

Case Law Update

Commodity Tax Summit West

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Case Agenda

GST/HST

- *Amex Bank of Canada v Canada*, 2026 FCA 31
- *BC Hydro and Power Authority v Canada*, 2025 TCC 61 (Appealed to FCA)
- *MedSleep Inc v Canada*, 2025 TCC 70
- *Ng v Canada*, 2025 TCC 172
- *Twisted Leaves Ltd v Canada*, 2026 TCC 38
- *Maragos v Canada*, 2026 TCC 4
- *Salehi v Canada*, 2026 TCC 30
- *LBL Holdings v Canada*, 2025 FCA 186
- *Toronto-Dominion Bank (TD Canada Trust) v Canada*, 2026 FCA 25

PST

- *Tolko Industries Ltd v British Columbia*, 2024 BCSC 599
- *Schlumberger Canada Ltd v British Columbia*, 2024 BCSC 781



Amex Bank of Canada v Canada, 2026 FCA 31

Facts:

- Amex Bank of Canada (**Amex**) issued a variety of credit cards to eligible individuals. By acquiring a card, an individual could participate in Amex's loyalty program – the Membership Rewards Program (**MRP**).
- Members could accumulate a certain number of points based on the dollar amounts charged to a card. In exchange for members redeeming their points, Amex offered various rewards such as airline tickets, hotel chain loyalty points and travel certificates, along with tangible products.
- Amex purchased the rewards from third-party suppliers and paid GST/HST in two primary instances:
 - **(1)** on the supplier's sale of goods and services used as the rewards; and
 - **(2)** and on the overhead costs, such as system maintenance, which Amex self-assessed GST/HST under Division IV of the ETA (**MRP Expenses**).
- Amex was assessed for its reporting periods between 2002 and 2012, whereby the CRA denied \$13.97 million of ITCs relating to the MRP Expenses.

Amex Bank of Canada v Canada, 2026 FCA 31

Positions before the TCC:

- **CRA** → MRP Expenses formed part of a “single compound supply”, with the predominant element being an exempt financial service provided to cardholders.
- **Amex** → it made “multiple supplies” and the GST/HST incurred on the MRP Expenses related to the provision of taxable supplies, separate from the exempt supplies it made to cardholders.

Issue at TCC:

- Were the MRP-related inputs acquired by Amex for use in commercial activities such that Amex was entitled to claim ITCs for the GST/HST payable on the inputs (*i.e.*, the MRP Expenses)?

Amex Bank of Canada v Canada, 2026 FCA 31

TCC:

- Applied established “compound supply test” to determine if MRP Expenses were incurred by virtue of a single supply or multiple supplies.
- The test is twofold: **(1)** all components of the single compound supply must be identified; and **(2)** the “predominant” component must be determined.
 - **(1)** A single compound supply will exist where each component is so intertwined and interdependent they are integral to the overall supply. Some components of the MRP were, in and of themselves, a supply of exempt financial services by Amex.
 - The balance of components directly linked to Amex’s supply of exempt financial services, such as members’ ability to redeem the points in exchange for the Rewards. Accordingly, all MRP components were so integrated and intertwined that they formed part of the overall supply – a single compound supply of exempt financial services.
 - **(2)** TCC was required to account for the perspective of the recipient of the MRP – i.e. the MRP members. It established that the predominant supply was the extension of credit by Amex to the members.

Amex Bank of Canada v Canada, 2026 FCA 31

Issue before the FCA:

- Whether the Tax Court erred, both in fact and law, in disallowing Amex's claim for ITCs with respect to the MRP Expenses.

FCA:

- Upheld TCC's denial of the ITCs → FCA applied a deferential standard to the TCC's factual findings and its statutory characterization under the ETA, concluding there was no palpable and overriding error in the TCC's analysis. FCA emphasized that overturning such findings requires clear error.
- MRP Expenses were incurred in making a single composite supply whose predominant element was exempt financial services (extension of credit), not in commercial activity.
- The "characterization test" only applies once it has been determined that there is a single composite supply. It does not apply to one agreement if that agreement is merely one component of a larger composite supply.

BC Hydro and Power Authority v Canada, 2025 TCC 61

* Under Appeal *

Facts:

- BC Hydro amended an electricity purchase agreement with an independent power producer. Under the amendment, BC Hydro agreed to pay \$8.5 million and, in return, obtained an option to extend the term of the agreement by 16 years once the project became operational.
- BC Hydro argued the payment was a consequence of a modification and should be treated under s. 182 of the ETA.

Issue:

- Was the \$8.5 million payment an amount paid “as a consequence of” modifying the agreement (per s. 182 of the ETA), or was it consideration for a taxable supply (*i.e.*, the option / term extension)?

* Under Appeal *

Holding:

- TCC held s. 182 of the ETA did not apply.
 - The payment was consideration for a taxable supply – being the optional term extension.

Reasoning:

- TCC characterized the \$8.5 million as paid for something new – an option to extend – rather than as damages / compensation flowing from a contractual cancellation or modification.
- Because the payment was consideration for a distinct taxable supply *per se*, it was not paid “as a consequence of” the modification in the sense required by s. 182.

MedSleep Inc v Canada, 2025 TCC 70

Facts:

- MedSleep operated sleep clinics and partnered with sleep physicians. Patients were referred by family doctors, underwent testing at MedSleep clinics and physicians reviewed results and prepared reports.
- Provincial health plan (OHIP) paid the physicians' professional fees / billings.
- MedSleep and physicians entered fee-sharing agreements, whereby MedSleep retained 20% of physicians' OHIP billings as an overhead / administration share and physicians received remaining 80%.
- CRA assessed MedSleep on the theory the retained portion was consideration for separate taxable "back-end" administrative services supplied by MedSleep to physicians.

Issue:

- Did MedSleep make a separate taxable supply of administrative / management services to physicians (requiring GST/HST), or were MedSleep and physicians jointly making a single exempt health care supply to patients?

MedSleep Inc v Canada, 2025 TCC 70

Holding:

- TCC allowed MedSleep's appeal; no separate taxable supply made by MedSleep to the physicians.
- The arrangement reflected a single interconnected exempt supply of institutional health care services to patients, not a separate taxable supply made by MedSleep to the physicians.

Reasoning:

- **Functional integration:** TCC emphasized the integrated nature of intake, testing, physician review and treatment as a unified patient service rather than discrete administrative services supplied to physicians.
- **Economic reality over form:** TCC looked to the substance and economic reality of the transactions, finding the 80/20 split was a revenue-sharing mechanism within a single patient-facing supply of exempt institutional healthcare services.

Facts:

- Taxpayer sought to challenge a GST/HST reassessment relating to a New Housing Rebate.
- CRA mailed the notice to an address previously provided by the Taxpayer.
- Taxpayer did not receive it and only learned of the reassessment years later, after the statutory objection and extension periods had elapsed.

Issue:

- Do the ETA objection deadlines run from the date the CRA sends the notice (even if not received), and does the TCC have jurisdiction once the objection and extension windows expire?

Holding:

- TCC enforced the strict statutory deadlines.
 - Once the objection period and limited extension window expired, the TCC lacked jurisdiction to entertain the late challenge.

Reasoning:

- The statutory scheme ties the objection clock to the sending of the notice to the taxpayer's address on file, not actual receipt.
- While the Taxpayer acted promptly once aware, the TCC emphasized it cannot extend Parliament's rigid limitation framework beyond the statutory extension period.

Twisted Leaves Ltd v Canada, 2026 TCC 38

Facts:

- Twisted Leaves Ltd. (**TL**), a tea retailer making zero-rated supplies, was assessed net GST/HST payable after failing to file a 2020 return during COVID-19 disruptions.
- After the Minister refused a late notice of objection and extension request, the dispute centered on whether TL had electronically filed its application to the TCC for an extension of time before the statutory deadline.

Issues:

- Was the application for an extension of time to file a notice of objection filed within the statutory deadline?
- How does the “deemed” electronic filing date operate when the acknowledgment is missing?

Twisted Leaves Ltd v Canada, 2026 TCC 38

Holding:

- TCC accepted that the extension application was transmitted within time, based on credible oral evidence, notwithstanding the absence of the usual electronic acknowledgment.

Reasoning:

- Rule 4.2 *deems* the filing date to be the date shown on the TCC's acknowledgment of receipt, which is ordinarily conclusive (with respect to electronic filings made with the TCC).
- However, where the acknowledgment could not be produced, the TCC found credible and compelling *viva voce* evidence (*i.e.*, oral evidence) established – on a balance of probabilities – that timely transmission occurred and treated the filing as within time.

Maragos v Canada, 2026 TCC 4

Facts:

- Maragos had been a director of a CBCA corporation that was dissolved for failure to file annual returns and later revived at the Minister's request.
- After unsuccessful collection from the corporation, Maragos was assessed under s. 323 of the ETA for unremitted GST/HST.
- The key timing dispute was when Maragos “last ceased to be a director” for purposes of the two-year limitation period in s. 323(5) of the ETA.

Issue:

- Does revival of a dissolved CBCA corporation automatically reinstate former directors (thereby delaying when they “cease” to be directors), or does the directorship end on dissolution for ETA limitation purposes?

Maragos v Canada, 2026 TCC 4

Holding:

- TCC held that Maragos ceased to be a director upon dissolution and was not automatically reinstated upon revival.
- Accordingly, the limitation period ran from dissolution of the corporation.

Reasoning:

- Using textual, contextual and purposive interpretation of the CBCA revival provisions and the ETA limitation scheme, the TCC concluded revival restores the corporation's legal existence but does not, without more, restore former directors to office.
- Interpreting revival as reinstating directors would effectively extend limitation periods contrary to the structure and purpose of s. 323(5) of the ETA.

Facts:

- In an appeal concerning GST/HST assessed on the sale of two new houses, evidence at trial had essentially closed when the Salehi made a last-minute request that the TCC take judicial notice of a CRA website search result showing whether the purchaser of one property was GST/HST-registered.
- The point mattered to a new argument under s. 221(2) of the ETA about who must collect/remit the GST/HST on a taxable supply of real property to a registrant purchaser.
- The purchaser's registration status and the s. 221(2) collection/remittance theory had not been pleaded.

Issue:

- After close of evidence, should the TCC:
 - (i) Take judicial notice of the purchaser's GST/HST registration status; and/or
 - (ii) Permit the appellant to amend pleadings and re-open the evidence to advance an unpleaded s. 221(2) theory – despite lack of due diligence?

Holding:

- The TCC refused to proceed by judicial notice.
- However, TCC granted leave to file an amended notice of appeal and re-opened the hearing on terms, including limited supplemental documentary production and discovery, and costs payable by Salehi.

Reasoning:

- Judicial notice was inappropriate for the purchaser's registration status in the circumstances, especially where the point effectively grounded a new, unpleaded position.
 - Although amendments are generally liberally allowed, the threshold increases once the evidentiary phase has ended; the TCC applied an “interests of justice” / prejudice analysis and found any prejudice was compensable by costs and the issue was discrete and contained (affecting only one property).
- On re-opening, the TCC acknowledged Salehi failed the classic due diligence branch of the Sagaz test, but held Rule 138 confers a broader discretion to re-open “upon such terms as are just” and that fairness and getting the merits right supported a limited re-opening.
- TCC also declined to accept an affidavit from a law clerk that relied on counsel as the source of information for contentious evidence, emphasizing the impropriety of counsel acting (directly or indirectly) as a witness.

LBL Holdings Limited v Canada, 2025 FCA 186

Facts:

- LBL Holdings Limited (**LBL**) sold almost \$98 million of tobacco products in 1999–2000 without charging GST/HST, asserting sales were to status Indian purchasers and therefore exempt pursuant to s. 87 of *Indian Act* for personal property situated on reserve.
- CRA reassessed on the basis the true purchasers were non-Indigenous customers to whom the goods were immediately resold.
- CRA also alleged misrepresentation to avoid the normal limitation period.

Issues:

- Who were the “recipients” for GST/HST purposes (*i.e.*, status Indian intermediary vs end customers)?
- Were reassessments statute-barred absent misrepresentation?

LBL Holdings Limited v Canada, 2025 FCA 186

Holding:

- The FCA dismissed the Crown's appeal and upheld vacating the reassessments.
 - The TCC's factual findings that the status Indians were liable to pay (and were the recipients) disclosed no palpable and overriding error.

Reasoning:

- The appeal turned largely on deference to the TCC's fact-finding on commercial reality – meaning, who was liable to pay, who received the supplies and whether the arrangement was a sham.
- Because the TCC's findings supported the intermediary being the purchaser and the exemption applying, and the Crown failed to show overriding error, the reassessments could not stand.

Toronto-Dominion Bank (TD Canada Trust) v Canada, 2026 FCA 25

Facts:

- HNJ Enterprises Ltd. (**HNJ**) failed to remit certain payroll deductions to the CRA, including \$36,250.86 for employee CPP/EI contributions and employee federal/provincial income taxes (**Unremitted Amounts**).
- HNJ incurred overdrafts on its account with Toronto-Dominion Bank (**TD**), making TD an unsecured creditor of HNJ.
- HNJ sold its restaurant business and used the proceeds of sale to repay TD for the overdrafts.
- The Crown commenced an action against TD to recover the Unremitted Amounts.

Issue:

- Can an unsecured creditor who innocently receives payment rely on the *bona fide* purchaser for value defense against the Crown's deemed trust claim under s. 227 of the ITA?

Toronto-Dominion Bank (TD Canada Trust) v Canada, 2026 FCA 25

Law – Relevant provisions of the ITA

- **227(4)** Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, **to hold the amount separate and apart from the property of the person** and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, **in trust for Her Majesty** and for payment to Her Majesty in the manner and at the time provided under this Act.

- **(4.1)** Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province **or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty** in the manner and at the time provided under this Act, **property of the person** and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, **equal in value to the amount so deemed to be held in trust is deemed**
 - (a) **to be held**, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, **in trust for Her Majesty** whether or not the property is subject to such a security interest, and [...]

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, **and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.**

Law – Relevant provisions of the ITA:

- The full name of the equitable defence is “*bona fide* purchase of a legal interest for value without notice of a pre-existing equitable interest”.
- The effect of the defence is to allow the defendant to hold its legal proprietary rights unencumbered by the pre-existing equitable proprietary rights.

Issues before the Federal Court:

- **Issue 1:** Do the deemed trust provisions in section 227 of the ITA apply to unsecured creditors? **Yes**
- **Issue 2:** Can unsecured creditors rely on the *bona fide* purchaser for value defence to defend against a deemed trust claim? **No**
- Court relied on, *inter alia*, *Toronto-Dominion Bank v Canada*, 2020 FCA 80
- TD appealed this decision to the FCA

FCA:

- **Issue 1:** Do the deemed trust provisions in section 227 of the ITA apply to unsecured creditors?
 - This question is too broad and, not only does it not accurately reflect the question arising in the dispute between the parties, but also is not one for which there is a “yes” or “no” answer.
- **Issue 2:** Can unsecured creditors rely on the bona fide purchaser for value defence to defend against a deemed trust claim?
 - An unsecured creditor can rely on the bona fide purchaser for value defence to defend against a claim by the Crown for the unremitted source deductions of an employer who paid proceeds from the sale of their property to the unsecured creditor.



Tolko Industries Ltd v British Columbia, 2024 BCSC 599

Facts:

- Tolko Industries Ltd. (**Tolko**) appealed a ministerial decision denying a PST exemption / refund for steam pipes and related equipment used at an integrated wood products manufacturing site in Armstrong, BC.
- Steam generated at a co-generation plant was transported via the pipes to processing facilities to support wood products manufacturing.
- Some electricity was also sold to third parties.

Issue:

- Did the steam pipes qualify for the manufacturing exemption in BC's *PST Exemption and Refund Regulation* (**Regulation**) – e.g., whether the steam was “qualifying tangible personal property” and whether its production involved “non-qualifying activity”?

Tolko Industries Ltd v British Columbia, 2024 BCSC 599

Holding:

- BCSC allowed Tolko's appeal and clarified the interpretation of "non-qualifying activity" in assessing whether steam production formed part of a combined qualifying manufacturing process.

Reasoning:

- BCSC analyzed the integrated nature of the site and the role of steam production and transmission within the broader manufacturing process.
- BCSC interpreted the Regulation purposively – targeted exemptions aimed at supporting production infrastructure – and assessed whether steam was manufactured as part of a process combined with other qualifying activities, rather than being excluded as a standalone non-qualifying activity.

Facts:

- Schlumberger provided services and supplies in connection with construction / installation work (*i.e.*, contracting activity) on real property.
- BC Finance assessed PST on amounts charged, relying on the statutory rules that treat certain supplies made in the course of real-property contracting as taxable.
 - In particular, the BC PST rules that apply where real property contractors who supply tangible personal property (**TPP**) that becomes part of / an improvement to real property.

Issue:

- How do BC's contractor rules interact with the resale exemption and s. 80.61 requirements, and in what circumstances can the BC Finance assess contractors for PST in a way that risks double taxation?

Schlumberger Canada Ltd v British Columbia, 2024 BCSC 781

Holding:

- BCSC resolved aspects of the dispute in a way that underscored both the strict statutory requirements on contractors and limits on BC Finance's ability to exploit gaps to impose double taxation.

Reasoning:

- BCSC examined the statutory definitions of “sale” and “use” and the carve-outs affecting contractors.
 - It emphasized legislative intent: PST should generally fall on the retail consumer, and contractors must satisfy explicit documentation / contracting requirements to shift PST collection to the customer.
 - Where those conditions are not met, contractors bear significant compliance risk.
- The litigation highlighted the importance of having clear, express contractual terms meeting the requirements under s. 80.61 PSTA regarding charging/collecting PST from customers.

Thank You

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