

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

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant
(Appellant / respondent on cross-appeal)

and

BRITISH COLUMBIA INVESTMENT MANAGEMENT CORPORATION

Respondent
(Respondent / appellant on cross-appeal)

and

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

Respondent
(Respondent / respondent on cross-appeal)

RESPONSE OF THE RESPONDENT,
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA
Pursuant to R. 27 of the *Rules of the Supreme Court of Canada* SOR/2002-156

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MEMORANDUM OF ARGUMENT

PART I – OVERVIEW AND STATEMENT OF FACTS

This case does not warrant the attention of this Court

1. This case does not raise issues of national or public importance.
2. The judgment of the Court of Appeal for British Columbia applied settled legal principles in the context of a single provincial crown agent, its provincial enabling statute and one associated provincial regulation.
3. The Court of Appeal concluded the Supreme Court of British Columbia did not commit a reviewable error in making a discretionary decision to take jurisdiction over a petition that included an issue over which the Tax Court of Canada had no jurisdiction.
4. The Court of Appeal concluded the chambers judge was correct in finding the deemed trust provisions of the federal *Excise Tax Act* reduced the scope of the British Columbia Investment Management Corporation’s constitutional immunity from federal taxation and that the *Excise Tax Act* cannot have that effect.
5. There is no division of authorities to make uniform, no new law to make and no injustice to correct. Canada’s application for leave to appeal the decision of the Court of Appeal for British Columbia should be dismissed.

Factual background

6. The British Columbia Investment Management Corporation (“bcIMC”) manages and invests the British Columbia’s public sector pension plans, including the Teachers’ Pension Plan, College Pension Plan, the Public Service Pension Plan, Municipal Pension Plan and the Worker's Compensation Board (“Plans”), that have been placed into the pooled investment portfolios (“Portfolios”).¹

¹ *British Columbia Investment Management Corporation v. Canada (Attorney General)*, 2016 BCSC 1803 (“BCSC Reasons”) at para. 8.

7. bcIMC holds legal title to the Portfolios by way of a statutory trust. In exchange for placing funds with bcIMC, the Plans receive units of participation (“Units”).²

8. The Plans do not have an interest or ownership in the Portfolios, only to the Units they acquire. The value of the Units is based on the underlying net assets in the Portfolios. The Plans have a right to be paid money equal to the value of the Units each holds, but not to the Portfolios themselves.³

9. When the Minister of Finance managed the Portfolios, it recovered its costs and expenses associated with managing the Portfolios from the Portfolios’ assets, without tax (“Tax”) under the *Excise Tax Act*, R.S.C. 1985, c. E-15 (“ETA”) being collected or remitted.⁴ The *Public Sector Pension Plans Act*⁵ expressly continued this method of recovering costs and expenses from the Portfolios’ assets when bcIMC assumed this function on January 1, 2000. Section 24(1) of the *PSPPA* requires bcIMC to recover its operating costs and expenses from the monies and securities in the Portfolios it manages.

10. To avoid perceived conflicts of interest, it was decided that decisions about investments of public sector trust funds should be made through a separate crown agent.⁶ bcIMC was established as a provincial crown agent to carry on trust business and investment management services.⁷

11. Funds held pursuant to the *Financial Administration Act* and the *Pooled Investment Portfolios Regulation* by the Minister on January 1, 2000, were transferred to and held on similar terms by bcIMC thereafter.⁸

12. In providing investment management services, bcIMC stands in the shoes of the provincial crown and has the same powers, functions and duties as the BC Minister of Finance would have if the funds had been placed with that minister prior to the creation of bcIMC.⁹

² BCSC Reasons at para. 8.

³ BCSC Reasons at para. 8.

⁴ BCSC Reasons at para. 13.

⁵ *Public Sector Pension Plans Act*, S.B.C. 1999, c. 44 (“PSPPA”), s. 18(2).

⁶ BCSC Reasons at para. 10.

⁷ *PSPPA*, s. 18(2).

⁸ *British Columbia Investment Management Corporation v. Canada (Attorney General)*, 2018 BCCA 47 (“BCCA Reasons”) at para. 5.

⁹ *PSPPA*, s. 18(4).

13. On September 5, 2013, the Canada Revenue Agency (“CRA”) opened an audit file concerning bcIMC for the Goods and Services Tax (“GST”) reporting period from April 1, 2010 to March 31, 2013.¹⁰

14. On December 20, 2013, before the field work on that audit commenced, bcIMC filed a petition.¹¹

15. The petition sought three declarations – one involving bcIMC’s constitutional immunity, as an agent of the provincial crown, from taxation by Canada (the “Immunity Claim”), and two others, involving the binding nature of the Reciprocal Taxation Agreement (“RTA”) and the Comprehensive Integrated Tax Coordination Agreement (“CITCA”) entered into between British Columbia and Canada (the “Agreement Claim”).¹²

16. The legal basis of both the Immunity Claim and the Agreement Claim included section 125 of the *Constitution Act, 1867*.¹³

17. Canada does not dispute the Agreement Claim is beyond the jurisdiction of the Tax Court of Canada.¹⁴

18. Pursuant to section 8(2) of the *Constitutional Question Act*, prior to the hearing of the petition, bcIMC prepared a Notice of Constitutional Question giving notice of its challenge to the constitutional applicability of the *ETA*, and served it on the Attorney General of British Columbia and the Attorney General of Canada.¹⁵

19. The chambers judge found the Supreme Court had jurisdiction to decide the entire petition and determined it was appropriate for the Court to exercise its discretion in favour of taking jurisdiction over the Immunity Claim.¹⁶

20. The chambers judge granted the Immunity Claim and declared bcIMC was immune from

¹⁰ [BCCA Reasons at para. 32.](#)

¹¹ [BCCA Reasons at para. 32](#); Petition, p.1: original petition filing date was December 20, 2013.

¹² Petition, Part 1, sub-paras. 1(a), (b) and (c).

¹³ Petition, Part 3, paras. 29 and 35 (Immunity Claim) and 43 (Agreement Claim); *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5 (“*Constitution Act, 1867*”), s. 125.

¹⁴ [BCCA Reasons at paras. 34 and 60.](#)

¹⁵ *Constitutional Question Act*, R.S.B.C. 1996, c. 68, s. 8(2). Notice of Constitutional Question (BCSC), paras. 1, 3 and 4.

¹⁶ [BCSC Reasons at paras. 6, 88 and 100.](#)

taxation by Canada under the *ETA* in respect of assets it holds in the Portfolios pursuant to the *Pooled Investment Portfolios Regulation*. The chambers judge held that Canada cannot, under the guise of the deemed trust provisions of the *ETA* or otherwise, defeat bcIMC's immunity from taxation as a provincial crown agent.¹⁷

21. Canada appealed to the Court of Appeal for British Columbia asserting the chambers judge erred on the issue of the Supreme Court of British Columbia's jurisdiction and his determination of the Immunity Claim. bcIMC cross-appealed on the Agreement Claim.

22. Canada's appeal was dismissed by the Court of Appeal for British Columbia.¹⁸

PART II – QUESTIONS IN ISSUE

23. The only issue is whether this Court should exercise its discretion to grant Canada leave to appeal the decision of the Court of Appeal for British Columbia.

PART III – ARGUMENT

24. The legal issues in this case are not novel nor are they of public or national importance.

25. The law involving the concurrent jurisdiction of provincial superior and federal statutory courts is settled and not in dispute.¹⁹

26. The proposed appeal in this case concerns the discretionary decision of one chambers judge to take jurisdiction over one part of a petition proceeding. Decisions that are so highly fact sensitive and that balance factors relevant only in the context of that single discretionary decision do not raise matters of public or national importance.²⁰

¹⁷ [BCSC Reasons at paras. 131-132](#). The chambers judge refused bcIMC's Agreement Claim and declared bcIMC was bound by the provisions of the RTA and CITCA respecting those same assets: Order of the BCSC paras. 1 and 2.

¹⁸ [BCCA Reasons at paras. 68, 113 – 115 and 160](#). bcIMC's cross-appeal was also dismissed by the Court of Appeal for British Columbia: [BCCA Reasons at para. 160](#).

¹⁹ [Reza v. Canada](#), [1994] 2 S.C.R. 394; [Canada \(Attorney General\) v. TeleZone Inc.](#), 2010 SCC 62; [Canada \(Attorney General\) v. McArthur](#), 2010 SCC 63; [Canadian Food Inspection Agency v. Professional Institute of the Public Service of Canada](#), 2010 SCC 66; [Strickland v. Canada \(Attorney General\)](#), 2015 SCC 37; [Windsor \(City\) v. Canadian Transit Co.](#), 2016 SCC 54.

²⁰ [Strickland](#) at para. 43.

27. The law with respect to the constitutional immunity of a crown agent is settled and not in dispute.²¹ The principle that Parliament cannot eviscerate a provincial crown agent's constitutional immunity from taxation by simply passing legislation is neither new nor controversial.

A single exercise of judicial discretion is not of a matter of national importance

28. A discretionary decision to take jurisdiction is entitled to deference. The chambers judge articulated the relevant factors and weighed them. The Court of Appeal affirmed the chambers judge's discretion had been exercised judiciously.²²

29. Canada's assertion that the chambers judge gave no weight to the presence of GST reassessments or the effect the declaration of immunity would have on the Tax Court's process, is without merit – the chambers judge expressly considered both.²³

30. There was no jurisdiction in the Tax Court to rule upon the applicability of the RTA or CITCA to bcIMC.

31. Canada's true complaint with respect to the discretionary decision to take jurisdiction is that the chambers judge recognized the immunity issue as a "threshold" question²⁴ and that he placed significant weight on avoiding a bifurcation of the two related issues raised in the petition proceeding.²⁵

The discretionary decision of the Supreme Court of British Columbia to take jurisdiction is unassailable

32. The issue before the Court of Appeal for British Columbia was whether the Supreme Court of British Columbia committed a reviewable error when it made a discretionary decision refusing to decline its general and inherent jurisdiction.

33. Canada asserts the chambers judge committed a reviewable error by giving "no weight to the presence of GST reassessments" and failing to consider the effect that a declaration of immunity would have on the Tax Court's process".²⁶ However, the chambers judge expressly

²¹ *Nova Scotia Power Inc. v. Canada*, 2004 SCC 51 [*Nova Scotia Power*].

²² *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19 at para. 27.

²³ Canada's Memorandum of Argument, para. 61; BCSC Reasons at para. 91.

²⁴ BCSC Reasons at paras. 93 and 95; BCCA Reasons at para. 41.

²⁵ BCSC Reasons at paras. 94 and 99; BCCA Reasons at para. 67.

²⁶ Canada's Memorandum of Argument, para. 61.

considered the presence of the GST reassessments and the effect that the declaration of immunity would have on the Tax Court's process, as did the Court of Appeal.²⁷

34. The Court of Appeal reviewed the reasons of the chambers judge for taking jurisdiction, namely:

- a) Courts have consistently held that the "threshold" question – whether, as a provincial Crown agent, bcIMC is immune from taxation under s. 125 of the *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5, and under s. 17 of the *Interpretation Act, R.S.C. 1985, c. I-21* – is not exclusively within the jurisdiction of the Tax Court: *Canadian Pacific Railway Company v. Canada, 2012 FC 1030 (CanLII)*, aff'd 2013 FC 161 (para. 93) [CPR];
- b) Determination of the second question – whether the Province can bind bcIMC to the agreements in the absence of legislation – is within the jurisdiction of the Supreme Court of British Columbia but not within the jurisdiction of the Tax Court (para. 93);
- c) bcIMC's claim to immunity from taxation is not simply about the assessment of the tax, but goes to the very heart of the ability of Canada to assess the tax against bcIMC (para. 95);
- d) The declaration sought regarding immunity (over which the Tax Court and the Supreme Court of British Columbia have concurrent jurisdiction) and the declaration regarding the Province's authority to bind bcIMC to the agreements (over which the Tax Court has no jurisdiction) are linked. If bcIMC's claim to immunity is successful, then the only basis on which it could owe the tax claimed is the agreements (para. 98); and
- e) Judicial economy and fairness militate in favor of the two issues being decided together (para. 99).²⁸

35. The scope of bcIMC's crown immunity from taxation by Canada was an issue at the heart of both declarations sought by bcIMC.²⁹ The Supreme Court could not have declined jurisdiction

²⁷ BCSC Reasons at paras. 28, 34, 35, 91, 95 and 98; BCCA Reasons at paras. 58 and 67.

²⁸ BCCA Reasons at para. 41.

²⁹ Petition, Part 3, paras. 29 and 35 (Immunity Claim) and 43 (Agreement Claim).

of the Immunity Claim without bifurcating the proceedings.

36. Bifurcating the proceedings would not have served judicial economy. The Supreme Court's decision did not amount to an injustice.³⁰

37. There was a basis upon which the chambers judge could conclude the questions before him were related and inter-dependent, that non-tax issues might predominate the litigation and that bcIMC's petition was not primarily an attack upon the assessment. In fact, bcIMC's petition was initiated prior to any tax reassessment being issued.³¹

38. The chambers judge was mindful of Canada's submissions regarding the importance of preserving the integrity and efficacy of the Tax Court system of tax assessments and appeals, as was the Court of Appeal in denying Canada's appeal.³² But the adjudication of constitutional questions and the development of the framework within which the Tax Court operates, is not "incidental litigation".³³

The law governing a crown agent's immunity from taxation is settled

39. bcIMC is a statutory agent of the provincial crown. As such it is entitled to the same immunity as the provincial crown itself.³⁴

40. Where a provincial crown agent is acting within the purposes for which the legislature made it an agent of the crown, it is within the protection of the province's constitutional immunity from taxation by Canada.³⁵

41. There was no suggestion in this case that bcIMC was not acting within the purposes for which British Columbia made it an agent of the provincial Crown.

42. Canada did not dispute that bcIMC is a Crown agent and that bcIMC itself enjoys constitutional immunity from taxation by Canada. bcIMC, as an agent of the provincial Crown, is entitled to the same constitutional immunity from taxation as the provincial Crown itself.

³⁰ *Elsom v. Elsom*, [1989] 1 S.C.R. 1367 at 1377.

³¹ BCCA Reasons at paras. 41 and 67.

³² BCCA Reasons at paras. 52-53.

³³ *Canada v. Addison & Leyen Ltd.*, 2007 SCC 33 at para. 11; BCSC Reasons at para. 95.

³⁴ *Nova Scotia Power* at para. 13.

³⁵ *Nova Scotia Power* at para. 14.

bcIMC’s constitutional immunity from taxation cannot be defeated by federal legislation

43. This Court has already established the dominant importance of the immunity conferred by section 125 of the *Constitution Act, 1867* and its “overriding nature”. The express powers of taxation contained in sections 91(3) and 92(2) are “qualified” by the constitutional immunity from taxation belonging to the other level of government. Parliament’s power to tax is subject to the constitutional limitation enshrined in section 125.

Section 125 is an exception to the general constitutional competence of the federal Parliament in the matter of taxation based on s. 91(3) and in this manner the section renders inapplicable to the property of the provinces federal fiscal legislation enacted pursuant to s. 91(3) ...

...

This immunity would be illusory if it applied only to taxes “on property” but not to a tax on the Crown in respect of a transaction affecting its property or on the transaction itself. The immunity would be illusory since, by the simple device of framing a tax as “*in personam*” rather than “*in rem*”, one level of government could with impunity tax away the fruits of property owned by the other. The fundamental constitutional protection framed by s. 125 cannot depend on subtle nuances of form.³⁶

44. The passage above makes clear that, regardless of how it is packaged or presented, federal tax legislation is inapplicable to provincial property, in respect of a transaction affecting the Province’s property or on the transaction itself.³⁷

45. The Supreme Court of British Columbia’s conclusion, affirmed by the Court of Appeal, that the constitutional immunity from the taxation enjoyed by the provincial crown cannot be defeated by a federal statute, applied that irrefutable principle.

46. While the *ETA* provisions relied on in assessing bcIMC may be valid federal legislation enacted pursuant to Canada’s legislative competence over the raising of Money by any Mode or

³⁶ *Reference Re Proposed Federal Tax On Exported Natural Gas*, [1982] 1 S.C.R. 1004 at 1067 and 1078 [*Exported Natural Gas Reference*].

³⁷ BCCA Reasons at para. 114.

System of Taxation,³⁸ insofar as Canada seeks to apply them to defeat the Province's immunity from taxation, which extends to its agents, those provisions are constitutionally inapplicable. Both the Supreme Court and the Court of Appeal applied that principle.

47. Despite that principle, Canada relied on two provisions of the *ETA*³⁹ to conclude that when bcIMC provides funds management services, including making investments, as it is obliged to do as a Crown agent under the *PSPPA*, the recipient of those services is an alter ego of bcIMC, namely trusts. According to Canada, when the Deeming Provisions are applied to bcIMC, bcIMC is transformed from one person to two — one a corporation and the other one (or more) a trust — but bcIMC's constitutional immunity from taxation does not survive that statutory transformation vis-à-vis the trust “persons”.

48. Canada cannot, under the guise of the Deeming Provisions, or any other section of the *ETA*, defeat provincial Crown immunity from taxation. That constitutional immunity is not dependent on any statutory regime Parliament may impose now or in the future.

49. In providing investment management services with respect to the Portfolios, as it is mandated to do by the *PSPPA* and the related *Pooled Investment Portfolios Regulation*, bcIMC is immune from Canada's taxation. That immunity cannot be defeated by an act of Parliament, regardless of how the CRA's interpretation and application of the *ETA* purports to characterize, categorize, consider or divide bcIMC.⁴⁰

50. Canada's position is that section 123(1) of the *ETA* “alters the normal private law principles applicable to trusts for purposes of GST”. However, the *Fundy Settlement* case relied on by Canada for this principle was a tax case involving private parties. It is of no assistance in this case where the constitutional immunity from taxation belonging to the Province is the central factor.⁴¹

³⁸ *Constitution Act, 1867*, section 91(3).

³⁹ Section 123(1) of the *ETA* defines “person” to include a trust, and section 267.1(5)(a) of the *ETA* deems anything done by a person in the capacity of trustee to have been done by the trust (the “Deeming Provisions”).

⁴⁰ *Nova Scotia Power* at para. 14; *BCCA Reasons* at para. 114.

⁴¹ *Fundy Settlement v. Canada*, 2012 SCC 14.

51. The extent to which any federal tax law, including section 123(1) of the *ETA*, “alters the normal private law principles applicable to trusts for purposes of GST” is subordinate to, and limited by, section 125 of the *Constitution Act, 1867*.⁴²

52. The reasoning in the *Exported Natural Gas Reference* is not displaced by the Deeming Provisions. The constitutional protection of section 125 of the *Constitution Act, 1867*, and the principles articulated by this Court in *Nova Scotia Power* confirming that the crown’s constitutional immunity from taxation extends to its agents, cannot be defeated by legislation enacted by Parliament.

The significance of this case ends at British Columbia’s borders

53. This case involved a provincial crown agent, established by its provincial enabling legislation and one associated provincial regulation. It is not a case that transcends the provincial borders of British Columbia.

54. While the case involved public law, it is not a case of public or national importance.

PART IV – SUBMISSIONS ON COSTS

55. The Respondent Her Majesty the Queen in right of the Province of British Columbia seeks an order for costs in this Court.

PART V – NATURE OF ORDER SOUGHT

56. The Respondent Her Majesty the Queen in right of the Province of British Columbia seeks an order dismissing Canada’s application for leave to appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED AT OTTAWA THIS day of May, 2018.

Veronica L. Jackson
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Counsel for the Respondent
Her Majesty the Queen in right of the
Province of British Columbia

⁴² *Exported Natural Gas Reference* at 1078 and 1081.

PART VI – TABLE OF AUTHORITIES

Authority	Paragraph number(s) in Response
Case Law	
<i>British Columbia Investment Management Corporation v. Canada (Attorney General)</i> , 2016 BCSC 1803.	6, 7, 8, 9, 10, 19, 20, 22, 31, 33 and 38
<i>British Columbia Investment Management Corporation v. Canada (Attorney General)</i> , 2018 BCCA 47.	11, 13, 14, 17, 33 34, 37, 38, 44, 49
<i>Canada (Attorney General) v. McArthur</i> , 2010 SCC 63.	25
<i>Canada (Attorney General) v. TeleZone Inc.</i> , 2010 SCC 62.	25
<i>Canada v. Addison & Leyen Ltd.</i> , 2007 SCC 33.	38
<i>Canadian Food Inspection Agency v. Professional Institute of the Public Service of Canada</i> , 2010 SCC 66.	25
<i>Canadian Pacific Railway Company v. Canada</i> , 2012 FC 1030, aff'd 2013 FC 161.	34
<i>Elsom v. Elsom</i> , [1989] 1 S.C.R. 1367.	36
<i>Fundy Settlement v. Canada</i> , 2012 SCC 14.	50
<i>Nova Scotia Power Inc. v. Canada</i> , 2004 SCC 51.	27, 39, 40, 49 and 52
<i>Penner v. Niagara (Regional Police Services Board)</i> , 2013 SCC 19.	28
<i>Reference Re Proposed Federal Tax On Exported Natural Gas</i> , [1982] 1 S.C.R. 1004.	43, 51
<i>Reza v. Canada</i> , [1994] 2 S.C.R. 394.	25
<i>Strickland v. Canada (Attorney General)</i> , 2015 SCC 37.	25 and 26
<i>Windsor (City) v. Canadian Transit Co.</i> , 2016 SCC 54.	25

Legislation	
<i>Constitution Act, 1867</i> (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5, ss. 91(3), 92(2), 125.	16, 43, 46, 52
<i>Constitutional Question Act</i> , R.S.B.C 1996, c. 68, s. 8(2).	18
<i>Excise Tax Act</i> , R.S.C. 1985, c. E-15, ss. 123(1) (definition of “person”) and 267.1(5)(a).	4, 6, 9, 18, 20, 46, 47, 48, 49, 50, 51
<i>Interpretation Act</i> , R.S.C. 1985, c. I-21.	34
<i>Pooled Investment Portfolios Regulation</i> , B.C. Reg. 447/99.	11, 20 and 49
<i>Public Sector Pension Plans Act</i> , S.B.C. 1999, c. 44, ss. 18(2) and 18(4).	9, 10, 12 and 49

PART VII - LEGISLATION

English	French
<p><i>Constitution Act, 1867</i> (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5</p> <p>91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say</p> <p>...</p> <p>3. The raising of Money by any Mode or System of Taxation</p> <p>92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,...</p> <p>2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.</p>	

<p>125. No Lands or Property belonging to Canada or any Province shall be liable to Taxation.</p>	
<p><i>Constitutional Question Act</i>, R.S.B.C 1996, c. 68</p> <p>Notice of questions of validity or applicability</p> <p>8 (1) In this section:</p> <p>"constitutional remedy" means a remedy under section 24 (1) of the <i>Canadian Charter of Rights and Freedoms</i> other than a remedy consisting of the exclusion of evidence or consequential on such exclusion;</p> <p>"law" includes an enactment and an enactment within the meaning of the <i>Interpretation Act</i> (Canada).</p> <p>(2) If in a cause, matter or other proceeding</p> <p>(a) the constitutional validity or constitutional applicability of any law is challenged, or</p> <p>(b) an application is made for a constitutional remedy,</p> <p>the law must not be held to be invalid or inapplicable and the remedy must not be granted until after notice of the challenge or application has been served on the Attorney General of Canada and the Attorney General of British Columbia in accordance with this section.</p>	

Public Sector Pension Plans Act, S.B.C. 1999, c. 44

Powers, functions and duties of the investment management corporation

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.

...

(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.

<p><i>Excise Tax Act</i>, R.S.C. 1985, c. E-15</p> <p>Definitions</p> <p>123 (1) In section 121, this Part and Schedules V to X,</p> <p>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)</p> <p>Activities of a trustee</p> <p>267.1(5) For the purposes of this Part, where a person acts as trustee of a trust,</p> <p>(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 ...</p>	<p><i>Loi sur la taxe d'accise</i>, L.R.C. (1985), ch. E-15</p> <p>Définitions</p> <p>123 (1) Les définitions qui suivent s'appliquent à l'article 121, à la présente partie et aux annexes V à X.</p> <p>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.</p> <p>(<i>person</i>)</p> <p>Activités du fiduciaire</p> <p>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:</p> <p>a) tout acte qu'elle accomplit à ce titre est réputé accompli par la fiducie et non par elle;</p>
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NO. S-139492
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BRITISH COLUMBIA INVESTMENT MANAGEMENT
CORPORATION

PETITIONER

AND:

ATTORNEY GENERAL OF CANADA and HER MAJESTY
THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA

RESPONDENTS

NOTICE OF CONSTITUTIONAL QUESTION
under section 8(2) of the *Constitutional Question Act*, R.S.B.C. 1996, c. 68

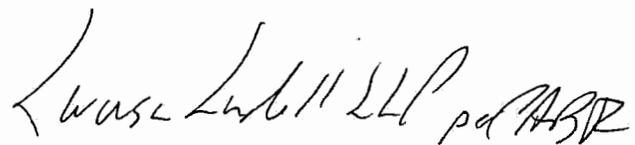
TO: Attorney General of Canada
c/o Department of Justice
900 - 840 Howe Street
Vancouver, B.C.
V6Z 2S9

AND TO: Minister of Justice and Attorney General of British Columbia
Director Constitutional & Administrative Law
1001 Douglas Street
Victoria, B.C.
V8V 1X4

1. TAKE NOTICE, pursuant to Section 8(2)(a) of the *Constitutional Question Act*, that the Petitioner, British Columbia Investment Management Corporation, intends to question, based on its constitutional immunity from federal taxation, the applicability of the *Excise Tax Act*, R.S.C. 1985, c E-15, to its pooled investment portfolios and the assets it holds in those portfolios.
2. The constitutional question is currently set to be argued at the hearing of the Petitioner's Petition on April 25 – 28, 2016 at 10:00 a.m. at 800 Smithe Street in the City of Vancouver in the Province of British Columbia.
3. In its Amended Petition, the Petitioner seeks, among other things, a declaration that:

[T]he British Columbia Investment Management Corporation, in respect of assets it holds in pooled investment portfolios pursuant to the *Pooled Investment Portfolios Regulation*, B.C. Reg. 447/99, is immune from taxation by Her Majesty in Right of Canada under the *Excise Tax Act*, R.S.C. 1985, c. E-15;
4. Counsel for the Petitioner will argue that the Petitioner is entitled to the above declaration including because, pursuant to section 125 of the *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), the *Excise Tax Act*, does not apply to impose taxation obligations on the Petitioner, its pooled investment portfolios, or the assets it holds in those portfolios.

DATED at the City of Vancouver, in the Province of British Columbia, this 15th day of April, 2016.

A handwritten signature in black ink that reads "Lawson Lundell LLP" followed by a stylized signature of "pd ABR".

Lawson Lundell LLP
Solicitors for the Petitioner

This NOTICE is filed by Craig A.B. Ferris, Q.C., of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 - 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

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RESPONDENTS

NOTICE OF CONSTITUTIONAL QUESTION



Barristers and Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2
Phone: (604) 685-3456
Attention: Craig A.B. Ferris, Q.C.

GBB

VANCOUVER

JUN 19 2017

Court of Appeal File No. CA44026

COURT OF APPEAL
REGISTRY

COURT OF APPEAL

BETWEEN:

BRITISH COLUMBIA INVESTMENT MANAGEMENT
CORPORATION

Respondent
Appellant on Cross-Appeal
(Petitioner)

AND:

ATTORNEY GENERAL OF CANADA

Appellant
Respondent on Cross-Appeal
(Respondent)

AND:

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

Respondent
Respondent on Cross-Appeal
(Respondent)

NOTICE OF CONSTITUTIONAL QUESTION
under section 8(2) of the *Constitutional Question Act*, R.S.B.C. 1996, c. 68

TO: Attorney General of Canada
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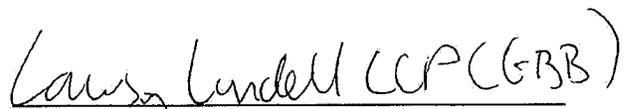
AND TO: Minister of Justice and Attorney General of British Columbia
Director Constitutional & Administrative Law
1001 Douglas Street
Victoria, B.C.
V8V 1X4

1. TAKE NOTICE, pursuant to s. 8(2)(a) of the *Constitutional Question Act*, that the Respondent (Appellant on Cross-Appeal), British Columbia Investment Management Corporation (“bcIMC”), intends to challenge, based on its constitutional immunity from federal taxation, the applicability of the *Excise Tax Act*, R.S.C. 1985, c E-15, to its pooled investment portfolios and the assets it holds in those portfolios.
2. The constitutional question is currently set to be argued at the hearing of the appeal on November 21 and 22, 2017 at 10:00 a.m. at 800 Smithe Street in the City of Vancouver in the Province of British Columbia.
3. On the appeal, counsel for bcIMC will argue in support of the following declaration made at the hearing of the Petition below, which is challenged in the appeal:

By virtue of being a provincial Crown agent, the Petitioner, British Columbia Investment Management Corporation (“bcIMC”), is immune from taxation by Canada under the *Excise Tax Act*, R.S.C. 1985, c. E-15, in respect of assets it holds in pooled investment portfolios pursuant to the *Pooled Investment Portfolios Regulation*, B.C. Reg. 447/99.

including on the basis that, pursuant to section 125 of the *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), the *Excise Tax Act*, does not apply to impose taxation obligations on bcIMC, its pooled investment portfolios, or the assets it holds in those portfolios.

DATED at the City of Vancouver, in the Province of British Columbia, this 19th day of June, 2017.



Lawson Lundell LLP
Solicitors for the Respondent (Appellant on Cross-Appeal), British Columbia Investment Management Corporation

This NOTICE is filed by Craig A.B. Ferris, Q.C., of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 - 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

Court of Appeal File No. CA44026

COURT OF APPEAL

BETWEEN:

BRITISH COLUMBIA INVESTMENT
MANAGEMENT CORPORATION

Respondent
Appellant on Cross-Appeal
(Petitioner)

AND:

ATTORNEY GENERAL OF CANADA

Appellant
Respondent on Cross-Appeal
(Respondent)

AND:

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

Respondent
Respondent on Cross-Appeal
(Respondent)

NOTICE OF CONSTITUTIONAL QUESTION



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GBB/jsj

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