



THORSTEINSSONS LLP
TAX LAWYERS

David R. Davies

OFFICES: Vancouver and Toronto
CONTACT: drdavies@thor.ca • (604) 602-4252 • (416) 864-0829

Featured Court Cases

Confidential client (2018): Pending decision of the Tax Court of Canada on a constitutional challenge to the Tax-Free Savings Account advantage rules.

Savics v. The Queen (2018): Pending decision of the Tax Court of Canada on the proper interpretation of a settlement agreement with the CRA in a tax shelter case.

2078970 Ontario Inc. and 2078702 Ontario Inc. (Lux) v. The Queen

2018 TCC 141 and 2017 TCC 173 (Tax Court of Canada)

Successfully overturned two partnership assessments that denying \$30 million in losses. CRA had assessed two partnerships by way of partnership “determinations”, arguing that partnership determinations were the appropriate procedure despite CRA’s fundamental position that no partnerships existed in law.

Confidential client (2018): Successfully added clients as parties to a claim on a contested application in Federal Court in connection with statutory requirement letters issued by CRA.

Canada v. Green et al.

2017 FCA 107 (Federal Court of Appeal)

Successfully argued that losses in a two-tier partnership did not become trapped at the top level partnership by the at-risk rules, and instead flowed out to the ultimate partners.

Madison Pacific Properties Inc. v. The Queen; MP Western Properties Inc. v. The Queen

2017 TCC 82 (Tax Court of Canada)

Successful motion to produce CRA and Department of Finance internal policy documents that the CRA was attempting to conceal in the context of an appeal against an assessment under the general anti-avoidance rule (GAAR).

www.thor.ca

TORONTO
Phone: (416) 864-0829
Fax: (416) 864-1106
Toll-free: 1 (888) 666-9998

VANCOUVER
Phone: (604) 602-4271
Fax: (604) 688-4711
Toll-free: 1 (877) 616-2200

Huntly Investments Ltd. v. The Queen

2017 TCC 255 (Tax Court of Canada)

Whether corporation with rental income was deemed to earn active business income by virtue of employing more than five full-time employees throughout the year.

0741449 B.C. Ltd. v. Minister of National Revenue

2016 FC 529 (Federal Court of Canada)

Refundability of taxes withheld by the CRA pursuant to a jeopardy order, pending the outcome of the underlying appeal.

Remilla v. The Queen

2015 TCC 200 (Tax Court of Canada)

Whether T1 adjustment requests could be said to qualify as a waiver of the normal reassessment period, thereby entitling the CRA to reassess beyond the normal three-year limitation period.

Re: 741508 B.C. Ltd. and 768723 B.C. Ltd.

2014 BCSC 1791 (British Columbia Supreme Court)

Successful in having a real estate purchase and sale rescinded in order to overturn \$6 million in assessed GST and related penalties.

Blackmore v. The Queen

2014 FCA 210 (Federal Court of Appeal)

A novel case arguing that the FLDS was established and operated sufficiently similar in principle to a Hutterite colony, in an effort to overcome denied corporate expenses and shareholder benefits through the application of section 143 of the ITA.

Mould v. The Queen

2014 TCC 21 (Tax Court of Canada)

Crown motion to compel outside witness in advance of trial.

Barker v. The Queen

2012 TCC 64 (Tax Court of Canada)

Successfully resisted the Crown's attempts to subject an "outside" witness to an examination for discovery in advance of trial.

Blackmore v. The Queen

2011 FCA 335 (Federal Court of Appeal)

Successfully overturned a costs award against the taxpayer.

Blackmore v. The Queen

2012 DTC 1053 (Tax Court of Canada)

Obtained an unprecedented declaration from the Tax Court that the taxpayer was a compellable witness in his own tax trial. This finding paved the way for the taxpayer to rely on the protections afforded by the *Charter* and the *Evidence Act* (Canada) which protect against incriminating oneself in a tax trial for the purposes of any subsequent criminal prosecution.

Strother et al. v. The Queen

2011 TCC 251 (Tax Court of Canada)

Successfully argued the taxpayer's motion to delete portions of the Crown's pleadings as being scandalous, frivolous and vexatious. The appellant was a partner in a syndicated film tax shelter structure.

Aujla v. The Queen

2008 FCA 304 (Federal Court of Appeal)

Successful in arguing that the taxpayer was not liable for a director's liability claim under the GST legislation (the Excise Tax Act). The taxpayer had ceased to be a director when the company was dissolved for failing to file corporate returns, and was therefore entitled to the benefit of the two-year limitation period after ceasing to be a director.

Sentinel Hill No. 29 Limited Partnership et al. v. A-G of Canada

2008 ONCA 132 (Ontario Court of Appeal)

The partnership sought repayment of overpaid withholding taxes on the basis that the government had been unjustly enriched by retaining tax payments to which it was not entitled. The taxpayer had withheld monies paid to non-residents of Canada under a "gross-up" clause and remitted those funds to the CRA. The taxpayer sought reimbursement since the non-resident payee (having previously been indemnified by the taxpayer) was indifferent as to whether the funds were remitted or not.

Sentinel Hill Productions (1999) Corporation, in its capacity as designated member of Sentinel Hill 1999 Master Limited Partnership et al. v. The Queen

2007 TCC 742 (Tax Court of Canada)

Successfully defended the taxpayer against the Crown's motion to strike those portions of the taxpayer's pleadings alleging that the Canada Revenue Agency had not honoured an Advance Income Tax Ruling issued in the context of a partnership tax shelter structure.

Howe et al. v. The Queen

2004 TCC 719 (Tax Court of Canada)

Successfully argued that the taxpayers' losses claimed in a structured partnership tax shelter structure were allowable. The Court rejected the Crown's general anti-avoidance rule (GAAR) argument, and concluded that the losses were fully deductible as claimed.

CIT Financial Ltd. v. The Queen

2004 FCA 201 (Federal Court of Appeal)

The taxpayer sought to sustain deductions arising from a structured finance transaction involving deductions for capital cost allowance on computer software imported into Canada.

Sidhu v. The Queen

2004 TCC 174 (Tax Court of Canada)

Issue: principal residence exemption, capital gains exemption, and penalties assessed on the associated gains.

Brown v. The Queen

2003 FCA 192 (Federal Court of Appeal)

This was the first computer software tax shelter partnership to proceed to Court. The Crown had challenged the capital cost allowance deductions on numerous bases. The taxpayer successfully challenged several of the bases of assessment on which the CRA had relied, leading to partial success.

Hsu v. The Queen

2001 FCA 240 (Federal Court of Appeal)

Still one of the leading “net worth” decisions on the taxability of imputed income.

Argus Holdings Limited v. The Queen

2000 CanLII 16579 (Federal Court of Appeal)

Successfully argued that initiation fees were, in law, earned in statute-barred years rather than the year of assessment, thereby avoiding tax on those fees.

Sandhu v. The Queen

98 DTC 1889 (Tax Court of Canada)

Successfully argued that the taxpayers were not subject to tax in respect of shareholders’ benefits assessed against them on transfer of a partnership interest to a corporation.