 DTC 1432 \(TCC\)](#), reversed [2003 FCA 33](#), affirmed [2004 SCC 51](#).

reporting period. There is no liability to the Crown for failing to collect and remit GST beyond the amounts self-reported unless the Minister assesses for a higher amount.⁸⁴ Once that assessment is issued (and only once an assessment is issued), the ETA gives a supplier comprehensive rights of objection and appeal. The statutory scheme clearly contemplates, therefore, that an assessment is a precondition to liability and a judicial remedy is not necessary until after an assessment is issued. The statutory framework does not contemplate that a taxpayer is entitled to a pre-determination of their liability. In that regard, bcIMC's petition was premature.

102. In exercising his discretion, the chambers judge gave no weight to the availability of the statutory appeal process, or to the effect that exercising his constitutional jurisdiction would have on that process and on the Tax Court's jurisdiction. Nor did the Court of Appeal afford that factor any weight in reviewing the chambers judge's decision.

iv. There was no compelling reason for the chambers judge to exercise his jurisdiction

103. This Court's reasons in *Addison & Leyen Ltd.* suggest that a discretionary remedy should be a last resort when the comprehensive statutory tax appeal process created by Parliament is available. Judicial review and declaratory relief are both discretionary remedies. The *Addison & Leyen* principle is even more applicable when the statutory process has already been set in motion. Accordingly, there was no compelling reason in this case for the chambers judge to pre-empt that process and the jurisdiction of the Tax Court.

104. The chambers judge erroneously cited judicial economy as a reason why it was appropriate to exercise his jurisdiction rather than deferring to the Tax Court. He relied on the presence of another issue in the petition – the effect of the Canada-British Columbia tax agreements – to conclude that it was more economical to decide the immunity issue in the provincial superior court rather than permitting the tax appeal process to unfold. However, that issue was speculative at best and the resolution of the immunity issue did not depend on the outcome of the tax agreements issue.

⁸⁴ ETA, ss. [315\(1\) and \(2\)](#), and [313\(2\)](#).

105. The binding nature of the Canada-British Columbia tax agreements is a discrete issue from the issue of immunity to GST under the ETA and the *Constitution Act, 1867*. Those agreements are not relevant to bcIMC's liability for under-collected GST under those instruments. Nor did the MNR rely on them in reassessing bcIMC for GST.
106. Whether the tax agreements are binding could arise as a live issue only if it were first determined that bcIMC possessed immunity from GST in relation to the pooled investment portfolio assets, and Canada subsequently invoked those agreements to require that the tax be paid anyway. When this petition was heard, those events had not yet occurred and it was not certain whether they ever would occur. The claim relating to the tax agreements was, therefore, contingent and speculative. Depending on the outcome of the immunity issue, a live dispute over the tax agreements might never have arisen. In addition, because Canada, the Province, and bcIMC disagree over whether bcIMC would be entitled to a rebate of any GST paid under those tax agreements,⁸⁵ the contours of a tax agreement dispute are uncertain at this time.
107. The chambers judge should not have allowed the inclusion of a contingent issue in the petition to affect his assessment of the essential nature of the immunity claim, or his assessment of whether it was economical to exercise the provincial superior court's inherent constitutional jurisdiction in preference to the Tax Court. To the extent that he relied on that issue as a reason to do so, he considered an irrelevant factor. Accordingly, the Court of Appeal was not justified in deferring to the chambers judge.

PART IV: SUBMISSIONS CONCERNING COSTS

108. There is no reason for costs not to follow the cause. The Appellant requests its costs in this Court and in the courts below.

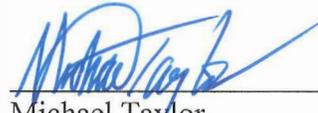
⁸⁵ [BCCA Reasons](#), para 127.

PART V: ORDER SOUGHT

109. The Appellant requests that this appeal be granted. Making the order that the British Columbia Supreme Court should have made, this Court should dismiss bcIMC's petition with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Vancouver, British Columbia, this 7th day of January, 2019.



Michael Taylor
Ian Demers
Selena Sit

Counsel for the Appellant

PART VI – TABLE OF AUTHORITIES

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<i>Attorney General of Canada v Law Society of British Columbia</i>, [1982] 2 SCR 307	95
<i>Bank voor Handel en Scheepvaart N.V. v Administrator of Hungarian Property</i> , [1954] AC 584 at 618 (HL)	70
<i>British Columbia Investment Management Corporation v Canada (Attorney General)</i>, 2014 BCSC 1296	34
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<i>British Columbia Investment Management Corporation v Canada (Attorney General)</i>, 2016 BCSC 2554	35
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<i>Calgary & Edmonton Land Co. v Alberta (Attorney-General)</i> (1911), 45 SCR 170	47, 70, 79 and 81
<i>Canada (Attorney General) v Campbell</i>, 2005 FCA 420	99
<i>Canada (Attorney General) v Fontaine</i>, 2017 SCC 47	88
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<i>Canada Labour Relations Board v Paul L'Anglais Inc.</i>, [1983] 1 SCR 147	95

<i>Canada v Addison & Leyen Ltd.</i>, 2007 SCC 33	46, 86, 87 and 103
<i>Canada v Domtar Inc.</i>, 2009 FCA 218	85 and 99
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<i>Fundy Settlement v Canada</i>, 2012 SCC 14	55
<i>GLP NT Corp. v Canada (Attorney General)</i> (2003), 65 OR (3d) 840 (ONSC)	85 and 99
<i>Her Majesty the Queen v Nova Scotia Power Inc.</i>, 2003 FCA 33	99
<i>Horseman v Canada</i>, 2016 FCA 252	85 and 99
<i>Johnson v Canada</i>, 2015 FCA 51, leave to appeal denied [2015] 3 SCR viii	85 and 99
<i>Montreal (City) v Montreal Port Authority</i>, 2010 SCC 14	67
<i>Northern Telecom Canada Limited v Communication Workers of Canada</i>, [1983] 1 SCR 733	95
<i>Nova Scotia Power Inc. v Her Majesty the Queen</i>, 2004 SCC 51	99
<i>Nova Scotia Power Inc. v The Queen</i> (2002), 56 DTC 1432 (TCC)	99
<i>Placer Dome Ltd. v. Ontario (Minister of Finance)</i>, 2006 SCC 20	82
<i>Quirt v the Queen</i> (1891), 19 SCR 510	70
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<i>Reference re Goods and Services Tax</i>, [1992] 2 SCR 445	29, 61, 64 and 71
<i>Regina Industries Ltd. v City of Regina</i>, [1947] SCR 345	70
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<i>Excise Tax Act, RSC 1985, c. E-15</i>	
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(English) s. 123(1) – “assessment”, “person”, “recipient”, “taxable supply” and “commercial activity” (Français) art. 123(1) – “cotisation”, “personne”, “acquéreur”, “fourniture taxable” et “activité commerciale”	27, 37, 48, 54, 55, 60, 62, 63 and 84
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<i>Interpretation Act</i> , RSBC 1996, c. 238 s. 8	82
<i>Pooled Investment Portfolios Regulation</i> , BC Reg 447/99 s. 4 s. 5 s. 10 s. 11 s. 14	21 24 and 77 77 77 77 24 and 77
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PART VII – STATUTES RELIED ON

Constitution Act, 1867 (UK), 30 & 31 Victoria, c 3, Section 125

Exemption of Public Lands, etc.

125. No Lands or Property belonging to Canada or any Province shall be liable to Taxation.

Terres publiques, etc., exemptées des taxes

125. Nulle terre ou propriété appartenant au Canada ou à aucune province en particulier ne sera sujette à la taxation.

Excise Tax Act, RSC 1985, c E-15, Sections 122, 123(1), 165, 212, 221(1), 225(1), 228(1) and (2), 238, 267.1(5), 296(1), 301(1.1) and (3) to (5), 306, 309, 313(1), (1.1) and (2), and 315(1) and (2)

Application

122 This Part is binding

(a) on Her Majesty in right of Canada;
and

(b) on Her Majesty in right of a province in respect of obligations as a supplier to collect and to remit tax in respect of taxable supplies made by Her Majesty in right of the province.

(c) [Repealed, 1993, c. 27, s. 9]

Sa Majesté

122 La présente partie lie :

a) Sa Majesté du chef du Canada;

b) Sa Majesté du chef d'une province en ce qui concerne une obligation à titre de fournisseur de percevoir et de verser la taxe relative aux fournitures taxables qu'elle effectue.

c) [Abrogé, 1993, ch. 27, art. 9]

Definitions

123(1) In section 121, this Part and Schedules V to X,

assessment means an assessment under this Part and includes a reassessment under this Part; (cotisation)

commercial activity of a person means

Définitions

123(1) Les définitions qui suivent s'appliquent à l'article 121, à la présente partie et aux annexes V à X.

acquéreur

a) Personne qui est tenue, aux termes d'une convention portant sur une

(a) a business carried on by the person (other than a business carried on without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the business involves the making of exempt supplies by the person,

(b) an adventure or concern of the person in the nature of trade (other than an adventure or concern engaged in without a reasonable expectation of profit by an individual, a personal trust or a partnership, all of the members of which are individuals), except to the extent to which the adventure or concern involves the making of exempt supplies by the person, and

(c) the making of a supply (other than an exempt supply) by the person of real property of the person, including anything done by the person in the course of or in connection with the making of the supply; (activité commerciale)

person means an individual, a partnership, a corporation, the estate of a deceased individual, a trust, or a body that is a society, union, club, association, commission or other organization of any kind; (personne)

recipient of a supply of property or a service means

(a) where consideration for the supply is payable under an agreement for the supply, the person who is liable under the agreement to pay that consideration,

fourniture, de payer la contrepartie de la fourniture;

b) personne qui est tenue, autrement qu'aux termes d'une convention portant sur une fourniture, de payer la contrepartie de la fourniture;

c) si nulle contrepartie n'est payable pour une fourniture :

(i) personne à qui un bien, fourni par vente, est livré ou à la disposition de qui le bien est mis,

(ii) personne à qui la possession ou l'utilisation d'un bien, fourni autrement que par vente, est transférée ou à la disposition de qui le bien est mis,

(iii) personne à qui un service est rendu.

Par ailleurs, la mention d'une personne au profit de laquelle une fourniture est effectuée vaut mention de l'acquéreur de la fourniture. (recipient)

activité commerciale Constituent des activités commerciales exercées par une personne :

a) l'exploitation d'une entreprise (à l'exception d'une entreprise exploitée sans attente raisonnable de profit par un particulier, une fiducie personnelle ou une société de personnes dont l'ensemble des associés sont des particuliers), sauf dans la mesure où l'entreprise comporte la réalisation par la personne de fournitures exonérées;

b) les projets à risque et les affaires de caractère commercial (à l'exception de quelque projet ou affaire qu'entrepren,

(b) where paragraph (a) does not apply and consideration is payable for the supply, the person who is liable to pay that consideration, and

(c) where no consideration is payable for the supply,

(i) in the case of a supply of property by way of sale, the person to whom the property is delivered or made available,

(ii) in the case of a supply of property otherwise than by way of sale, the person to whom possession or use of the property is given or made available, and

(iii) in the case of a supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be read as a reference to the recipient of the supply; (acquéreur)

taxable supply means a supply that is made in the course of a commercial activity; (fourniture taxable)

Imposition of goods and services tax

165 (1) Subject to this Part, every recipient of a taxable supply made in Canada shall pay to Her Majesty in right of Canada tax in respect of the supply calculated at the rate of 5% on the value of the consideration for the supply.

sans attente raisonnable de profit, un particulier, une fiducie personnelle ou une société de personnes dont l'ensemble des associés sont des particuliers), sauf dans la mesure où le projet ou l'affaire comporte la réalisation par la personne de fournitures exonérées;

c) la réalisation de fournitures, sauf des fournitures exonérées, d'immeubles appartenant à la personne, y compris les actes qu'elle accomplit dans le cadre ou à l'occasion des fournitures.
(commercial activity)

cotisation ou nouvelle cotisation établie aux termes de la présente partie.
(*assessment*)

fourniture taxable Fourniture effectuée dans le cadre d'une activité commerciale.
(taxable supply)

personne Particulier, société de personnes, personne morale, fiducie ou succession, ainsi que l'organisme qui est un syndicat, un club, une association, une commission ou autre organisation; ces notions sont visées dans des formulations générales, impersonnelles ou comportant des pronoms ou adjectifs indéfinis. (person)

Taux de la taxe sur les produits et services

165 (1) Sous réserve des autres dispositions de la présente partie, l'acquéreur d'une fourniture taxable effectuée au Canada est tenu de payer à Sa Majesté du chef du Canada une taxe calculée au taux de 5 % sur la valeur de la contrepartie de la fourniture.

Tax in participating province

(2) Subject to this Part, every recipient of a taxable supply made in a participating province shall pay to Her Majesty in right of Canada, in addition to the tax imposed by subsection (1), tax in respect of the supply calculated at the tax rate for that province on the value of the consideration for the supply.

Zero-rated supply

(3) The tax rate in respect of a taxable supply that is a zero-rated supply is 0%.

Application in offshore areas

(4) Subsection (2) does not apply to a supply of property or a service made in the Nova Scotia offshore area or the Newfoundland offshore area unless the supplier makes the supply in the course of an offshore activity or the recipient of the supply acquires the property or service for consumption, use or supply in the course of an offshore activity.

Collection of tax

221 (1) Every person who makes a taxable supply shall, as agent of Her Majesty in right of Canada, collect the tax under Division II payable by the recipient in respect of the supply.

Net tax

225 (1) Subject to this Subdivision, the net tax for a particular reporting period of a person is the positive or negative amount determined by the formula

Taux de la taxe dans les provinces participantes

(2) Sous réserve des autres dispositions de la présente partie, l'acquéreur d'une fourniture taxable effectuée dans une province participante est tenu de payer à Sa Majesté du chef du Canada, outre la taxe imposée par le paragraphe (1), une taxe calculée au taux de taxe applicable à la province sur la valeur de la contrepartie de la fourniture.

Fourniture détaxée

(3) Le taux de la taxe relative à une fourniture détaxée est nul.

Application dans les zones extracôtières

(4) Le paragraphe (2) ne s'applique à la fourniture d'un bien ou d'un service effectuée dans la zone extracôtière de la Nouvelle-Écosse ou la zone extracôtière de Terre-Neuve que si le fournisseur l'effectue dans le cadre d'une activité extracôtière ou si l'acquéreur acquiert le bien ou le service pour consommation, utilisation ou fourniture dans le cadre d'une telle activité.

Perception

221 (1) La personne qui effectue une fourniture taxable doit, à titre de mandataire de Sa Majesté du chef du Canada, percevoir la taxe payable par l'acquéreur en vertu de la section II.

Taxe nette

225 (1) Sous réserve des autres dispositions de la présente sous-section, la taxe nette pour une période de déclaration donnée d'une personne correspond au montant,

A - B

where

A is the total of

- (a) all amounts that became collectible and all other amounts collected by the person in the particular reporting period as or on account of tax under Division II, and
- (b) all amounts that are required under this Part to be added in determining the net tax of the person for the particular reporting period; and

B is the total of

- (a) all amounts each of which is an input tax credit for the particular reporting period or a preceding reporting period of the person claimed by the person in the return under this Division filed by the person for the particular reporting period, and
- (b) all amounts each of which is an amount that may be deducted by the person under this Part in determining the net tax of the person for the particular reporting period and that is claimed by the person in the return under this Division filed by the person for the particular reporting period.

Calculation of net tax

228 (1) Every person who is required to file a return under this Division shall, in the return, calculate the net tax of the person for the reporting period for which the

positif ou négatif, obtenu par la formule suivante :

A - B

où :

A représente le total des montants suivants:

- a) les montants devenus percevables et les autres montants perçus par la personne au cours de la période donnée au titre de la taxe prévue à la section II;
- b) les montants à ajouter aux termes de la présente partie dans le calcul de la taxe nette de la personne pour la période donnée;

B le total des montants suivants :

- a) l'ensemble des montants dont chacun représente un crédit de taxe sur les intrants pour la période donnée ou une période de déclaration antérieure de la personne, que celle-ci a demandé dans la déclaration produite en application de la présente section pour la période donnée;
- b) l'ensemble des montants dont chacun représente un montant que la personne peut déduire en application de la présente partie dans le calcul de sa taxe nette pour la période donnée et qu'elle a indiqué dans la déclaration produite en application de la présente section pour cette période.

Calcul de la taxe nette

228 (1) La personne tenue de produire une déclaration en application de la présente section doit y calculer sa taxe nette pour la période de déclaration qui y est visée, sauf

return is required to be filed, except where subsection (2.1) or (2.3) applies in respect of the reporting period.

si les paragraphes (2.1) ou (2.3) s'appliquent à la période de déclaration.

Remittance

(2) Where the net tax for a reporting period of a person is a positive amount, the person shall, except where subsection (2.1) or (2.3) applies in respect of the reporting period, remit that amount to the Receiver General,

(a) where the person is an individual to whom subparagraph 238(1)(a)(ii) applies in respect of the reporting period, on or before April 30 of the year following the end of the reporting period; and

(b) in any other case, on or before the day on or before which the return for that period is required to be filed.

Versement

(2) La personne est tenue de verser au receveur général le montant positif de sa taxe nette pour une période de déclaration dans le délai suivant, sauf les paragraphes (2.1) ou (2.3) s'appliquent à la période de déclaration :

a) si elle est un particulier auquel le sous-alinéa 238(1)a)(ii) s'applique pour la période, au plus tard le 30 avril de l'année suivant la fin de la période;

b) dans les autres cas, au plus tard le jour où la déclaration visant la période est à produire.

Filing required

238 (1) Every registrant shall file a return with the Minister for each reporting period of the registrant

(a) where the registrant's reporting period is or would, in the absence of subsection 251(1), be the fiscal year,

(i) if the registrant is a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x), within six months after the end of the year,

(ii) if subparagraph (i) does not apply, the registrant is an individual, the fiscal year is a calendar year and, for the purposes of the Income

Production par un inscrit

238 (1) L'inscrit doit présenter une déclaration au ministre pour chacune de ses périodes de déclaration dans le délai suivant :

a) si la période de déclaration correspond à l'exercice, ou y correspondrait en l'absence du paragraphe 251(1) :

(i) lorsque l'inscrit est une institution financière désignée visée à l'un des sous-alinéas 149(1)a)(i) à (x), dans les six mois suivant la fin de l'exercice,

(ii) lorsque le sous-alinéa (i) ne s'applique pas, que l'exercice

Tax Act, the individual carried on a business in the year and the filing-date date of the individual for the year is June 15 of the following year, on or before that day, and

(iii) in any other case, within three months after the end of the year; and

(b) in every other case, within one month after the end of the reporting period of the registrant.

Idem

(2) Every person who is not a registrant shall file a return with the Minister for each reporting period of the person for which net tax is remittable by the person within one month after the end of the reporting period.

Filing by certain selected listed financial institutions

(2.1) Despite paragraph (1)(b) and subsection (2), if a selected listed financial institution's reporting period is a fiscal month or fiscal quarter, the financial institution shall

(a) file an interim return for the period with the Minister within one month after the end of the period; and

(b) file a final return for the period with the Minister within six months after the end of the fiscal year in which the period ends.

correspond à une année civile et que l'inscrit est un particulier qui exploitait une entreprise au cours de l'année pour l'application de la Loi de l'impôt sur le revenu et dont la date d'échéance de production pour l'année pour l'application de cette loi est le 15 juin de l'année suivante, au plus tard à cette date,

(iii) dans les autres cas, dans les trois mois suivant la fin de l'exercice;

b) sinon, dans un délai d'un mois suivant la fin de la période de déclaration.

Production par un non-inscrit

(2) Le non-inscrit est tenu de présenter une déclaration au ministre dans le mois suivant chacune de ses périodes de déclaration pour laquelle il doit verser la taxe nette.

Production par certaines institutions financières désignées particulières

(2.1) Malgré l'alinéa (1)b) et le paragraphe (2), l'institution financière désignée particulière dont la période de déclaration est un mois d'exercice ou un trimestre d'exercice est tenue de présenter au ministre :

a) une déclaration provisoire visant la période, dans le mois suivant la fin de la période;

b) une déclaration finale pour la période, dans les six mois suivant la fin de l'exercice dans lequel la période prend fin.

Non-resident performers, etc.

(3) Notwithstanding subsection (1), where, in a reporting period of a non-resident person, the person makes a taxable supply in Canada of an admission in respect of a place of amusement, a seminar, an activity or an event, the person shall

(a) file with the Minister a return for that period on or before the earlier of

(i) the day on or before which a return for that period is required to be filed under subsection (1), and

(ii) the day the person, or one or more employees of the person who are involved in the commercial activity in which the supply was made, leaves Canada; and

(b) on or before that earlier day, remit all amounts that became collectible, and all other amounts collected by the person, in the period as or on an account of tax under Division II.

Form and content

(4) Every return under this Subdivision shall be made in prescribed form containing prescribed information and shall be filed in prescribed manner.

Activities of a trustee

267.1 (5) For the purposes of this Part, where a person acts as trustee of a trust,

(a) anything done by the person in the person's capacity as trustee of the trust is deemed to have been done by the trust and not by the person; and

Artistes non-résidents

(3) Malgré le paragraphe (1), la personne non-résidente qui, au cours de sa période de déclaration, effectue la fourniture taxable au Canada d'un droit d'entrée à un lieu de divertissement, un colloque, une activité ou un événement doit :

a) présenter une déclaration au ministre pour cette période au plus tard le premier en date du jour où la déclaration pour cette période doit être produite en application du paragraphe (1) et du jour où la personne, ou un de ses salariés qui intervient dans l'activité commerciale dans le cadre de laquelle la fourniture est effectuée, quitte le Canada;

b) verser, au plus tard le premier en date des jours visés à l'alinéa a), les montants devenus percevables ainsi que les montants qu'elle a perçus au cours de la période au titre de la taxe prévue à la section II.

Forme et contenu

(4) La déclaration doit être produite en la forme, selon les modalités et avec les renseignements déterminés par le ministre.

Activités du fiduciaire

267.1 (5) Les présomptions suivantes s'appliquent dans le cadre de la présente partie lorsqu'une personne agit à titre de fiduciaire d'une fiducie :

a) tout acte qu'elle accomplit à ce titre est réputé accompli par la fiducie et non par elle;

(b) notwithstanding paragraph (a), where the person is not an officer of the trust, the person is deemed to supply a service to the trust of acting as a trustee of the trust and any amount to which the person is entitled for acting in that capacity that is included in computing, for the purposes of the Income Tax Act, the person's income or, where the person is an individual, the person's income from a business, is deemed to be consideration for that supply.

b) malgré l'alinéa a), si elle n'est pas un cadre de la fiducie, elle est réputée fournir à celle-ci un service de fiduciaire et tout montant auquel elle a droit à ce titre et qui est inclus, pour l'application de la Loi de l'impôt sur le revenu, dans le calcul de son revenu ou, si elle est un particulier, dans le calcul de son revenu tiré d'une entreprise est réputé être un montant au titre de la contrepartie de cette fourniture.

Assessments

296 (1) The Minister may assess

- (a) the net tax of a person under Division V for a reporting period of the person,
- (b) any tax payable by a person under Division II, IV or IV.1,
- (c) any penalty or interest payable by a person under this Part,
- (d) any amount payable by a person under any of paragraphs 228(2.1)(b) and (2.3)(d), section 230.1 and paragraphs 232.01(5)(c) and 232.02(4)(c), and
- (e) any amount which a person is liable to pay or remit under subsection 177(1.1) or Subdivision a or b.1 of Division VII,

and may reassess or make an additional assessment of tax, net tax, penalty, interest or an amount referred to in paragraph (d) or (e).

Cotisation

296 (1) Le ministre peut établir une cotisation, une nouvelle cotisation ou une cotisation supplémentaire pour déterminer :

- a) la taxe nette d'une personne, prévue à la section V, pour une période de déclaration;
- b) la taxe payable par une personne en application des sections II, IV ou IV.1;
- c) les pénalités et intérêts payables par une personne en application de la présente partie;
- d) un montant payable par une personne en application des alinéas 228(2.1)b) ou (2.3)d), de l'article 230.1 ou des alinéas 232.01(5)c) ou 232.02(4)c);
- e) un montant qu'une personne est tenue de payer ou de verser en vertu du paragraphe 177(1.1) ou des sous-sections a ou b.1 de la section VII.

Objection to assessment

301 (1.1) Any person who has been assessed and who objects to the assessment may, within ninety days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.

Consideration of objection

(3) On receipt of a notice of objection, the Minister shall, with all due dispatch, reconsider the assessment and vacate or confirm the assessment or make a reassessment.

Waiving reconsideration

(4) Where, in a notice of objection, a person who wishes to appeal directly to the Tax Court requests the Minister not to reconsider the assessment objected to, the Minister may confirm the assessment without reconsideration.

Notice of decision

(5) After reconsidering an assessment under subsection (3) or confirming an assessment under subsection (4), the Minister shall send to the person objecting notice of the Minister's decision by registered or certified mail.

Appeal

306 A person who has filed a notice of objection to an assessment under this Subdivision may appeal to the Tax Court to have the assessment vacated or a reassessment made after either

Opposition à la cotisation

(1.1) La personne qui fait opposition à la cotisation établie à son égard peut, dans les 90 jours suivant le jour où l'avis de cotisation lui est envoyé, présenter au ministre un avis d'opposition, en la forme et selon les modalités déterminées par celui-ci, exposant les motifs de son opposition et tous les faits pertinents.

Examen de l'opposition

(3) Sur réception d'un avis d'opposition, le ministre doit, avec diligence, examiner la cotisation de nouveau et l'annuler ou la confirmer ou établir une nouvelle cotisation.

Renonciation au nouvel examen

(4) Le ministre peut confirmer une cotisation sans l'examiner de nouveau sur demande de la personne qui lui fait part, dans son avis d'opposition, de son intention d'en appeler directement à la Cour canadienne de l'impôt.

Avis de décision

(5) Après avoir examiné de nouveau ou confirmé une cotisation, le ministre fait part de sa décision par avis envoyé par courrier recommandé ou certifié à la personne qui a fait opposition à la cotisation.

Appel

306 La personne qui a produit un avis d'opposition à une cotisation aux termes de la présente sous-section peut interjeter appel à la Cour canadienne de l'impôt pour faire annuler la cotisation ou en faire établir une nouvelle lorsque, selon le cas :

(a) the Minister has confirmed the assessment or has reassessed, or

(b) one hundred and eighty days have elapsed after the filing of the notice of objection and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has reassessed,

but no appeal under this section may be instituted after the expiration of ninety days after the day notice is sent to the person under section 301 that the Minister has confirmed the assessment or has reassessed.

Disposition of appeal

309 (1) The Tax Court may dispose of an appeal from an assessment by

(a) dismissing it; or

(b) allowing it and

(i) vacating the assessment, or

(ii) referring the assessment back to the Minister for reconsideration and reassessment.

(2) [Repealed, 1993, c. 27, s. 132]

Definitions

313 (1) The following definitions apply in this section.

action means an action to collect a tax debt of a person and includes a proceeding in a court and anything done by the Minister

a) la cotisation est confirmée par le ministre ou une nouvelle cotisation est établie;

b) un délai de 180 jours suivant la production de l'avis est expiré sans que le ministre n'ait notifié la personne du fait qu'il a annulé ou confirmé la cotisation ou procédé à une nouvelle cotisation.

Toutefois, nul appel ne peut être interjeté après l'expiration d'un délai de 90 jours suivant l'envoi à la personne, aux termes de l'article 301, d'un avis portant que le ministre a confirmé la cotisation ou procédé à une nouvelle cotisation.

Règlement d'appel

309 (1) La Cour canadienne de l'impôt peut statuer sur un appel concernant une cotisation en le rejetant ou en l'accueillant. Dans ce dernier cas, elle peut annuler la cotisation ou la renvoyer au ministre pour nouvel examen et nouvelle cotisation.

(2) [Abrogé, 1993, ch. 27, art. 132]

Définitions

313 (1) Les définitions qui suivent s'appliquent au présent article.

action Toute action en recouvrement d'une dette fiscale d'une personne, y compris les procédures judiciaires et toute mesure prise

under any provision of this Division.
(action)

legal representative of a person means a trustee in bankruptcy, an assignee, a liquidator, a curator, a receiver of any kind, a trustee, an heir, an administrator, an executor, a liquidator of a succession, a committee, or any other like person, administering, winding up, controlling or otherwise dealing in a representative or fiduciary capacity with any property, business, commercial activity or estate that belongs or belonged to, or that is or was held for the benefit of, the person or the person's estate. (représentant légal)

tax debt means any amount payable or remittable by a person under this Part.
(dette fiscale)

Debts to Her Majesty

(1.1) A tax debt is a debt due to Her Majesty in right of Canada and is recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided under this Part.

Court proceedings

(2) The Minister may not commence a proceeding in a court to collect a tax debt of a person in respect of an amount that may be assessed under this Part, unless when the proceeding is commenced the person has been or may be assessed for that amount.

par le ministre en vertu d'une disposition de la présente section. (action)

dette fiscale Tout montant à payer ou à verser par une personne sous le régime de la présente partie. (tax debt)

représentant légal Syndic de faillite, cessionnaire, liquidateur, curateur, séquestre de tout genre, fiduciaire, héritier, administrateur du bien d'autrui, liquidateur de succession, exécuteur testamentaire, conseil ou autre personne semblable, qui administre, liquide ou contrôle, en qualité de représentant ou de fiduciaire, les biens, les affaires, les activités commerciales ou les actifs qui appartiennent ou appartenaient à une personne ou à sa succession, ou qui sont ou étaient détenus pour leur compte, ou qui, en cette qualité, s'en occupe de toute autre façon. (legal representative)

Créances de Sa Majesté

(1.1) La dette fiscale est une créance de Sa Majesté du chef du Canada et est recouvrable à ce titre devant la Cour fédérale ou devant tout autre tribunal compétent ou de toute autre manière prévue par la présente partie.

Procédures judiciaires

(2) Une procédure judiciaire en vue du recouvrement de la dette fiscale d'une personne à l'égard d'un montant qui peut faire l'objet d'une cotisation aux termes de la présente partie ne peut être intentée par le ministre que si, au moment où la procédure est intentée, la personne a fait l'objet d'une cotisation pour ce montant ou peut en faire l'objet.

Assessment before collection

315 (1) The Minister may not take any collection action under sections 316 to 321 in respect of any amount payable or remittable by a person that may be assessed under this Part, other than interest, unless the amount has been assessed.

Payment of remainder

(2) If the Minister sends a notice of assessment to a person, any amount assessed then remaining unpaid is payable forthwith by the person to the Receiver General.

Cotisation avant recouvrement

315 (1) Le ministre ne peut, outre exiger des intérêts, prendre des mesures de recouvrement aux termes des articles 316 à 321 relativement à un montant susceptible de cotisation selon la présente partie que si le montant a fait l'objet d'une cotisation.

Paiement du solde

(2) La partie impayée d'une cotisation visée par un avis de cotisation est payable immédiatement au receveur général.

Interpretation Act, RSC 1985, c I-21, Section 17**Her Majesty not bound or affected unless stated**

17 No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner, except as mentioned or referred to in the enactment.

Non-obligation, sauf indication contraire

17 Sauf indication contraire y figurant, nul texte ne lie Sa Majesté ni n'a d'effet sur ses droits et prérogatives.

Interpretation Act, RSBC 1996, c. 238, Section 8**Enactment remedial**

8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

***Pooled Investment Portfolios Regulation, BC Reg 447/99,
Sections 4, 5, 10, 11 and 14*****Management of pooled investment portfolios**

4 (1) All the assets of a portfolio are held in trust by the investment management corporation.

(2) Subject to the Act, the chief investment officer is responsible for investing money of a portfolio in categories of investment the chief investment officer considers desirable and for managing and controlling the portfolio.

(3) The investments of a portfolio must be identified separately from other property of the investment management corporation, with each investment recorded to show clearly the portfolio to which the investment belongs.

(4) Ownership in any asset in a portfolio must not be attributed to a participating fund.

Units of participation

5 (1) A portfolio must be divided into units of participation, that on any given day are of equal value, and the proportionate interest to be attributed to each participating fund must be expressed by the number of units allocated to it.

(2) The value of each full unit in a portfolio is

(a) on establishment of the portfolio, \$1 million, and

(b) on any subsequent date, the value determined by the chief investment officer.

(3) On establishment of a portfolio, the appropriate number of units must be allocated to each participating fund proportionate to its investment in the portfolio.

(4) Subject to section 10 (4.1), the cost of a unit in a portfolio is the value of the units on the date of purchase.

(5) A participating fund may hold a fraction of a unit calculated to 9 decimal places.

Annual calculation and attribution of income and net taxable capital gain

10 (1) On the last opening date of the calendar year, the aggregate of the income and net realized taxable capital gains of each portfolio for that year as determined under the Income Tax Act (Canada) less any income and net realized taxable capital gains already paid to the participating funds for that year are payable to each participating fund in proportion to its participation in the portfolio.

(2) A participating fund, on demand by December 15 in the same calendar year, will receive the payment to which it is entitled under subsection (1).

(3) A payment to which a participating fund is entitled under subsection (1) that has not otherwise been paid pursuant to a demand for payment under subsection (2) must be paid by the issuance of additional units having value equal to the amount of the payment.

(4) Unless the investment management corporation determines otherwise, immediately after the issuance of additional units under subsection (3), the additional units must be consolidated with

the other units held by the participating fund so that the participating fund will hold, after the consolidation, the same number of units as the participating fund held before the issuance of the additional units.

(4.1) If a consolidation occurs under subsection (4), the carrying costs of the units held by a participating fund must be increased by the value, before consolidation, of the additional units issued to the participating fund.

(5) If a participating fund has made a demand for payment under subsection (2), the number of its units of participation, valued as of the last opening date of the calendar year, must be reduced proportionally to reflect the value of the payment.

Investment of income and other proceeds

11 Subject to section 10, the chief investment officer may

- (a) distribute any net income, net capital gains or other proceeds received by a portfolio to each participating fund in proportion to its participation in the portfolio, or
- (b) invest any net income, net capital gains or other proceeds received by a portfolio in that portfolio.

Termination of a pooled investment portfolio

14 The chief investment officer may terminate a portfolio and distribute to the unit holders the net proceeds realized.

Public Sector Pension Plans Act, SBC 1999, c 44, Sections 2, 5, 7, 13, 16, 18, 24, Schedule A – Section 16.1 and Schedule C – Sections 18(2) and (3)

Purposes of the Act

2 The purposes of this Act are as follows:

- (a) to establish an agency which must provide pension plan administration services to the pension boards;
- (b) to establish an agency which may provide investment management services to the pension boards;
- (c) to provide pension plan governance and risk and reward sharing alternatives for the management of the pension plans and pension funds;
- (d) to provide benefits to eligible plan members under the pension plans.

British Columbia Pension Corporation established

- 5 (1)** A corporation to be known as the British Columbia Pension Corporation is established consisting of the pension management board appointed under section 8.
- (2)** The pension corporation has the power and capacity of a natural person of full capacity.
- (3)** The fiscal year end of the pension corporation is March 31.
- (4)** The pension corporation is an agent of the government.
- (5)** The pension corporation, as an agent of the government, is not liable for taxation except as the government is liable for taxation.
- (6)** The pension corporation may, with the approval of the pension management board, borrow or raise money for its purposes in the amounts and for the periods determined by the pension corporation.
- (7)** The Business Corporations Act does not apply to the pension corporation, but the Lieutenant Governor in Council may, on the recommendation of the pension management board, direct that certain provisions of the Business Corporations Act apply to the pension corporation.

Powers, functions and duties of the pension corporation

- 7 (1)** The purpose of the pension corporation is to provide plan administration services
- (a) to the pension boards responsible for the pension plans, and
 - (b) to any other clients that retain the services of the pension corporation.
- (2)** Plan administration services are those administrative services, excluding funds management services, required to deliver pension benefits to plan members, and includes all of the following:
- (a) enrolling employers and plan members;
 - (b) collecting and recording contributions and other information received from employers and plan members necessary to properly administer the pension plans;
 - (c) auditing the information collected under paragraph (b);
 - (d) communicating information about the pension plan provisions to employers and plan members;
 - (e) establishing and maintaining plan member records and accounts;
 - (f) calculating and processing pension benefits and other related benefits;
 - (g) managing, in coordination with the investment management corporation, the cash flow of the pension funds in order to maximize investment returns;
 - (h) paying, and recording the payment of, pension benefits and other related benefits;

(i) filing documentation with the appropriate authorities and performing other regulatory duties as may be required under other enactments;

(j) providing secretariat and other services required by the pension boards;

(k) providing additional services to a pension plan if the pension management board and the pension board agree on the budget required for the additional services.

(3) The pension corporation must discharge the responsibilities of the pension boards under the Income Tax Act (Canada) for administration of the pension plans.

(4) The pension corporation may enter into agreements

(a) with a person or body to provide benefits to plan members or to provide other services in respect of the pension plans, or

(b) to administer plans for other clients.

Operating costs and capital expenditures of the pension corporation

13 (1) The pension corporation must recover its operating costs and capital expenditures from one or more of the following:

(a) amounts charged to the pension plans for operating costs and capital expenditures necessarily incurred by the pension corporation on behalf of the pension plans it administers;

(b) amounts authorized under other enactments for services provided by the pension corporation;

(c) amounts charged to persons, organizations and other clients for services provided by the pension corporation;

(d) income accruing from investments made by the pension corporation on its own behalf.

(2) The pension corporation may, in advance, submit a requisition quarterly to the pension boards respecting the pension plans it administers for the amounts required to cover the anticipated operating costs and capital expenditures necessarily incurred by the pension corporation on behalf of those pension plans.

(3) The pension plans must pay to the pension corporation, in quarterly instalments from the pension funds, the amounts requisitioned under subsection (2), subject to the limits within the pension corporation's budget as approved by the respective pension boards.

(4) The operating costs and capital expenditures of the pension corporation attributable to the pension plans it administers, as determined and certified by the chief executive officer, must

(a) be paid out of the money requisitioned under subsection (2), and

(b) to the extent to which the operating costs and capital expenditures paid out

- (i) are less than the amount requisitioned, be reimbursed to the pension funds, or
- (ii) are greater than the amount requisitioned, be paid from the pension funds.

(5) Capital expenditures of the pension corporation may be paid from amounts borrowed by the pension corporation.

British Columbia Investment Management Corporation established

16 (1) A corporation, to be known as the British Columbia Investment Management Corporation, is established and incorporated as a trust company authorized to carry on trust business and investment management services as provided in this Part.

(2) The corporation referred to in subsection (1) consists of the investment management board appointed under section 19 (1) or (3).

(3) The investment management corporation has the power and capacity of a natural person of full capacity.

(4) The fiscal year end of the investment management corporation is March 31.

(5) The investment management corporation is an agent of the government.

(6) The investment management corporation, as an agent of the government, is not liable for taxation except as the government is liable for taxation.

(7) The Business Corporations Act and, despite section 11 of the Financial Institutions Act, the Financial Institutions Act do not apply to the investment management corporation, but the Lieutenant Governor in Council may direct that certain provisions of the Business Corporations Act and the Financial Institutions Act apply to the investment management corporation.

(8) For the purposes of the Securities Act and its regulations, the investment management corporation must be treated in the same manner as the government is treated under that Act.

Powers, functions and duties of the investment management corporation

18 (1) In this section, "government body", "public money", "special fund" and "trust fund" have the same meaning as in the Financial Administration Act.

(2) The purpose of the investment management corporation is to provide funds management services, including the making of investments and loans, for funds placed with the investment management corporation.

(3) Despite any other enactment, including the Financial Administration Act, a person who has the authority to invest

- (a) money or securities of a trust fund, special fund or other fund,

- (b) money or securities of a government body or designated institution, or
- (c) other public money or securities

may, with the agreement of the investment management board, place the money or securities with the investment management corporation as agent of the person, for investment.

(4) In addition to the powers, functions and duties of the investment management corporation as provided in this Part, the investment management corporation has the same powers, functions and duties in the provision of funds management services for funds placed with it under subsection (3) as the Minister of Finance would have if the funds had been placed with that minister under Part 5 of the Financial Administration Act as it read on April 1, 1999.

(5) The investment management corporation may provide additional services to a pension plan if the investment management board and the pension board agree on the budget required for the additional services.

Operating costs and capital expenditures of the investment management corporation

24 (1) The investment management corporation must recover its operating costs and capital expenditures from one or more of the following:

- (a) amounts charged to the funds for operating costs and capital expenditures necessarily incurred by the investment management corporation on behalf of the funds it manages;
- (b) amounts charged to persons, organizations and other clients for services provided by the investment management corporation;
- (c) income accruing from investments made by the investment management corporation on its own behalf.

(2) to (4) [Not in force.]

(5) Capital expenditures of the investment management corporation may be paid from amounts borrowed by the investment management corporation.

Schedule A - College Pension Plan, Part 1.1 — Joint Trusteeship

Joint management agreement

16.1 (1) In this section, "agreement" means the joint management agreement referred to in subsection (2).

(2) The partners may enter into a unanimous joint management agreement that provides for, but is not limited to, all of the following:

- (a) the continuation of the pension plan and pension fund, that were continued under this Schedule, for the benefit of plan members;
- (b) the joint management of the pension plan and the pension fund;
- (c) the establishment of who will manage the agreement;
- (d) the establishment of an arrangement to hold and invest the pension fund;
- (e) the composition of the board of trustees of the pension plan, including the appointment of trustees and the delineation of their powers, functions and duties;
- (f) the sharing by employers and plan members of gains or surplus and of liability for deficiencies in the pension fund;
- (g) the method for amending the pension plan by the agreement of the partners;
- (h) the resolution of disputes;
- (i) any other matter on which agreement is reached.

(3) The partners must establish appropriate mechanisms whereby the views and interests of the plan members who are

- (a) non-unionized employees,
- (b) unionized employees not represented by a plan member partner, and
- (c) retirees

are fairly represented in the negotiation of the agreement.

(4) The pension plan continued under the agreement must provide for all of the following:

- (a) employer and employee eligibility to participate in the pension plan;
- (b) employer and plan member contributions to the pension fund;
- (c) pensionable service, including the calculation of pensions, purchase of service, reinstatement and portability;
- (d) eligibility to receive a benefit and the determination of the amount of that benefit;
- (e) benefits on termination, early retirement, normal retirement, late retirement, disability retirement and pre-retirement death;
- (f) pension indexing;
- (g) general administrative requirements;
- (h) supplemental benefits;
- (i) continued recognition of any rights vested in a plan member or beneficiary, in the same manner and to the same extent as provided under the pension plan;

(j) any matter necessary or advisable to establish the pension plan rules.

(5) The partners must ensure that

(a) the money of the pension fund is invested or loaned in the best financial interests of the plan members and, in doing that, must

(i) exercise the care, diligence and skill that a person of ordinary prudence would exercise when dealing with the property of another person, and

(ii) ensure that the investments and loans are made in accordance with the provisions of the Pension Benefits Standards Act and other regulatory requirements,

(b) the plan administrative agent keeps an account of all money received and paid out of the pension fund and keeps an accounting of the assets and liabilities of the pension fund, and

(c) the plan administrative agent keeps an individual record of contributions made by each plan member.

(6) Any of the partners may initiate discussions respecting the agreement.

(7) Despite subsection (2), the non-unionized employees, unionized employees not represented by a plan member partner and retirees not represented by the partners may benefit from and be subject to the agreement and the partners have the power to enter into the agreement on behalf of those persons and, if entered into, the agreement is binding on those persons.

Schedule C - Public Service Pension Plan, Part 2 — Joint Trusteeship

Joint management agreement

18 (1) In this section "agreement" means the joint management agreement referred to in subsection (2).

(2) The partners may enter into a unanimous joint management agreement that provides for, but is not limited to, all of the following:

(a) the continuation of the pension plan and the pension fund, that were continued under this Schedule, for the benefit of plan members;

(b) the joint management of the pension plan and the pension fund;

(c) establishing who will manage the agreement;

(d) the establishment of an arrangement to hold and invest the pension fund;

(e) the composition of the board of trustees of the pension plan, including the appointment of trustees and the delineation of their powers, functions and duties;

(f) the sharing by the employers and plan members of gains or surplus and of liability for deficiencies in the pension fund;

- (g) the method for amending the pension plan by the agreement of the partners;
- (h) the resolution of disputes;
- (i) any other matter on which agreement is reached.

(3) The partners must establish appropriate mechanisms whereby the views and interests of the plan members who are

- (a) unionized employees not represented by the plan member partner,
- (b) non-unionized employees, and
- (c) retirees,

are fairly represented in the negotiation of the agreement.

Tax Court of Canada Act, RSC 1985, c T-2, Sections 3 and 12(1)

Tax Court of Canada continued

3 The Tax Court of Canada is continued under the name of the Tax Court of Canada as a superior court of record.

Jurisdiction

12 (1) The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the Air Travellers Security Charge Act, the Canada Pension Plan, the Cultural Property Export and Import Act, Part V.1 of the Customs Act, the Employment Insurance Act, the Excise Act, 2001, Part IX of the Excise Tax Act, Part 1 of the Greenhouse Gas Pollution Pricing Act, the Income Tax Act, the Old Age Security Act, the Petroleum and Gas Revenue Tax Act and the Softwood Lumber Products Export Charge Act, 2006 when references or appeals to the Court are provided for in those Acts.

Continuité de la Cour canadienne de l'impôt

3 La Cour canadienne de l'impôt est maintenue en cour supérieure d'archives.

Compétence

12 (1) La Cour a compétence exclusive pour entendre les renvois et les appels portés devant elle sur les questions découlant de l'application de la Loi sur le droit pour la sécurité des passagers du transport aérien, du Régime de pensions du Canada, de la Loi sur l'exportation et l'importation de biens culturels, de la partie V.1 de la Loi sur les douanes, de la Loi sur l'assurance-emploi, de la Loi de 2001 sur l'accise, de la partie IX de la Loi sur la taxe d'accise, de la partie 1 de la Loi sur la tarification de la pollution causée par les gaz à effet de serre, de la Loi de l'impôt sur le revenu, de la Loi sur la sécurité de la vieillesse, de la Loi de l'impôt sur les revenus pétroliers et de la Loi de 2006 sur les droits d'exportation de produits de bois

d'oeuvre, dans la mesure où ces lois prévoient un droit de renvoi ou d'appel devant elle.