SCC File No. 38059

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

AND:

ATTORNEY GENERAL OF ALBERTA and ATTORNEY GENERAL OF ONTARIO

Interveners

FACTUM OF THE RESPONDENT ON APPEAL AND FACTUM OF THE APPELLANT ON CROSS-APPEAL, BRITISH COLUMBIA INVESTMENT MANAGEMENT CORPORATION

(Pursuant to Rules 42 and 43 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

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FACTUM OF THE RESPONDENT, BRITISH COLUMBIA INVESTMENT MANAGEMENT CORPORATION, ON APPEAL

PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview[1]

1. bcIMC is a statutory agent of the provincial Crown. Its liability for (and immunity from) federal taxes is commensurate with the provincial government's liability (and immunity) so long as it is acting within the scope of its agency. When supplying goods or services to third parties, it is, like the Province, liable to collect GST under the *Excise Tax Act* (the "**ETA**").[2] This appeal does not involve that scenario. Rather, Canada asserts that bcIMC is liable to collect GST in relation to its management of pooled investment portfolios (the "**Portfolios**") previously created, managed and held by the provincial Minister of Finance, which Portfolios are now held by bcIMC and contain assets owned solely by bcIMC. The Courts below correctly rejected Canada's argument, finding that bcIMC was immune from federal taxation in relation to the Portfolios.

2. Canada's position on each of the three issues it has framed on this appeal encapsulates its wish as to how the relevant statutes and constitutional principles might apply if differently worded and differently interpreted in the governing jurisprudence: it is not rooted in the reality of how the statutes actually read and of the settled constitutional jurisprudence that applies.

3. Canada's views on how the legislation ought to read are contradicted by the following:

   (a) Under s. 17 of the federal *Interpretation Act*,[3] no enactment is binding on Her Majesty except as mentioned or referred to in the enactment. The limited provisions of the ETA made expressly applicable to the provincial Crown do not result in bcIMC, in respect of assets it holds in the Portfolios, being liable to

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[1] Capitalized terms used in this factum that are not defined here are defined in the appellant's factum.

[2] R.S.C. 1985, c. E-15.

[3] R.S.C. 1985, c. I-21, s. 17.

federal taxation. While there are provisions of the ETA that treat a trustee and the trust *corpus* as separate legal persons, these provisions do not apply to bcIMC, in respect of the Portfolios, as they do not expressly bind the provincial Crown and because bcIMC, which holds the assets in the Portfolios under a statutory trust, is the sole owner of those assets.

(b) As a Crown agent acting under its express statutory mandate, bcIMC is entitled to the constitutional immunity articulated in s. 125 of the *Constitution Act, 1867*[4] in relation to the property it holds in the Portfolios. Under the statutory regime found in the *Public Sector Pension Plans Act* (the "**PSPPA**")[5] and the *Pooled Investment Portfolios Regulation* (the "**Regulation**"),[6] bcIMC is the legal and only identified owner of the assets in the Portfolios. Public monies, including monies from the Province's consolidated revenue fund and monies earmarked to fund defined pension benefits for public sector employees, are placed for investment in the Portfolios.

(c) The jurisdiction of the Tax Court of Canada (the "**Tax Court**") is purely statutory. Prior to an assessment being issued and objected to, and other statutory steps being taken under the ETA, the Tax Court's jurisdiction is not triggered. In this case, bcIMC's Petition was brought almost two years before there was an assessment. In addition to seeking a declaration of immunity under the ETA, the Petition disputed the applicability of two intergovernmental agreements to bcIMC, an issue that necessarily required the participation of the Province as a party, which meant that the Supreme Court of British Columbia (the "**BCSC**") was the most appropriate venue. The British Columbia courts, on four occasions, confirmed their jurisdiction over the subject matter of the Petition and exercised their discretion to take jurisdiction, rulings that are entitled to deference.

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[4] *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5.
[5] S.B.C. 1999, c. 44.
[6] B.C. Reg. 447/99.

4. bcIMC was entitled to have this matter heard and to succeed below in its claim for immunity in respect of the Portfolios, either on the basis of its immunity from statute or its constitutional immunity, or both. The appeal to this Court should be dismissed.

B. Statement of Facts

5. In light of the overlap between the issues raised on appeal and on cross-appeal, a single statement of the facts relevant to both is set out below.

i. bcIMC and the Portfolios

6. Except as stated below, bcIMC accepts the background facts set out at paras. 6 to 9, 12, 13, 18, 24 and 25 of the appellant's factum respecting the constitution of bcIMC and its investment management functions. Unless otherwise noted, the facts set out in this section relate only to bcIMC's role in managing the Portfolios, which is the only role at issue in this appeal.[7]

7. Paragraphs 7 and 9 of the appellant's factum describe bcIMC's purposes but not its powers. As set out in the PSPPA, bcIMC is granted the same powers, functions and duties as the Minister of Finance had at bcIMC's inception with respect to monies and securities placed with bcIMC for investment. bcIMC's function in this regard is the continuation of the function previously performed by the Minister. bcIMC is also expressly granted the power and capacity of a natural person of full capacity. bcIMC's single share is held by the Minister of Finance on behalf of the government.[8]

8. bcIMC is governed by a board of directors responsible for, among other things, appointing the chief investment officer, overseeing bcIMC's operations, and approving policies respecting the Portfolios. The board is statutorily precluded from involvement in bcIMC's investment decisions.[9]

9. In clarification to para. 10 of the appellant's factum, bcIMC does not provide investment management services <u>to the pension boards</u> in managing the assets in the Portfolios. In

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[7] See appellant's factum, para. 20.
[8] PSPPA, ss. 16(3), 17, 18(4).
[9] PSPPA, ss. 1, "investment management board", 19, 20.

this regard, bcIMC is mandated to provide investment management services for funds placed with it. Funds, in this context, has a specific definition, meaning "money and securities placed with [bcIMC] under the authority of s. 18(3)". Section 18(3), in turn, sets out the categories of public monies or securities that may be placed with bcIMC for investment. These categories are far broader than only funds originating from the four public sector pension plans.[10]

10. Contrary to the description at para. 23 of the appellant's factum of how the Portfolios are funded, it is money and securities placed with bcIMC by the four pension plans together with the Workers' Compensation Board that form the "bulk" of the assets in the Portfolios.[11] There is no evidence that the funds placed by British Columbia directly, including from the Province's consolidated revenue fund, represent only a "minor" proportion of the Portfolios; these amounts were stated to vary from time to time.[12]

11. Canada's recitation of facts at paras. 14 to 17 and 22 of the appellant's factum conflates three separate concepts: the placement of money and securities with bcIMC, the governance of the pension boards under joint trust agreements, and bcIMC's relationship

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[10] See PSPPA, ss. 15, "funds", 18(1), 18(2), 18(3). Only persons who have the authority to invest money or securities of a trust fund, special fund or other fund; money or securities of a government body or designated institution; or other public money or securities, may place money or securities with bcIMC for investment. When one delves into the definitions of these terms, in the *Financial Administration Act*, R.S.B.C. 1996, c. 138, and the *Designated Institutions Regulation*, B.C. Reg. 158/2003, it is obvious that the money and securities invested with bcIMC originate with government or government-related entities. See also appellant's factum, para. 18.

[11] See the Reasons for Judgment of the British Columbia Court of Appeal, 2018 BCCA 47 ("**BCCA Reasons**"), para. 8, Appellant's Record, Tab 2; Amended Petition of bcIMC filed May 28, 2014 ("**Amended Petition**"), para. 6, Appellant's Record, Tab 7.

[12] Affidavit No. 1 of Stewart Newton, paras. 5-9, Appellant's Record, Tab 25. See also Affidavit No. 1 of Paul Flanagan, para. 12, Appellant's Record, Tab 22. Contrary to para. 23 of the appellant's factum, there is also no evidence in the record of a written services agreement between bcIMC and the Workers' Compensation Board.

with the pension boards under investment management agreements. As described below, only the first is relevant to this appeal.

12. The mechanism by which money and securities are placed with bcIMC is governed exclusively by statute. Authorized persons, as specified in s. 18(3) of the PSPPA, place money or securities with bcIMC for investment. Upon doing so, those persons are then allocated units of participation in Portfolios (the "**Units**"). Persons who have acquired Units do not have an interest or ownership in the Portfolios, but rather only in the Units they acquire. The value of the Units is based on the underlying net assets in the Portfolios, as determined by bcIMC's chief investment officer. Persons holding Units have a right to be paid money equal to the value of the Units each holds, but not to the assets in the Portfolios themselves.[13]

13. It is common ground that bcIMC is the legal owner of the assets in the Portfolios, and that the PSPPA and Regulation do not identify any beneficial owner.[14] The Regulation provides as follows with respect to the ownership of the Portfolios:

    (a) All the assets in the Portfolios are held in trust by bcIMC;

    (b) The investments of a Portfolio must be identified separately from <u>other property</u> of bcIMC; and

    (c) Ownership in any asset in a Portfolio must not be attributed to a "participating fund" (*i.e.*, a fund from which money or securities are used to purchase Units in a Portfolio).[15]

14. The details of the internal management structure of the pension boards, including their trust obligations specified in joint trust agreements and their relationship with pension

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[13] PSPPA, s. 18(3); Regulation, ss. 4(4), 5; Reasons for Judgment of the British Columbia Supreme Court, 2016 BCSC 1803 ("**BCSC Reasons**"), para. 8, Appellant's Record, Tab 1; BCCA Reasons, para. 12, Appellant's Record, Tab 2.
[14] See appellant's factum, paras. 22, 24, 73.
[15] Regulation, ss. 1, "participating fund", 4(1), 4(3), 4(4).

plan members (addressed at length in the appellant's factum), are not relevant to bcIMC's management of the assets in the Portfolios.[16]

15. Once a decision has been made to place monies or securities with bcIMC by a pension board or any other authorized person, that entity has no further interest in the property so placed; their sole interest is in the Units purchased.[17] No person that places money or securities with bcIMC has any involvement in bcIMC's investment decisions; that is the exclusive purview of bcIMC's chief investment officer.[18]

16. Similarly, and in response to para. 17 of the appellant's factum, where bcIMC has entered into a funds management agreement with a pension board or other authorized persons, the agreement relates only to the authorized person's interests as a Unit holder (or, in a function not at issue in this appeal, to bcIMC's management of segregated funds). Those agreements do not in any way relate to the ownership or management of the underlying assets in Portfolios.[19]

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[16] Contrary to what is stated at para. 16 of the appellant's factum, there is no evidence as to the extent to which the pension boards have appointed managers other than bcIMC to perform investment management services. Section 7.3 of the Public Sector Pension Plan Joint Trust Agreement, as cited at para. 16 of the appellant's factum, does not require the appointment of a single exclusive investment manager. See Affidavit No. 1 of Claudine Gagnon, Exhibit "A", Appellant's Record, Tab 20.

[17] Regulation, s. 4(4).

[18] Regulation, s. 4(2); PSPPA, ss. 20(5), 21. The chief investment officer continues a function previously performed within the Ministry of Finance. See *Financial Administration Act*, R.S.B.C. 1996, c. 138, as at April 1, 1999, s. 41; *Establishing Duties of the Chief Investment Officer With Respect to the Investment of Trust Funds*, O.I.C. 1251/94, (*Financial Administration Act*).

[19] The September 1, 2004 Funds Investment and Management Agreement between bcIMC and the Teachers' Pension Plan is the only example of a funds management agreement with any of the pension plans that was included in the record below. See: Affidavit No. 1 of Claudine Gagnon, Exhibit "F", Appellant's Record, Tab 20.

17. The references at paras. 17 and 23 of the appellant's factum to a right to charge fees under funds management agreements do not assist in the determination of this appeal. The appellant has acknowledged at para. 25 that when bcIMC recovers its management costs in respect of the Portfolios, it does so directly from the assets in the Portfolios. This method of cost recovery is expressly required by s. 24(1) of the PSPPA.

18. In this regard, bcIMC has continued the same method employed by the Minister, who did not collect or remit GST when recovering costs and expenses from the assets in the Portfolios.[20]

ii. Facts Respecting the ETA

19. The inapplicability of the ETA to bcIMC in respect of its management of the Portfolios will be addressed primarily in argument below. However, two matters raised at paras. 29 and 30 of the appellant's factum bear addressing here:

(a) It is not disputed that a supply of investment management services, in general, attracts liability for GST. However, bcIMC has not "supplied" investment management services to another person, *i.e.*, a recipient; it is the sole owner of the assets in the Portfolios. In this context, bcIMC's obligations to collect and remit tax are not engaged.

(b) bcIMC's status as a GST registrant is not an acknowledgement that a supply of investment management services to the Portfolios may attract GST. Registration for GST does not create or acknowledge liability for taxation in respect of any specific transaction. bcIMC has obligations under the ETA wholly unrelated to the Portfolios, *e.g.*, its obligation to remit GST for funds outside the Portfolios.[21]

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[20] BCSC Reasons, para. 13, Appellant's Record, Tab 1; See also: PSPPA, s. 18(4); *Financial Administration Act*, R.S.B.C. 1996, c. 138 (as at April 1, 1999), ss. 43(4), 44(5).
[21] BCCA Reasons, para. 31, Appellant's Record, Tab 2.

iii. Intergovernmental Agreements

20. Two intergovernmental agreements between Canada and British Columbia are relevant to the jurisdictional issue the appellant has raised and to the cross-appeal. These are the Reciprocal Taxation Agreement (the "**RTA**") and the Comprehensive Integrated Tax Coordination Agreement (the "**CITCA**"), collectively the ("**Agreements**").[22]

21. The RTA, stated to be effective as of July 1, 2010, provides for Canada and British Columbia to pay amounts in lieu of each other's sales taxes and other specific taxes on goods and services in certain circumstances.[23] The RTA states that British Columbia agrees to pay GST/HST "as if [the ETA] were applicable to it",[24] and purports to bind provincial Crown agents,[25] with provincial entities listed on the RTA's Schedule "A" entitled to a rebate of amounts paid.[26] Versions of the RTA have been in place since before bcIMC's formation in 1999.[27]

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[22] RTA, Amended Petition, Appendix "A"; CITCA, Amended Petition, Appendix "B", Appellant's Record, Tab 7.

[23] BCSC Reasons, paras. 15-16, Appellant's Record, Tab 1. While throughout the RTA, the parties use the term "tax" to describe taxes levied under federal or provincial law, it is clear from the context that the parties are agreeing to pay amounts in lieu of the given tax, as if the relevant taxation statute applied to them, without waiving their constitutional immunity.

[24] RTA, s. 6, Amended Petition, Appendix "A", Appellant's Record, Tab 7.

[25] RTA, s. 3, Amended Petition, Appendix "A", Appellant's Record, Tab 7.

[26] A separate issue, not raised in the Petition, is whether bcIMC, in respect of the Portfolios, is entitled to a rebate under the listing for "Public Sector Pension Trust Accounts" in Schedule "A" to the RTA. This issue would only arise if bcIMC were held to be bound by the RTA. This question was not placed before the Courts below, which did not rule on whether the Agreements ultimately impose any payment obligation on bcIMC. See: BCCA Reasons, para. 127, Appellant's Record, Tab 2. Upon its formation, bcIMC was listed on Schedule "A" to the RTA in place at that time. When the listing for bcIMC was removed effective April 1, 2003, bcIMC understood that the assets in the Portfolios would remain covered by the listing of the "Public Sector Pension Trust Accounts", which has remained on Schedule "A": BCSC Reasons, paras.

22. The CITCA, which is relevant to the period November 30, 2009 to April 1, 2013, was a step in the implementation of the HST in British Columbia.[28] It ceased to be effective when British Columbia withdrew from the HST regime and returned to a GST/Provincial Sales Tax model.[29] Like the RTA, the CITCA provides for a "pay and rebate" scheme whereby Canada and the Province agree to pay amounts in lieu of HST on the purchase of taxable goods and services, with provincial entities listed on Schedule "A" to the RTA entitled to a rebate.[30]

23. The execution of each Agreement was authorized by Order in Council stating that "approval is given to the Minister of Finance" to enter into the agreement.[31] The Agreements have not been implemented by legislation giving them the force of law in British Columbia.[32]

24. While the Agreements each purport to bind the agents of the Province to obligations thereunder, the only parties to the Agreements are Canada and British Columbia.[33]

25. Neither of the Agreements provides for a binding dispute resolution mechanism:

    (a) Section 9 of the RTA provides that the parties may refer a dispute to a board appointed by the parties to review the issue and prepare a report. The parties are at liberty to approve or reject the board's recommendations;[34] and

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23, Appellant's Record, Tab 1; Amended Petition, paras. 16, 17, Appellant's Record, Tab 7; Affidavit No. 2 of David Woodward, para. 19, Appellant's Record, Tab 19.

[27] BCSC Reasons, para. 23, Appellant's Record Tab 1; Affidavit No. 1 of Paul Flanagan, para. 28, Appellant's Record, Tab 22.

[28] BCSC Reasons, para. 19, Appellant's Record, Tab 1.

[29] BCCA Reasons, para. 21, Appellant's Record, Tab 2.

[30] BCSC Reasons, para. 22, Appellant's Record Tab 1.

[31] O.I.C. 485/10, (*Ministry of Intergovernmental Relations Act*) (RTA); O.I.C. 661/09, (*Ministry of Intergovernmental Relations Act*) (CITCA).

[32] While British Columbia enacted the *Consumption Tax Rebate and Transition Act*, S.B.C. 2010, c. 5, to implement the HST, the provisions of the CITCA itself were not implemented by way of legislation in British Columbia.

[33] RTA, s. 3, Amended Petition, Appendix "A"; CITCA, s. 51, Amended Petition, Appendix "B", Appellant's Record, Tab 7.

(b) Part XIV of the CITCA provides that "[b]est efforts will be exercised by federal and provincial officials to reach consensus in respect of issues arising in respect of matters governed by this Agreement." Unresolved disputes are to be referred to the relevant federal and provincial ministers, who may, in turn, refer the issue to a third party "for consideration and advice."[35]

26. The Agreements reflect the constitutional reality and the long-standing joint understanding between Canada and British Columbia that they are immune from payment of each other's taxes.[36] Each of the Agreements expressly provides that, by entering into the agreement, the parties are not deemed to have surrendered, abandoned or impaired any of their respective constitutional powers, rights, privileges or authorities.[37]

iv. Dispute Respecting bcIMC's Status

27. The Petition in the British Columbia Supreme Court was filed on December 20, 2013, following a decade-long dispute among Canada, the Province, and bcIMC as to whether bcIMC is required to pay GST/HST in respect of its management of the Portfolios.[38]

28. In particular, the Province and Canada had gone through multiple rounds of submissions, debates, negotiations and consultations regarding:

(a) bcIMC's immunity with respect to the assets it holds in the Portfolios;

(b) The applicability of the RTA and CITCA to bcIMC in that capacity and otherwise; and

(c) The continued listing of bcIMC and the term "Public Sector Pension Trust Accounts" in Schedule "A" to the RTA.[39]

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[34] BCCA Reasons, para. 29, Appellant's Record, Tab 2; RTA, s. 9, Amended Petition, Appendix "A", Appellant's Record, Tab 7.
[35] BCCA Reasons, para. 30, Appellant's Record, Tab 2; CITCA, Part XIV, Amended Petition, Appendix "B", Appellant's Record, Tab 7.
[36] BCSC Reasons, paras. 16, 156, Appellant's Record, Tab 1.
[37] RTA, s. 4, Amended Petition, Appendix "A"; CITCA, s. 65, Amended Petition, Appendix "B", Appellant's Record, Tab 7.
[38] BCSC Reasons, paras. 9, Appellant's Record, Tab 1.

29. Canada has maintained the position throughout that:

(a) It does not acknowledge bcIMC's status as a Crown agent entitled to immunity from taxation under the ETA with respect to assets it holds in the Portfolios;

(b) To the extent bcIMC was *prima facie* entitled to Crown immunity from federal taxation, such immunity was eliminated by application of the RTA and CITCA; and

(c) It intends to tax bcIMC in relation to costs it recovers from the assets held in the Portfolios.[40]

30. The application of the RTA and CITCA to bcIMC had been a central part of the above communications – *i.e.*, as Canada's alternative basis for asserting that bcIMC is liable for taxation.[41]

v. Procedural History

Petition filed and Pre-Hearing Steps

31. On September 5, 2013, the Minister of National Revenue (the "**MNR**") opened a "supplier compliance" audit file on bcIMC for the reporting periods April 1, 2010 to March 31, 2013 (the "**Audit**"). On December 20, 2013, prior to any field work beginning on the Audit, bcIMC filed its Petition in the British Columbia Supreme Court.[42]

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[39] BCSC Reasons, para. 24, Appellant's Record Tab 1; Amended Petition, para. 18, Appellant's Record, Tab 7; Affidavit No. 2 of David Woodward, paras. 21-45, Appellant's Record, Tab 19.

[40] BCSC Reasons, para. 25, Appellant's Record, Tab 1. The proposed taxation of bcIMC's statutorily recovered costs is based on the Canada Revenue Agency equating the value of the services it alleges were supplied to the Portfolios to those costs. See: Affidavit No. 2 of David Woodward, paras. 20, 25, Appellant's Record, Tab 19.

[41] BCSC Reasons, paras. 24, 25, Appellant's Record, Tab 1; Affidavit No. 2 of David Woodward, paras. 23-45, Appellant's Record, Tab 19. See also: Affidavit No. 1 of Claudine Gagnon, paras. 17-20, Appellant's Record, Tab. 20; Affidavit No. 3 of David Woodward, para. 9, Exhibit "A", Appellant's Record, Tab 24.

[42] BCCA Reasons, para. 32, Appellant's Record, Tab 2; Amended Petition, Appellant's Record, Tab 7.

32. In the Petition, bcIMC sought declarations that:

(a) In respect of the assets it holds in the Portfolios, it is immune from taxation by Canada under the ETA; and

(b) The RTA and CITCA are not binding upon it, and are ineffective to alter or derogate from its immunity from federal taxation.[43]

33. On May 9, 2014, Canada filed a Jurisdictional Response and Notice of Application seeking to strike the Petition on jurisdictional grounds and on the ground that the Petition disclosed no reasonable cause of action. British Columbia supported Canada's application. In a judgment delivered June 20, 2014, the BCSC dismissed the application.[44]

34. Canada appealed the order dismissing its application to strike.[45] In a judgment delivered August 26, 2015, the British Columbia Court of Appeal (the "**BCCA**") unanimously dismissed Canada's appeal. The BCCA held that the jurisdiction of the BCSC had not been ousted and that the pleadings did not disclose any basis on which the court should decline jurisdiction.[46]

35. The MNR issued notices of assessment on November 30, 2015—not November 30, 2013 as stated in the appellant's factum. This step was taken nearly two years after the proceedings were commenced in the BCSC.[47]

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[43] Amended Petition, Part 1, Appellant's Record, Tab 7.

[44] *British Columbia Investment Management Corporation v. Canada (Attorney General)*, 2014 BCSC 1296.

[45] Canada and British Columbia were unsuccessful in obtaining a stay of the Petition proceedings pending the hearing of the appeal: *British Columbia Investment Management Corporation v. Canada (Attorney General)*, 2014 BCSC 1744.

[46] *British Columbia Investment Management Corporation v. Canada (Attorney General)*, 2015 BCCA 373. See: paras. 37, 40.

[47] BCSC Reasons, para. 35, Appellant's Record, Tab 1; Affidavit No. 1 of Virginia Kwok, para. 5, Exhibits "A", "B", "C", Appellant's Record, Tab 23.

36. The basis for the assessment had been set out in a proposal letter issued one month prior, on October 30, 2015. In that letter, the Canada Revenue Agency (the "**CRA**") had stated that it would be finalizing the Audit "[n]ow that the decision by the B.C. Appeal Court has been rendered", and proposed to assess bcIMC in the total amount of $40,498,754.94 in relation to the Portfolios for the Audit period. The working papers attached to the proposal letter (*i.e.*, the auditor's papers setting out the basis for the intended assessment) relied on the Agreements as a part of the basis for assessing bcIMC.[48]

37. On February 16, 2016, the MNR issued revised working papers, which did not include reference to the Agreements. It is those revised working papers that are referenced at paras. 38 to 40 of the appellant's factum. They include the MNR's conclusion that the "clients/unit holders are not the recipients" of bcIMC's investment management services.[49] Patently, the MNR and Canada have taken inconsistent positions in these proceedings.

BCSC Decision on the Merits

38. The Petition proceeded to a hearing on the merits in April and June 2016. Reasons for Judgment were released September 30, 2016.

39. Before addressing the merits of the immunity claim and claim in relation to the Agreements, the chambers judge first addressed jurisdiction as Canada and British Columbia maintained that the BCSC lacked jurisdiction to hear the Petition. The chambers judge concluded that the BCSC and the Tax Court had concurrent jurisdiction over the immunity claim (which is now conceded by the government parties), and that the claim in relation to the Agreements is exclusively within the jurisdiction of the BCSC. The Court found that in light of the nature of the claims and the timing of the commencement of the proceeding, bcIMC was not using the Petition to indirectly appeal an assessment (*i.e.*, the immunity claim, properly characterized, is not about a challenge

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[48] BCSC Reasons, para. 35, Appellant's Record, Tab 1; Affidavit No. 3 of David Woodward, para. 9, Exhibit "A", Appellant's Record, Tab 24.
[49] Affidavit No. 1 of Virginia Kwok, Exhibit "E", Appellant's Record, Tab 23.

to a GST assessment). Thus, despite Canada's "manoeuvres", the Court had and should exercise jurisdiction to decide the interlinked issues raised in the Petition.[50]

40. With respect to the immunity claim, the chambers judge found that the assets in the Portfolios belong to bcIMC; the PSPPA's statutory trust does not separate bcIMC from those assets, *i.e.*, the statutory construct resulted in bcIMC being the only owner of the assets. To recognize some other ownership interest would "change the trust into something it is not". Canada accordingly could not tax the investment management services, whether by application of the "deemed trust" provisions of the ETA or otherwise. To do so would defeat the Province's constitutional immunity from taxation.[51]

41. The chambers judge accordingly granted the declaration sought in respect of the immunity claim, finding bcIMC immune from taxation in respect of the assets it holds in the Portfolios.[52]

42. With respect to bcIMC's claim regarding the Agreements, the chambers judge appears to have assumed that the Agreements were binding between the parties to them (*i.e.*, Canada and British Columbia), were not mere political agreements, and that they operated to make British Columbia "liable" for federal "taxation". No analysis was set out in that regard. The chambers judge found that bcIMC was bound by the Agreements by virtue of s. 16(6) of the PSPPA, which provides that bcIMC "is not liable for taxation except as the government is liable for taxation". Relying on that provision, the Court concluded that because the Province was liable for taxation under the Agreements, so too was bcIMC.[53]

Appeal Decision

43. Canada appealed the declaration granting bcIMC's immunity claim on jurisdictional grounds and on the substantive merits; bcIMC cross-appealed the declaration respecting

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[50] BCSC Reasons, paras. 90, 93-98, Appellant's Record, Tab 1.
[51] BCSC Reasons, paras. 128-133, Appellant's Record, Tab 1.
[52] BCSC Reasons, para. 137, Appellant's Record, Tab 1.
[53] BCSC Reasons, paras. 166-167, Appellant's Record, Tab 1. See: PSPPA, s. 16(6).

the Agreements. British Columbia changed its position with respect to jurisdiction at this second appeal: it sought to have the appeal decided on the merits, now emphasizing that the BCSC was a Court of general and inherent jurisdiction whose power to review the constitutional issues in this case could not be removed by jurisdiction vested in the Tax Court.[54]

44. In unanimous Reasons for Judgment released February 7, 2018, the BCCA dismissed both the appeal and the cross-appeal.

45. With respect to jurisdiction, Canada, by this point conceding the BCSC's jurisdiction on the immunity issue, argued that the chambers judge failed to give sufficient weight to "the primacy of the challenge to the assessment in this case" and ought to have declined jurisdiction in favour of the Tax Court.[55] The BCCA held that the chambers judge was entitled to deference in his characterization of the dispute, and upheld his exercise of discretion to hear the Petition.[56]

46. In addressing the immunity claim, the BCCA framed the issue to be considered as follows:

> [104] Similarly, in this case, the challenge to immunity does not rest upon a challenge to the status of bcIMC but, rather, upon the question whether bcIMC, and its principal, the Crown, can be said to be the recipient of the services provided by bcIMC in managing the pooled funds, or whether private interests received the services.

47. The BCCA held that in the specific context of the PSPPA, the statutory trust did not identify any beneficial interest in the funds in the Portfolios. Only by application of the "deemed trust" provisions in the ETA could a taxable transaction be seen to arise from bcIMC's management of the Portfolios. As bcIMC was immune from taxation by

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[54] BCCA Reasons, paras. 49, 50, Appellant's Record, Tab 2.
[55] BCCA Reasons, paras. 52, 60, Appellant's Record, Tab 2.
[56] BCCA Reasons, paras. 67-68, Appellant's Record, Tab 2.

Canada under s. 125 of the *Constitution Act, 1867*, no interpretation of the ETA could result in tax applying to bcIMC's management of the Portfolios.[57]

48. With respect to the Agreements, the BCCA affirmed the chambers judge's decision that the Agreements were binding on bcIMC. The BCCA found that intergovernmental agreements are generally not binding due to the constitutional principle of parliamentary sovereignty and the principle that the Sovereign cannot contract with herself. However, the BCCA concluded that an exception arose where the "agreement bears the hallmarks of a legally binding contract".[58] Adopting an approach of situating intergovernmental agreements along a "spectrum", and referring to a decision of the Australian High Court, the BCCA found that the Agreements bore the necessary hallmarks, were intended to create legally binding obligations, and were therefore enforceable between the parties to them.[59] The BCCA also affirmed the chambers judge's decision that s. 16(6) of the PSPPA was effective to bind bcIMC to the Agreements.[60]

PART II – ISSUES

49. The first issue as framed by Canada improperly presupposes a "taxable supply" of services by bcIMC to the Portfolios. The live issue is rather whether provisions of the ETA that separate a trust from a trustee (and treat them as distinct legal persons) apply to bcIMC and the Portfolio structure under the Regulation. Absent such a separation, there is no "supply" or transaction to which the ETA could apply.[61] bcIMC's position is that: (a) only statutory provisions that are expressly stated to apply to the Crown can affect its immunity from federal statute law; and (b) the statutory provisions Canada relies upon <u>do not</u> expressly apply to the provincial Crown, with the result that there is no taxable supply of services at issue and no taxable event to which the ETA can apply.

50. The second issue raised on appeal is whether bcIMC is entitled to constitutional immunity from taxation under s. 125 of the *Constitution Act, 1867*, in relation to the

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[57] BCCA Reasons, paras. 109-115, Appellant's Record, Tab 2.
[58] BCCA Reasons, paras. 129, 142, Appellant's Record, Tab 2.
[59] BCCA Reasons, paras. 142, 151, 159, Appellant's Record, Tab 2.
[60] BCCA Reasons, paras. 152-156, 159, Appellant's Record, Tab 2.
[61] BCCA Reasons, para. 110, Appellant's Record, Tab 2.

assets it holds in the Portfolios. bcIMC submits that the Courts below correctly found that bcIMC, as the legal owner of the assets and an express agent of the Crown, enjoys immunity from taxation by Canada in relation to the Portfolios when acting within its legislative mandate.

51. The third issue is whether the BCSC erred in exercising its discretion to hear the Petition. bcIMC submits that the decision of that Court to exercise jurisdiction, which was upheld on appeal, is entitled to deference and in any event was justified on the facts and in law.

PART III – ARGUMENT

52. As Canada posits, there are two inquiries to be made as to bcIMC's immunity from federal taxation in relation to the Portfolios: the applicability of bcIMC's immunity under s. 125 of the *Constitution Act, 1867* and its immunity from statute. Canada asserts that the BCCA confused the two. Even if that were the case, that observation does not assist Canada—to prevail bcIMC only needs to rely on one of the two alternative grounds of immunity from the application of the ETA.

53. Even if the provisions of the ETA separating a trustee from a trust applied to bcIMC, it would still be entitled to rely on its constitutional immunity from federal taxation under s. 125 because, as the courts below found, the owner of the property in the Portfolios is bcIMC. The obligation imposed on a supplier to collect and remit cannot, by way of a statutory device, negate the provincial Crown's constitutional immunity in relation to its property.

54. Because the BCCA focussed on bcIMC's constitutional immunity, this factum will address that issue first and will then address why bcIMC enjoys statutory immunity from the provisions of the ETA applying to trusts.

A. Constitutional Immunity

55. It is uncontroversial that:

(a) The immunity conferred by s. 125 must override the express powers of taxation contained in ss. 91(3) and 92(2) of the *Constitution Act, 1867*;

(b) Fiscal legislation enacted pursuant to s. 91(3) is rendered inapplicable to the property of the provinces by s. 125; and

(c) Section 125 applies not just to taxes levied on Crown property, but also to taxes levied on persons or transactions in relation to Crown property.[62]

56. Canada's thesis in relation to the lower Courts' rulings on the application of s. 125 is that the Courts improperly extended the Crown's constitutional immunity from taxation to property held in trust by a Crown agent for the benefit of private parties.

57. Canada argues that the assets in the Portfolios can only "belong" to bcIMC in the sense that term is used in s. 125 if they belong to the Province "in a substantive sense", suggesting that the Court can ignore the actual ownership of the assets and imply an ownership interest in a third party so as to satisfy what Canada describes as Parliament's objectives under the ETA.

58. Canada's position is flawed in several ways:

(a) Its characterization of the statutory regime under which bcIMC holds the assets in the Portfolios is inaccurate;

(b) The jurisprudence does not support its approach to determining whether assets "belong" to the Province; and

(c) A s. 125 analysis cannot be driven by the MNR's policy objectives as set out in internal tax publications or otherwise.[63]

59. The notion of there being private parties with a beneficial interest in the assets held by bcIMC in the Portfolios pervades Canada's submissions: this notion is incorrect.

60. In the cases on which Canada relies to support this submission, there was indeed a private party who held a beneficial interest in the property in question.[64] Those cases were

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[62] See *Re Exported Natural Gas Tax*, [1982] 1 S.C.R. 1004 at 1078-1079, [1982] S.C.J. No. 52.
[63] See, *e.g.*, appellant's factum, para. 66, footnote 41.
[64] Notably, neither of these cases dealt with personal property.

properly distinguished by the BCCA. In *Calgary and Edmonton Land Company v. Alberta (Attorney General)*,[65] the entire beneficial interest in the subject real property had passed to the Company, with the Crown remaining as bare trustee only. The provincial taxing statute, as framed, was comprehensive enough to cover that beneficial interest. In *Smith v. Vermilion Hills (Rural Municipality)*,[66] a privately held leasehold interest was found liable to municipal taxation on the basis that it was distinct from the underlying federal ownership of the property and because the broad definition of "owner" in the taxing statute captured the interest of a lessee.

61. Where there is no distinct legal or equitable interest in property held by a non-Crown party that could be subject to taxation (such as a leasehold),[67] the Crown's legal ownership of the property is definitive: the property will be exempt from taxation pursuant to s. 125 regardless of how the taxing statute is framed.[68]

62. There is no such private party with beneficial ownership of the assets in the case at bar. The fact that the assets bcIMC holds in the Portfolios are invested to satisfy contractual governmental obligations under defined benefit pension plans in favour of government employees (among other purposes) does not result in government employees or the trustees of the pension plans having a beneficial interest <u>in the property</u> held in the Portfolios. In short, there is no basis in fact or law for a finding that the pension plan members hold a "*de facto*" beneficial interest in any assets in the Portfolios. The Regulation makes it clear that Unit holders only have a right to be paid the value of any Units realized.[69]

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[65] (1911), 45 S.C.R. 170, 1911 CanLII 39.
[66] (1916), 30 D.L.R. 83, [1917] 1 W.W.R. 108 (J.C.P.C.).
[67] Even where there is a distinct interest in the property, which can be the case where the property in question is land, whether the non-Crown interest holder must pay tax will obviously depend on how the taxing statute is framed.
[68] See *Bennett & White (Calgary) Ltd. v. Sugar City (Municipality)*, [1951] A.C. 786, [1951] 4 D.L.R. 129 (J.C.P.C.); *Kamsack (Town) v. Canadian Northern Town Properties Co.*, [1924] S.C.R. 80.
[69] Regulation, s. 6(3).

63. Where the Crown holds property as a trustee, the entire interest held by the Crown is exempt from taxation under s. 125.[70]

64. Canada suggests that the result of the BCCA ruling is a triumph of form over substance and ignores the statutory framework. To the contrary, the BCCA ruling acknowledges and applies the statutory framework imposed by the law of British Columbia. In any event, the prior statement of this Court about the fundamental constitutional protection framed by s. 125 not depending on subtle nuances of form cited by Canada was made in the context of a generous reading of that protection and its scope.[71] To cite that statement as the basis for narrowing the scope of s. 125 (as Canada does) is to turn the jurisprudence on its head.

65. Canada's assertion that bcIMC cannot be both legal and beneficial owner of the assets is ill-founded. While that principle applies in the context of a common law trust, a deemed statutory trust is not governed by common law requirements.[72] It is open to the Legislature to characterize a statutory trust in whatever way it chooses without regard to constraints imposed by ordinary principles of trust law.[73]

66. Canada is effectively arguing that the regime under the PSPPA and the Regulation is *ultra vires* the Province, despite the fact that it has never directly challenged the legislation's *vires* in this proceeding, but rather concedes its validity. Canada should not

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[70] *Quirt v. R.* (1891), 19 S.C.R. 510, [1891] S.C.J. No. 42.

[71] Canada cites *Re Exported Natural Gas Tax*, [1982] 1 S.C.R. 1004, where that comment was made in the very different context of extending the scope of s. 125, not limiting its scope. See appellant's factum, para. 73.

[72] And even with a common law trust, a beneficiary who has no actual entitlement to the trust property under the terms of the trust (such as under a *Henson* trust), and only a mere hope of monies being distributed to her at some point in the future, does not have an "asset": see *S.A. v. Metro Vancouver Housing Corporation*, 2019 SCC 4.

[73] See *First Vancouver Finance v. Canada (Minister of National Revenue)*, 2002 SCC 49 at para. 34. See also *Buschau v. Rogers Communications Inc*., 2006 SCC 28, where the common law rule in *Saunders v. Vautier* was found not to apply to a pension trust with a statutory overlay.

be permitted to indirectly attack the provincial statutory construct creating and governing bcIMC and the Portfolios while conceding the constitutionality of that construct. To accept Canada's position would be to undercut the provincial legislative prerogative each time a province chose to create a statutory trust to carry out a government mandate.

67. Canada conflates the pension boards under the legislative scheme with bcIMC. In paras. 74 and 75 of the appellant's factum, Canada focusses on the rights of members of plans as against those pension boards vis-à-vis their pension benefits. Neither those relationships nor the joint trust agreements that govern those relationships is at issue here.[74]

68. The underlying purpose of s. 125 (granting each level of government sufficient operational space to govern without interference) supports the application of constitutional immunity where the provincial Crown has delegated former ministerial responsibilities to a Crown agent. As set out at para. 7 above, bcIMC is carrying out a function previously carried out by the provincial Minister of Finance.[75]

69. It was within the purview of the British Columbia government to structure bcIMC and the Portfolios as it did, including the express designation of bcIMC as a Crown agent and the stipulation as to how the assets in the Portfolios are held. Section 125 serves to protect British Columbia's ability to legislate without interference from Canada.

70. Canada concedes that the protection of s. 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.[76] However, it seeks to narrow that protection by imposing a requirement that the property be used for "government purposes" (or be used in the discharge of a government function) and be subject to appropriation by the Crown for those purposes.

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[74] The decision in *Ehrcke v. Public Service Pension Board of Trustees*, 2004 BCSC 757, cited by Canada at footnote 53 stands only for the proposition that decisions of the pension boards of trustees are not amenable to judicial review.

[75] See also BCSC Reasons, paras. 10-12, Appellant's Record, Tab 1.

[76] As confirmed in *Westbank First Nation v. British Columbia Hydro and Power Authority*, [1999] 3 S.C.R. 134.

71. Canada does not cite any Canadian jurisprudence supporting the proposition that bcIMC or the Province must have the ability to appropriate from the Portfolio assets for them to "belong" to the Province.

72. The single English case Canada cites at footnote 49 obviously deals with a very different regime in a unitary state. But in any event, that case does not support Canada's thesis: the majority of the House of Lords concluded that any Crown interest in the fund held by the Custodian in that case, regardless of how small, supported the right to claim immunity from taxation. That immunity, they concluded, was not defeated by demonstrating that the funds could be paid out to someone other than the Crown or that the income would not all be applied to the public revenue.[77] Even if one ignored bcIMC's ownership of the assets in the Portfolios, it is uncontroverted that government monies and other public monies, including from the consolidated revenue fund, are placed with bcIMC for investment in the Portfolios.[78]

73. The constitutional rights of the Province and bcIMC under s. 125 cannot be defeated or undercut by policy objectives the federal government has enunciated as underpinning the ETA taxation regime. Both levels of government may have valid policy objectives, including perceived fairness or tax neutrality, in seeking to tax the property of the other level of government; however, such objectives cannot override the Constitution.

B. Immunity from Statute

74. bcIMC's immunity from statute presents an independent, dispositive basis for immunity from federal taxation that does not require resort to s. 125 of the *Constitution Act, 1867*.

75. As codified in s. 17 of the federal *Interpretation Act*, subject to narrow exceptions, no enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or

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[77] See *Bank voor Handel en Scheepvaart N.V. v. Administrator of Hungarian Property,* [1954] A.C. 584 (H.L.).
[78] See *supra* note 12.

prerogatives, unless the immunity is clearly negated by express language.[79] A federal enactment, including a provision of the ETA, is only binding on the provincial Crown when the federal Parliament has manifested its intention that it bind the provincial Crown.[80] This principle has equal application to definition provisions in a federal statute like the ETA.[81]

76. Whereas s. 122(a) of the ETA makes Part IX, "Goods and Services Tax", binding on Her Majesty in right of Canada, s. 122(b) provides that Part IX is only binding on Her Majesty in right of the province in respect of obligations as a supplier to collect and remit tax in respect of taxable supplies made by Her Majesty in right of the province. The difference between the two provisions must have been intentional on the part of Parliament.

77. bcIMC collects and remits GST when it provides good and services outside the context of the Portfolios (for example, in managing the segregated funds and in providing taxable benefits to employees).[82] It does not do so, and is not statutorily required to do so, when it manages and invests the assets it holds in the Portfolios.

78. In managing and investing the assets in the Portfolios, bcIMC is acting under its statutory mandate as a Crown agent, pursuant to which it is stated to hold the assets in trust.[83] When acting within the purposes for which it was made a Crown agent, such an entity enjoys the same tax immunity as the Province.[84]

79. An examination of the statutory regime makes it clear that it does not create a common law trust, but rather a *sui generis* statutory construct, under which there is no beneficial

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[79] See *Canada (Attorney General) v. Thouin*, 2017 SCC 46 at paras. 20-21. This principle applies unless it can be inferred that the statute was intended to apply to the Crown by necessary implication, *i.e.*, the purpose of the Act would be wholly frustrated if the Crown were not bound.

[80] See *Brant v. R.*, [1998] G.S.T.C. 101 (F.C.T.D.) at para. 39; *Insurance Corporation of British Columbia v. R.*, 2002 FCA 104.

[81] See *R. v. Eldorado Nuclear Ltd.*, [1983] 2 S.C.R. 551, [1983] S.C.J. No. 87.

[82] See Affidavit No. 3 of David Woodward, Exhibit "A", Appellant's Record, Tab 24.

[83] Per s. 4(1) of the Regulation.

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

owner of the assets in the Portfolios. Canada's statement that bcIMC cannot be both legal and beneficial owner of trust property at the same time presupposes that the Portfolios are common law trusts. In fact, they are statutory trusts, in relation to which the common law limitations do not apply.[85]

80. In any event, there could be no certainty of trust *res* giving rise to any beneficial interest given that "[o]wnership in any asset in a portfolio must not be attributed to a participating fund."[86] While the description of bcIMC as a trustee may impose fiduciary duties on it in the management of the Portfolios, use of that terminology does not imply that there is a beneficial owner distinct from the trustee.

81. Canada acknowledged in the Court of Appeal that absent application of the ETA's "deemed trust" provisions, there is no separation of bcIMC from the Portfolios and no transaction that could attract taxation.[87] Canada seeks to create a beneficial owner of the assets (a recipient) to whom bcIMC purportedly supplies services by relying on s. 267.1(5)(a) of the ETA. That provision, when read in the express context of the definition of "person" in s. 123 of the ETA, has the effect of creating a legal fiction, wherein a trust is treated as a separate person from its trustee. Section 267.1(5)(a) is not expressly stated to apply to Her Majesty in Right of the Province nor is s. 123. The term "person" in a statute is not to be read to include the Crown unless that intention is made express.[88]

82. Section 122 of the ETA is the <u>only</u> relevant provision in that statute's Part IX that expressly references Her Majesty as being bound as contemplated by s. 17 of the *Interpretation Act.*

83. Canada argues at paras. 60-63 of the appellant's factum that s. 122 of the ETA implicitly overrides s. 17 of the *Interpretation Act* to make ss. 123 and 267.1(5) apply to bcIMC and

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[85] See *First Vancouver Finance v. Canada (Minister of National Revenue), supra* note 73.
[86] Regulation, s. 4(4).
[87] BCCA Reasons, para. 110, Appellant's Record, Tab 2.
[88] See *R. v. Eldorado Nuclear Ltd*., *supra* note 81; *Brant v. R.*, *supra* note 80.

the Portfolios without express language to that effect, relying on what Canada says is the policy underlying the legislative scheme.

84. If there are policy imperatives that Canada wishes to fulfill by making provincial Crown trusts subject to the s. 122 collect and remit obligation, it must legislate to that effect; it is not entitled to ask this Court to read in language having that effect.

85. Where Crown immunity would effect a total frustration of the purpose of a statute, the Crown may be subject to the statute (and Crown immunity lifted) by necessary implication.[89] But this is clearly not such a case: Canada, quite properly, does not take the position that the purpose of the ETA would be "wholly frustrated" if it did not apply to bcIMC in relation to the Portfolios.

86. Crown immunity from statute (including from a statutory tax) has been held to apply to Crown agents who are bcIMC's peers in other provinces.[90] Crown immunity from statute is not affected or diluted where one of the mandates the Crown agent is carrying out is that of a trustee.[91]

87. At para. 60 of the appellant's factum, Canada says it is the Province that brought bcIMC, in relation to assets held in the Portfolios, within the ambit of s. 122(b) by having "cast itself as a service provider through its agent". It is unclear what Canada means by this. The Province previously carried out the function of managing and investing the assets in the Portfolios and was exempt from federal taxation when doing so. The insertion of bcIMC as its express agent to carry out this same governmental function does not change the landscape—bcIMC is entitled to the same statutory and constitutional immunity. The Province's decision to confer the privilege and immunities of the Crown on a corporation

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[89] See *Canada (Attorney General) v. Thouin*, *supra* note 79 at para. 21.
[90] See *Omers Realty Corporation v. Minister of Finance*, 2011 ONSC 6585, aff'd 2012 ONCA 400; *Sparling v. Québec (Caisse de dépôt & placement)*, [1988] 2 S.C.R. 1015, [1988] S.C.J. No. 95; *Re Caisse de dépôt & placement du Québec and Ontario (Securities Commission)* (1983), 42 O.R. (2d) 561, 149 D.L.R. (3d) 456 (Div. Ct.).
[91] See *Quirt v. R.*, *supra* note 70; *Nova Scotia Farm Loan Board v. Annapolis (County)*, 2004 NSSC 194.

acting as its agent is a legislative policy decision:[92] Canada has no authority or right to change or second guess that decision.

88. Canada has not provided examples of Crown agents providing goods and services that are also provided by private sector suppliers thereby giving rise to the spectre of "an unwarranted competitive advantage".[93] The reality is that the Portfolio construct that existed within the British Columbia government has been traversed to bcIMC; at issue in this litigation is that construct and that construct alone.

C. Jurisdiction

89. The jurisdictional issue, first raised by Canada in a summary judgment motion before the BCSC, has been adjudicated on four times.

90. While it has abandoned its prior position that the British Columbia courts had no jurisdiction to adjudicate on the immunity issue raised by the Petition, Canada still argues that the BCSC ought to have declined jurisdiction on a discretionary basis. The BCSC's exercise of that discretion, and the BCCA's affirmation of that exercise of discretion, are rulings that are entitled to deference.[94]

91. Canada declined to appeal the taking of jurisdiction by the BCSC over the Agreements issue and instead is only appealing the chambers judge's exercise of discretion in relation to the immunity issue. However, assessing the exercise of discretion by the chambers judge necessarily entails consideration of the pleadings and claims made as a whole.

92. In its submissions on characterization of bcIMC's claims, Canada seeks to minimize the importance of the Agreements issue when it patently factored into the chamber judge's decision to take jurisdiction. As set out above, this issue was of critical importance to bcIMC; it needed to be dealt with at the same time as the immunity issues and was better dealt with before a court in which British Columbia could participate as a full party.

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[92] Peter W. Hogg, Patrick J. Monahan & Wade K. Wright, *Liability of the Crown*, 4th ed. (Toronto: Carswell, 2011) at 468.
[93] Appellant's factum, para. 65.
[94] BCCA Reasons, para. 67, Appellant's Record, Tab 2.

Further, Canada's position disregards the factual findings that the immunity and the Agreements issues were interlinked in a "ripe" claim that was in need of resolution.[95]

93. Canada seeks to make something of the fact that bcIMC is a registrant that collects GST in relation to services supplied to third parties. This fact is not determinative of anything in this litigation. bcIMC has never taken issue with any GST audit of the services it supplies to third parties (*i.e.*, not the Portfolios).

94. Canada's position with respect to jurisdiction is unsupportable on the law and the facts because:

(a) At the time the Petition was filed, bcIMC's rights and interests were in jeopardy: these issues were found by the chambers judge to be important and real – neither hypothetical nor academic.[96] Given its role as a Crown agent, timely adjudication of the issues was of paramount importance. Resolving the immunity issue without also resolving the issue of the applicability of the Agreements would have resulted in ongoing jeopardy and uncertainty.

(b) The only court with jurisdiction over the issues raised by the appeal at the time the Petition was filed was the BCSC. The Petition was filed on December 20, 2013. Notices of Assessment were not issued until nearly two years later, on November 30, 2015.[97] Jurisdiction is not vested in the Tax Court under the ETA unless and until there is an assessment (or reassessment) and a notice of objection has been responded to by the Minister (or 180 days have elapsed).[98]

(c) While the Tax Court can take jurisdiction over constitutional issues as ancillary to a matter over which it has statutory jurisdiction, it can only do so provided the

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[95] BCSC Reasons, para. 159, Appellant's Record, Tab 1.
[96] BCSC Reasons, paras. 159, 170-171, Appellant's Record, Tab 1.
[97] The reason the issues raised by the Petition were not dealt with on the merits prior to an assessment being issued by CRA is because Canada brought a motion to strike and appealed from the ruling on that motion.
[98] ETA, ss. 302, 306.

issues have not already been adjudicated upon by a court of competent jurisdiction.[99]

(d) The Tax Court's jurisdiction is not equivalent to that of a provincial superior court of inherent jurisdiction. The Tax Court cannot grant declaratory relief[100] and could not grant relief against the Province, a necessary party on the Agreements issue, but not a proper party to a GST assessment appeal. A proceeding in Tax Court where the Agreements issue was argued ancillary to an appeal of an assessment would be a substantively different proceeding than the hearing of the Petition in the BCSC, in terms of parties, time frame, process and relief available.

(e) The BCSC is a superior court of inherent jurisdiction.[101] Its power to determine the constitutional validity and applicability of legislation is fundamental and cannot be dislodged by federal statute.[102] It was not only logical for that Court to take jurisdiction over this dispute, which involved the immunity of a Crown agent and necessitated the interpretation of British Columbia legislation and an intergovernmental agreement to which the Provincial Crown is a party, it was necessary given that the Tax Court had no jurisdiction at the time the proceeding was commenced.

(f) Having the Petition heard in the BCSC supported judicial economy by the efficient use of judicial resources.[103] The approach Canada advocates for would have resulted in a protracted, two-stage process.

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[99] *Lau v. Canada*, 2014 BCSC 2384 at para. 63; *Re Petromines Acquisitions Ltd.*, 2001 ABQB 568 at para. 11; *Dale v. R.*, [1997] 3 F.C. 235 (C.A.).
[100] *Whitford v. The Queen*, 2008 TCC 359 at paras. 13-15; *Pintendre Autos Inc.*, 2003 TCC 818 at paras. 32-33; *Campbell v. Canada*, 2005 FCA 49 at paras. 12-13, leave to appeal ref'd [2005] S.C.C.A. No. 162.
[101] *Canada (Attorney General) v. Telezone Inc.*, 2010 SCC 62 at paras. 42-43; *MacMillan Bloedel v. Simpson*, [1995] 4 S.C.R. 725 at para. 38.
[102] *Strickland v. Canada (Attorney-General*), 2015 SCC 37 at para. 12; *Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 S.C.R. 307, [1982] S.C.J. No. 70; *Canada Labour Relations Board v. Paul L'Anglais Inc.*, [1983] 1 S.C.R. 147, [1983] S.C.J. No. 12.
[103] *Barreau du Québec c. Québec (Sous-ministre du Revenu)*, 2008 QCCS 1706; *Canadian Pacific Railway Company v. R.*, 2012 FC 1030, aff'd 2013 FC 161.

95. bcIMC was not seeking to circumvent the Tax Court process but rather to have the issues adjudicated on together (not serially), in a timely fashion, in the one Court that had jurisdiction at the relevant time. There is no doubt that if Canada is not able to pursue bcIMC for the payment of GST under the ETA, it will pursue a payment in lieu of tax under the RTA. That jeopardy is and was not "contingent" as described by Canada, but a present reality at all relevant times.[104]

96. There is nothing improper in a party seeking declaratory relief as to tax-exempt status (*i.e.*, adjudication on the threshold question of application of a taxing statute to a person).[105] A proceeding of this nature is particularly appropriate where the petitioner claims a particular status, in this case as an agent of the Crown.[106]

97. Canada concedes that the Tax Court's jurisdiction hinges on the existence of an assessment,[107] but suggests that because of this, a judicial remedy is not ***necessary*** until after an assessment is issued and that a taxpayer is not entitled to a predetermination of their liability. In short, Canada is negating the chambers judge's discretion entirely on the basis that the Tax Court may have eventually gained jurisdiction over a portion of the dispute.

98. The cases cited by Canada do not support the proposition that declining jurisdiction was the only appropriate result on these facts. In particular:

    (a) *Domtar, JP Morgan, Horseman* and *Sorbara* are all cases where the issues raised were found to be within the exclusive jurisdiction of the Tax Court;[108]

    (b) *Windsor (City)* involved a ruling that the Ontario Superior Court had exclusive jurisdiction over the claim and that the Federal Court had none;[109]

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[104] See findings of fact referenced *supra* at note 96.
[105] *Shilling v. Minister of National Revenue* (1998), 149 F.T.R. 136 (T.D.).
[106] *Ibid*.
[107] Appellant's factum, para. 101.
[108] *Canada v. Domtar Inc.*, 2009 FCA 218; *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250; *Horseman v. Canada*, 2016 FCA 252; *Sorbara v. Canada (Attorney General)*, 2009 ONCA 506, leave to appeal ref'd [2009] S.C.C.A. No. 299.

(c) *Addison & Leyen* is about the availability of judicial review in Federal Court in relation to a decision of the MNR to assess where no appeal to the Tax Court was pursued;[110]

(d) In *GLP NT*, the Tax Court's jurisdiction had already been triggered by an assessment when the taxpayer sought judicial review; in *Johnson*, an assessment had issued and collection proceedings were underway when the taxpayer sought judicial review;[111]

(e) In *Reza*, the applicant had exhausted all avenues of relief under the *Immigration Act* before the relevant tribunal and Federal Courts when he then attempted to seek relief in the Ontario Superior Court;[112] and

(f) In *Strickland*, the Court indicated that one of the discretionary grounds for refusing to undertake a judicial review is whether there is an adequate alternative. As set out above, there are numerous reasons why the Tax Court was not an adequate alternative here.[113]

99. In sum, these cases are not analogous to the situation or determinative of the issues here, where all parties concede that the BCSC had jurisdiction, and the only jurisdictional issue before this Court is whether to uphold the BCSC's discretionary decision to hear and decide this Petition.

100. Given that this proceeding: (a) raised a threshold issue of the application of the ETA in respect of the Portfolios; (b) was grounded in considerations of constitutional and statutory immunity; and (c) required consideration of two intergovernmental agreements, an issue to which the Province is necessarily a full party, the assertion that the Provincial superior court was not the most appropriate forum cannot succeed. Nor can there be any

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[109] *Windsor (City) v. Canadian Transit Co.*, 2016 SCC 54.
[110] *Canada v. Addison & Leyen Ltd.*, 2007 SCC 33.
[111] *GLP NT Corp. v. Canada (Attorney General)* (2003), 65 O.R. (3d) 840 (S.C.J.); *Johnson v. Canada*, 2015 FCA 51, leave to appeal ref'd [2015] S.C.C.A. No. 149.
[112] *Reza v. Canada*, [1994] 2 S.C.R. 394, 116 D.L.R. (4th) 61.
[113] *Strickland v. Canada (Attorney-General*), *supra* note 102.

merit in the assertion that the chambers judge had no proper basis on which to exercise his discretion to hear and decide the Petition.

PART IV – COSTS

101. bcIMC seeks its costs throughout.

PART V – NATURE OF ORDER SOUGHT

102. bcIMC seeks an order dismissing the appeal with costs throughout.

DATED: March 5, 2019.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

_____

Craig A.B. Ferris, Q.C.
Lisa A. Peters, Q.C.
Gordon Brandt

Counsel for the Respondent,
British Columbia Investment Management Corporation

PART VI – TABLE OF AUTHORITIES

	JURISPRUDENCE	**Cited at paragraph(s)**
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2.	*Bank voor Handel en Scheepvaart N.V. v. Administrator of Hungarian Property*, [1954] A.C. 584 (H.L.)	72
3.	*Barreau du Québec c. Québec (Sous-ministre du Revenu)*, 2008 QCCS 1706	94(f)
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17.	*Canada Labour Relations Board v. Paul L'Anglais Inc.*, [1983] 1 S.C.R. 147, [1983] S.C.J. No. 12	98(e)
18.	*Canada v. Addison & Leyen Ltd.*, 2007 SCC 33	98(c)
19.	*Canada v. Domtar Inc.*, 2009 FCA 218	98(a)
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25.	*Horseman v. Canada*, 2016 FCA 252	98(a)
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PART VII – STATUTES RELIED UPON

Constitution Act, 1867 (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5

Legislative Authority of Parliament of Canada

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,

…

3. The raising of Money by any Mode or System of Taxation.

Autorité législative du parlement du Canada

91. Il sera loisible à la Reine, de l'avis et du consentement du Sénat et de la Chambre des Communes, de faire des lois pour la paix, l'ordre et le bon gouvernement du Canada, relativement à toutes les matières ne tombant pas dans les catégories de sujets par la présente loi exclusivement assignés aux législatures des provinces; mais, pour plus de garantie, sans toutefois restreindre la généralité des termes ci-haut employés dans le présent article, il est par la présente déclaré que (nonobstant toute disposition contraire énoncée dans la présente loi) l'autorité législative exclusive du parlement du Canada s'étend à toutes les matières tombant dans les catégories de sujets ci-dessous énumérés, savoir :

…

3. Le prélèvement de deniers par tous modes ou systèmes de taxation.

Subjects of exclusive Provincial Legislation

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,

…

2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.

Sujets soumis au contrôle exclusif de la législation provincial

92. Dans chaque province la législature pourra exclusivement faire des lois relatives aux matières tombant dans les catégories de sujets ci-dessous énumérés, savoir,

…

2. La taxation directe dans les limites de la province, dans le but de prélever un revenu pour des objets provinciaux;

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, R.S.C. 1985, c. E-15

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]

Definitions

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

…

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)

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

(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

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]

Définitions

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

…

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)

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) 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

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.

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.

Appeal to Tax Court

302 Where a person files a notice of objection to an assessment and the Minister sends to the person a notice of a reassessment or an additional assessment, in respect of any matter dealt with in the notice of objection, the person may, within ninety days after the day the notice of reassessment or additional assessment was sent by the Minister,

(a) appeal therefrom to the Tax Court; or

(b) where an appeal has already been instituted in respect of the matter, amend the appeal by joining thereto an appeal in respect of the reassessment or additional assessment in such manner and on such terms as the Tax Court directs.

Appel à la Cour canadienne de l'impôt

302 La personne, ayant présenté un avis d'opposition à une cotisation, à qui le ministre a envoyé un avis de nouvelle cotisation ou de cotisation supplémentaire concernant l'objet de l'avis d'opposition peut, dans les 90 jours suivant cet envoi :

(a) interjeter appel devant la Cour canadienne de l'impôt;

(b) si un appel a déjà été interjeté, modifier cet appel en y joignant un appel concernant la nouvelle cotisation ou la cotisation supplémentaire, en la forme et selon les modalités fixées par cette cour.

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

(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

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) 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

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.

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.

***Financial Administration Act*, R.S.B.C. 1996, c. 138**

Definitions

1 In this Act:

…

"**pension fund**" means

(a) a pension fund established under Part 2 or 3 of the Members' Remuneration and Pensions Act or continued under the Public Sector Pension Plans Act,

(b) any pension fund held in trust by the government or a public officer, and

(c) any prescribed pension fund that has been established for the benefit of employees of a government body;

…

"**trust funds**" means

(a) money held in trust by the government or a public officer, and

(b) pension funds, sinking funds maintained by the government, money received for another person and money paid to the government as a deposit to ensure the doing of any act or thing;

***Financial Administration Act*, R.S.B.C. 1996, c. 138 (as at April 1, 1999)**

Functions of the investment management corporation

41(1) The functions of the chief investment officer are to perform and exercise the following:

(c) (a) investment powers, duties and functions of the Minister of Finance designated by the Lieutenant Governor in Council in respect of trust funds, funds of government bodies and funds of designated institutions;

(d) (b) powers, duties and functions of the Minister of Finance and Corporate Relations that are delegated by that minister in respect of funds other than those funds referred to in paragraph (a).

(2) If a power, duty or function is designated under subsection (1), the power, duty or function may no longer be exercised or performed by the Minister of Finance and Corporate Relations.

Pooled investment portfolios

43(1) Subject to the regulations, the Minister of Finance and Corporate Relations may establish and operate pooled investment portfolios in which the money from trust funds, special funds or other funds, other public money and the money of government bodies and designated institutions may be combined in common for the purpose of investment by means of investment units of participation in a pooled investment portfolio.

…

(4) The costs and expenses incurred by the Minister of Finance and Corporate Relations under section 44 (5) in operating or administering a pooled investment portfolio may be paid directly from the portfolio.

…

Administration of investments

44(1) The Lieutenant Governor in Council may make regulations considered necessary or advisable to

(a) facilitate the investment and lending of money from, and the lending of securities of, trust funds, special funds or other funds, other public money and money of government bodies and designated institutions, and

(b) regulate the investing and lending of money and the lending of securities under sections 40 and 43 and this section.

…

(5) If the Minister of Finance and Corporate Relations is authorized to make an investment or loan, or both, that minister may

(a) do all things necessary or advisable for the purpose of making, continuing, exchanging or disposing of the investment or loan, including buying and selling currency on a current or future delivery basis,

(b) authorize

(i) a person to exercise that minister's powers to make, continue, exchange or dispose of the investment or loan,

(ii) a person to administer the investment or loan, and

(iii) a person, or that person's nominee, to hold the investment or loan, in the case of money in a trust fund, in trust for that minister and the trustees and, in other cases, in trust for that minister,

subject to any restrictions, limits or conditions that that minister may impose, and

(c) enter into an agreement with a person under which the person provides one or more of the services referred to in paragraph (b).

Interpretation Act, R.S.C. 1985, c. I-21

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.

Pooled Investment Portfolios Regulation, B.C. Reg. 447/99

Interpretation

1 In this regulation:

"**Act**" means the Public Sector Pension Plans Act;

"**chief investment officer**" means the person appointed under section 20 (1) (a) of the Act as the chief investment officer of the investment management corporation;

"**investment management corporation**" means the British Columbia Investment Management Corporation established under section 16 of the Act;

"**opening date**" means a date when funds may purchase or realize units in a portfolio;

"**participating fund**" means a fund from which money or securities are used to purchase units in a portfolio;

"**portfolio**" means a pooled investment portfolio established under section 2 or continued under section 3;

"**unit**" means a unit of participation referred to in section 5, and includes a part of a unit.

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.

Purchase and realization of units

6(1) A unit must be purchased or realized only on an opening date.

(2) The chief investment officer is authorized to set opening dates for each portfolio.

(3) The holder of units in a portfolio may realize units only on an opening date for the portfolio on the basis of the value of the units on that date.

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

Definitions and interpretation

1(1) In this Act:

…

"**investment management board**" means the board of directors of the investment management corporation;

Definitions

15 In this Part:

"**chief investment officer**" means the person appointed under section 20 (1) (a) as chief investment officer of the investment management corporation;

"**designated institution**" means an institution designated by regulation of the Lieutenant Governor in Council for the purposes of this Part;

"**funds**" means money and securities placed with the investment management corporation under the authority of section 18 (3);

"**other clients**" means persons, other than the pension boards, with authority under section 18 (3) to make investments.

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.

Capital of the investment management corporation

17(1) The capital of the investment management corporation is one share with a par value of $10.

(2) The share in the investment management corporation must be issued to and registered in the name of the Minister of Finance and must be held by that minister on behalf of the government.

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.

Continuation of investment portfolios

18.1(1) Each portfolio established under B.C. Reg. 84/86, the Pooled Investment Portfolios Regulation, is continued under this Act.

(2) Each participating fund allocated units of a portfolio immediately before January 1, 2000 must continue to be allocated those units of the portfolio with the investment management corporation holding those units as agent for the participating fund.

(3) All assets held under or in a portfolio by the Minister of Finance or the chief investment officer under the Financial Administration Act immediately before January 1, 2000 must continue to be held under or in the portfolio, in trust, by the investment management corporation.

Investment management board

19 (1)-(2)[Repealed 1999-44-19 (2).]

(2.1) In this section, **"minister"** means the minister charged with administration of the *Financial Administration Act*.

(3) The investment management board is continued and has 7 directors as follows:

(a) one director appointed by the college board from among its members;

(b) one director appointed by the municipal board from among its members;

(c) one director appointed by the public service board from among its members;

(d) one director appointed by the teachers' board from among its members;

(e) 2 directors, representative of clients of the investment management corporation, other than those referred to in paragraphs (a) to (d), appointed by the minister;

(f) one other director appointed by the minister.

(4) The director appointed under subsection (3) (f) is designated as chair of the investment management board.

(5) Each director appointed under subsection (3) has one vote on the board.

(6) An appointment to the investment management board under subsection (3) (a) to (f) must be made

(a) for a term not exceeding 3 years, and

(b) so that no more than 3 appointments expire in any calendar year.

(7) An appointment under subsection (3) (a) to (f) may be renewed.

(8) Despite subsection (3) (a) to (f), an appointment to the investment management board may be rescinded by the party that made the appointment.

(9) If a director ceases for any reason to be a director of the investment management board before the end of the term for which he or she was appointed,

(a) the board must provide notice of the vacancy to the party that appointed that director, and

(b) that party must promptly appoint, in accordance with subsection (3), a replacement director for the remainder of the term of that director.

(10) Subject to subsection (11), a quorum of the investment management board consists of all of the directors of the board, and all decisions of the board must be unanimous.

(11) The investment management board may, by the unanimous agreement of the board, change a requirement of subsection (10).

(11.1) The chair may appoint one of the other directors to act, in the chair's absence, as chair of the investment management board, but the appointment may be made only if

(a) a quorum has been established under subsection (11) consisting of fewer than the number of directors required under subsection (10), and

(b) the chair's presence is not necessary for constituting the quorum.

(11.2) A director appointed under subsection (11.1) to act as chair is not entitled to vote on behalf of the director appointed under subsection (3) (f) on any matter before the investment management board.

(12) No act or proceeding of the investment management board is invalid merely because there are in office fewer than the number of directors required under this section.

(13) The investment management board may pay

(a) to a director or a person appointed to a committee of the board an allowance for reasonable travel and other expenses necessarily incurred in carrying out the business of the board,

(b) to a director or a person appointed to a committee of the board, if the director or person is not receiving remuneration from any other source for acting as a director or on a committee, remuneration that has been set by the board and is consistent with Treasury Board guidelines, and

(c) to an organization, if the organization is the source of remuneration paid to a director or person appointed to a committee of the board, remuneration for the services of the director or person at the rate set by the board under paragraph (b).

Powers, functions and duties of the investment management board

20(1) The investment management board must do all of the following:

(a) select and appoint a chief investment officer to hold office during pleasure, and determine the salary to be paid to the chief investment officer;

(b) review and monitor the performance of the chief investment officer;

(c) select and appoint for the investment management corporation an auditor who is authorized to be an auditor of a company under sections 205 and 206 of the Business Corporations Act;

(d) approve, in whole or in part and with or without modifications,

(i) policies respecting the proper discharge of the investment

management corporation's mandate,

(ii) a business plan for the investment management corporation,

(iii) the investment management corporation's budget, including the budget for capital expenditures and staffing,

(iv) policies respecting pooled funds, and

(v) conflict of interest guidelines;

(e) establish an employee classification system and compensation scale, including performance bonuses;

(f) oversee the operations of the investment management corporation;

(g) act in the best interests of the investment management corporation.

(2) The investment management board must, through the investment management corporation and to the extent possible under the budget approved for the investment management corporation, do all of the following:

(a) provide proper reporting and accountability, in a timely manner, to the pension boards and the trustees and other persons responsible for the funds managed by the investment management corporation;

(b) comply with recognized industry standards;

(c) provide investment management services in an efficient, effective and timely manner;

(d) have in place an equitable fee system based on the user pay principle;

(e) provide for its own financial administration by

(i) establishing an accounting system which ensures that there is proper reporting and accountability, in a timely manner, to the clients of the investment management corporation,

(ii) permitting the Minister of Finance to direct the Comptroller General to examine the financial and accounting operations of the investment management corporation and report back to the investment management board, Treasury Board, the pension boards and other persons responsible for the funds managed by the investment management corporation,

(iii) having annual financial statements of the investment management corporation prepared in accordance with generally accepted accounting principles,

(iv) having an audit performed annually on the financial statements referred to in subparagraph (iii), and

(v) providing to the Minister of Finance an annual business plan and an annual report on the investment management corporation, including the audited financial statements.

(3) The investment management board may do any of the following:

(a) delegate to the chief investment officer the exercise or performance of any power or duty conferred or imposed on the board under subsection (2);

(b) pass resolutions it considers necessary or advisable to manage and conduct the affairs of the investment management corporation and to exercise the board's powers and perform its duties;

(c) establish committees of the board, and may determine the composition, duties, responsibilities, limitations and operating procedures of those committees;

(d) appoint persons other than directors of the board to a committee referred to in paragraph (c), and may set the term of appointment that applies to those committee members.

(4) The chief investment officer appointed under the authority of subsection (1) (a) is the chief executive officer of the investment management corporation.

(5) The investment management board must not be involved in the investment decisions of the investment management corporation.

Responsibilities of the chief investment officer

21 (1) The chief investment officer is responsible for carrying out the day to day duties related to the management of the funds.

(2) The chief investment officer must report

(a) to the investment management board with respect to the operations of the investment management corporation, and

(b) to the trustees or other persons responsible for the funds, and to the other clients of the investment management corporation, with respect to the management and investment performance of the funds that they have placed with the investment management corporation.

(3) The chief investment officer must do all of the following:

(a) hire and dismiss the officers and employees necessary to carry on the business and operations of the investment management corporation;

(b) supervise the day to day operations of the investment management corporation, including a determination of which assets to buy and sell;

(c) prepare a business plan and budget for approval by the investment management board;

(d) attend at meetings of the investment management board and receive a copy of all information provided to the board;

(e) establish policies and procedures to meet the operational objectives of the investment management corporation and the funds;

(f) develop a business continuation plan;

(g) keep all the records, books and accounts of the investment management corporation, and provide other accounting services as required by the trustees or other persons responsible for the funds and by the other clients of the investment

management corporation;

(h) ensure that risk and returns are managed in a prudent and appropriate fashion, given the nature of the funds, and in accordance with any instructions provided by the trustees or other persons responsible for the funds;

(i) hire and dismiss the investment management corporation's external suppliers, including custodians and external fund managers;

(j) recommend changes in investment strategies and policies to clients of the investment management corporation;

(k) file documentation with the appropriate authorities and perform other regulatory duties as may be required under the Securities Act and other enactments;

(l) address any other matter arising out of the management of the investment management corporation that is necessary to properly carry out the provisions of this Part;

(m) exercise or perform any power or duty delegated to the chief investment officer by the investment management board under section 20 (3) (a).

(4) Subsection (3) (d) does not apply to the chief investment officer respecting matters referred to in section 20 (1) (a) and (b) or respecting matters in which there would be a conflict of interest.

(5) In exercising the powers or performing his or her duties, the chief investment officer may enter into agreements in the name of the investment management corporation.

(6) Agreements entered into by the chief investment officer are binding on the investment management corporation and those funds on behalf of which the chief investment officer is acting.

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.

FACTUM OF THE APPELLANT, BRITISH COLUMBIA INVESTMENT MANAGEMENT CORPORATION, ON CROSS-APPEAL

PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

103. Intergovernmental agreements ("**IGAs**") are an important and flexible tool of cooperative federalism.

104. Despite this fact, there is relatively little jurisprudence on the interpretation, justiciability and enforceability of IGAs. This may be because, as between governments, these issues are worked out on a cooperative and political basis.

105. The specific issue in the case at bar is how governments may bind third parties to a given IGA. On that issue, bcIMC takes the position that it is only where an IGA has been constitutionalized or implemented explicitly in legislation, thereby having the force of law, that it can bind third parties, including Crown agents with separate legal personality and independent boards like bcIMC.

106. The legislative provision relied on by Canada and British Columbia, s. 16(6) of the PSPPA, is not effective, in form or in substance, to legislatively implement the Agreements and bind bcIMC to their terms. Section 16(6) does not expressly state that it is giving the RTA or CITCA (or reciprocal tax agreements with Canada more generally) the force of law. This, or equivalent language, is the minimum required to legislatively implement an IGA.

107. Moreover, as a matter of statutory interpretation, s. 16(6) is not capable of binding bcIMC to the Agreements, or any obligations under the Agreements, given the specific language used in that provision. It provides that bcIMC is only "liable for taxation" as the government is "liable for taxation." Under the RTA and CITCA, the Province agrees to pay amounts in lieu of tax, and is not waiving its constitutional and statutory immunity from payment of tax, including under the ETA. Further, the Province is not rendered "liable" by way of the commitments it made in the Agreements because the Agreements are not legally enforceable on their terms.

108. While there are various techniques available to government parties to obtain an interpretation and opinion from a judge or arbitrator in relation to an IGA, justiciability in this sense is not the same thing as enforceability. Governments can manifest their intention to honour obligations set out in an IGA to varying degrees. The deliberate choice of the parties to the Agreements to not include a provision submitting their disputes to a court of competent jurisdiction or an arbitration must preclude the Agreements from falling within a category of legally enforceable agreement that can give rise to "liability", even between the parties thereto.

B. Statement of Facts

109. bcIMC relies on the facts set out in the Statement of Facts in bcIMC's factum on appeal above.

PART II – ISSUES

110. By what modalities can a Crown signatory to an IGA bind third parties that are not merely divisions or ministries of government to an IGA?

111. Is s. 16(6) of the PSPPA effective to bind bcIMC to the Agreements?

PART III – ARGUMENT

A. Binding Third Parties to an IGA

112. In bcIMC's submission, in order to bind third parties, IGAs must be given the force of law, either by being constitutionalized or by being implemented by statute, neither of which occurred on the facts at bar.

113. Because it is not an implementing statute and because of its express wording, s. 16(6) does not bind bcIMC to the Agreements. The Agreements do not make the Province "liable for taxation." Rather, they are IGAs without a binding dispute resolution provision that have the government parties committing to pay amounts in lieu of tax.

i. Theories of the Government Parties and Rulings Below

114. In the courts below, Canada and British Columbia put forward several theories as to how the Agreements bound bcIMC, specifically:

(a) Section 16(6) of the PSPPA, which states that bcIMC, as an agent of the government, is not liable for taxation except as the government is liable for taxation, should be interpreted as binding bcIMC to the Agreements;

(b) The Province was legislatively authorized to enter into the Agreements and the Agreements contain provisions binding agents of the Province; and

(c) bcIMC, as an agent of the Crown, "is obliged to obey the orders of the executive as expressed" in the Agreements.

115. The chambers judge focussed on the first theory and held (without detailed analysis) that the language in s. 16(6) was the specific legislative authority required to bind bcIMC. He held that the Province was "liable for taxation" as it had signed the Agreements, and therefore so too was bcIMC.[114]

116. The BCCA held that assuming legislation is required to bind bcIMC to the RTA, the chambers judge did not err in finding that s. 16(6) does so and that an express provision referencing reciprocal tax agreements is not necessary. It held that the phrase "liable for taxation" includes contractual liability to pay "taxes" under the Agreements.[115] The Court of Appeal did not address why it chose to assume, rather than decide, that implementing legislation was required.

ii. Statutory or Constitutional Implementation Required

117. The reasoning of the Courts below is flawed from the perspective of understanding the mechanism required to give IGAs the force of law and bind third parties.

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[114] BCSC Reasons, para. 166, Appellant's Record, Tab 1.
[115] BCCA Reasons, paras. 153-155, Appellant's Record, Tab 2.

118. The BCCA opined that no further action (*i.e.*, beyond entry into the agreement) was required to give effect to the RTA.[116] If by "giving effect" the Court meant giving force of law to the RTA, it erred: when an IGA is not made part of the Constitution, the only way to give it the force of law so as to bind third parties is by statutory implementation.

119. The Agreements are obviously not constitutionalized. Constitutionalized IGAs are, by their nature, binding on persons in the relevant jurisdiction and on the federal and provincial Crown.[117] Examples include the Terms of Union for various provinces, including British Columbia, Newfoundland and Prince Edward Island.[118]

120. Statutory implementation entails express incorporation of the terms of the agreement into legislation or, at minimum, a legislative statement that the IGA is "given force of law" or that it has effect "as if enacted."

121. This Court has stated several times that the implementation of an IGA is analogous to the implementation of an international treaty.[119] For an international treaty to become part of domestic law, binding persons within a given jurisdiction, it must be implemented by explicit legislation.

122. There are three principal ways in which a treaty is implemented: the content of the treaty is reproduced in a domestic statute; the statute states that the treaty is approved and has the force of law; or the statute incorporates terms of the treaty using words like "as if

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[116] BCCA Reasons, para. 145, Appellant's Record, Tab 2.

[117] See *Hogan v. Newfoundland (Attorney General),* 2000 NFCA 12, leave to appeal ref'd [2000] S.C.C.A. No. 191.

[118] *British Columbia Terms of Union*, (U.K.), 1871, reprinted in R.S.C. 1985, App. II, No. 10; *Newfoundland Act*, (U.K.), 1949, 12 - 13 George VI, c. 22, reprinted in R.S.C. 1985, App. II, No. 32; *Prince Edward Island Terms of Union*, (U.K.), 1873, reprinted in R.S.C. 1985, App. II, No. 12. At various times in more recent history, consideration has been given to elevating other IGAs to constitutional status: see the Meech Lake Accord at ss. 95A to 95E and the Charlottetown Accord at s. 26. These efforts, while unsuccessful, illustrate the understanding of Crown parties that constitutionalization is a means to give IGAs the force of law.

[119] See *Re Anti-Inflation Act*, [1976] 2 S.C.R. 373 at 433, 68 D.L.R. (3d) 452; *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 at para. 66.

enacted", "have the force of law" or "given force of law".[120] Section 16(6) of the PSPPA does none of these things.

123. A statutory provision merely approving or ratifying an international agreement is not effective to implement it such that it has force of law.[121] Thus, the Province cannot rely on the statutory provisions authorizing entry into the Agreements, and the BCCA erred in finding this form of approval sufficient.[122]

124. Examples of IGAs, either individually or as a particular category, being implemented using the same type of formulation used to implement treaties include:[123]

(a) *Pooled Registered Pension Plans Act*, S.C. 2012, c. 16, s. 7;

(b) *Pension Benefits Standards Act*, R.S.C. 1985, c. 32 (2nd Supp.) s. 6.2, and the corresponding provincial statutes;[124]

(c) *Natural Resources Transfer (School Lands) Amendment Act, 1961*, S.C. 1960-61, c. 62, which provides in s. 2 that certain agreements made between the government of Canada and the governments of Saskatchewan and Manitoba are declared to have the force of law in Canada; and

(d) *International Rapids Power Development Act*, R.S.C. 1952, c. 157, which provides in s. 2 that the agreement between Canada and Ontario "is binding on the

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[120] See, for example, *Canada Shipping Act, 2001*, S.C. 2001, c. 26, s. 142(1); *International Interests in Mobile Equipment (Aircraft Equipment) Act*, S.C. 2005, c. 3, s. 4(1); *United Nations Foreign Arbitral Awards Convention Act*, R.S.C. 1985, c. 16 (2nd Supp.), s. 3.

[121] *Fraser v. Janes Family Foods Ltd.*, 2012 FCA 99 at para. 22; *Pfizer Inc. v. Canada*, [1999] 4 F.C. 441 (T.D.), aff'd [1999] F.C.J. No. 1598 (C.A.).

[122] See BCCA Reasons, para. 155, Appellant's Record, Tab 2.

[123] There are multiple examples of land claims agreements with First Nations using the "force of law" formulation to implement the agreement. See also *Labour Mobility Act*, S.B.C. 2009, c. 20, where s. 7 explicitly provides that nothing in the Act renders the *Agreement on Internal Trade* an enactment or otherwise gives to the Agreement the force of law.

[124] Such as *The Pension Benefits Act*, C.C.S.M. c. P32, s. 11; *Pension Benefits Act*, S.N.B. 1987, c. P-5.1, s. 93.4.

> Government of Canada and all things to be done by virtue thereof are approved and authorized".

125. Canadian jurisprudence supports the proposition that legislative implementation of an IGA is necessary to give it the force of law and that explicit implementation language is required to have that effect.

126. In *UL Canada Inc. c. Québec (Procureur général),*[125] the Quebec Court of Appeal contrasted the manner in which the *Agreement on Internal Trade* and the *Agreement Establishing the World Trade Organization* had been allegedly implemented in Quebec with the manner in which the *James Bay and Northern Quebec Agreement* had been implemented.[126] In the case of the former, the legislation simply states that the agreements were approved. This, the Court held, was insufficient to support a conclusion that it formed part of Quebec law and thereby bound persons in that jurisdiction.

127. Subsequently, in *Northrop Grumman Overseas Services Corp. v. Canada (Attorney General),*[127] this Court endorsed the approach of the Quebec Court of Appeal, noting that

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[125] [2003] R.J.Q. 2729 (C.A.), aff'ing [1999] R.J.Q. 1720 (C.S.), aff'd 2005 SCC 10. The comments of the trial judge on the effect of intergovernmental agreements that are not implemented by statutes are germane:

> 100 À moins d'être mis en oeuvre par une loi appropriée, soit du gouvernement fédéral, soit d'un gouvernement provincial, l'ACI ne peut obliger une tierce partie, créer des droits en sa faveur ou modifier la législation existante. Comme le professeur Vilaysoun Loungnarath le soulignait,
>
> > ...La loi de mise en oeuvre donne une base législative aux droits et aux obligations du tiers. La loi de mise en oeuvre se présente comme une base juridique distincte de l'accord. En fait, c'est la seule qui puisse fonder des droits au bénéfice des tiers ou des obligations à leur charge, puisque les tribunaux ne reconnaissent pas que l'accord intergouvernemental puisse, en lui-même et directement, produire à l'égard d'un tiers des droits ou des obligations de nature contractuelle...

[126] By contrast, the legislation implementing that latter agreement contained a provision whereby the rights, title and interests of the beneficiaries under the Agreement were legislatively bestowed on them. See *UL Canada*, *supra*, at para. 82 (C.A.).

[127] 2009 SCC 50 at para. 11.

in order to give an intergovernmental agreement force of law, legislation implementing it is required. In *Reference re Pan-Canadian Securities Regulation,*[128] the Court emphasized that explicit language is required to incorporate an IGA into legislation.

128. In *British Columbia (Attorney General) v. Canada (Attorney General),*[129] the Province sought to elevate the Dunsmuir Agreement to the status of a federal statute. The Dunsmuir Agreement was attached as a schedule to the federal statute under which Canada, *inter alia*, agreed to contribute $750,000 towards the cost of constructing the Esquimalt to Nanaimo railway line and to convey land for that purpose. The majority of this Court found that the Agreement had no statutory force, confirming that a statutory provision that simply authorizes the entry into an IGA or ratifies the IGA after the fact is insufficient to amount to legislative implementation of the IGA such that it has the force of law.

129. Australian courts take the same view: the mere approval of an agreement by statute does not give the rights and obligations contained in the agreement the force of law.[130]

130. There are examples of statutory implementation of specific RTAs, or reciprocal taxation agreements, as a class of agreement, so as to give them force of law.

131. Newfoundland's *Reciprocal Taxation Agreement Act, 1991,*[131] contained the following terms:

> 3. From January 1, 1991, the agreement is ratified, confirmed and adopted and declared to be valid and binding on the Crown and its agents.
>
> 4(1) The agreement so far as it binds the Crown and its agents has the force and effect of law for all purposes as if expressly enacted in this Act.

132. Canada, in the *Federal-Provincial Fiscal Arrangements Act,*[132] has employed a model whereby corporations listed in Schedules to the Act are expressly stated in the legislation

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[128] 2018 SCC 48.
[129] [1994] 2 S.C.R. 41, [1994] S.C.J. No. 35.
[130] See *Sankey v. Whitlam,* [1978] HCA 43 at para. 22; Robert French, "Executive and Legislative Power in the Implementation of Intergovernmental Agreements" (2018) 41 Melbourne U.L. Rev. 1383.
[131] S.N.L. 1991, c. 23; repealed by *Regulatory Reform Act*, S.N.L. 1996, c. R-10.1, s. 85.

to be required to pay provincial taxes levied by "participating provinces" that would otherwise be payable if the corporation was not entitled to Crown immunity. "Participating provinces" are those with whom Canada has entered into a reciprocal taxation agreement.

133. The jurisprudence also calls for strict construction of enactments implementing IGAs. In two cases interpreting the federal Crown's payment obligations under the *Federal-Provincial Fiscal Arrangements Act*, [133] Courts held that the absence of any reference in the statute to interest being payable on the provincial tax resulted in the federal Crown corporations being entitled to rely on their immunity from taxation to avoid interest calculated under the provincial taxing statutes.

134. There is also long standing authority for the proposition that a prerogative power to contract granted by the executive branch of government (*i.e.*, as given by Order in Council) cannot elevate the agreement so authorized to the status of legislation binding third parties.[134]

135. Professor Nigel Bankes summarized the law as follows in a 1991 article: [135]

> …nobody would seriously argue that a non-party should be subject to obligations without her consent. This is even more obviously the case with intergovernmental agreements. To suggest that such agreements, without more, could create obligations for third parties smacks of legislating by prerogative. […]
>
> It is clear that mere statutory approval of an agreement, whether prospective or retrospective, will not suffice to bind third parties. This formulation will certainly resolve any doubts there may be as to the authority to enter into the agreement and may cure some common law defects in the contract, but it does not change the law of the land and it would not appear to transform a contractual duty into a statutory duty.

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[132] R.S.C. 1985, c. F-8, s. 31(1), "participating province", s. 34.
[133] *Canadian Broadcasting Corporation v. Nova Scotia Tax Review Board* (1991), 79 D.L.R. (4th) 700 (N.S.C.A.); *Canadian Broadcasting Corporation v. Newfoundland (Minister of Finance)* (1993), 112 Nfld. & P.E.I.R. 255 (Nfld. S.C.–T.D.).
[134] See *Re Anti-Inflation Act*, [1976] 2 S.C.R. 373, 68 D.L.R. (3d) 452; *Manitoba Government Employees Association v. Manitoba*, [1978] 1 S.C.R. 1123, 1977 CanLII 198.
[135] Nigel Bankes, "Cooperative Federalism: Third Parties and Intergovernmental Agreements and Arrangements in Canada and Australia" (1991) 29 Alta. L. Rev. 792 at 811, 832.

> In order to change the law of the land and thereby affect third parties, specific statutory language must be adopted; the more specific the language the more likely that third parties will be taken to be affected. It appears that the "as if enacted language" will suffice for this purpose, but none of the authorities on the point is strong. In my opinion, it is appropriate that there should continue to be doubts about the effect of this formulation in relation to third parties.

136. Professor Johanne Poirier summarized the jurisprudence as follows in her PhD thesis:[136]

> Setting aside the particular phenomenon of Canadian constitutionalised agreements, which has no direct equivalent in Belgium, the fundamental rule in both federations is that executives may not legislate by contract. In other words, the characterization of IGAs as contractual instruments *inter partes*, does not entail a modification of the parties' respective legal orders, unless the legislative branch is involved. The major difference between the two federations lies in the nature and frequency of this parliamentary involvement.
>
> Officially, in Canada, IGAs will only create rights and obligations for third parties if they are not merely "approved" or "ratified" by statutes, but actually incorporated, that is, given explicit force of law. This rarely occurs, with the result that a very large proportion of IGAs are technically devoid of legal force *erga omnes*. This is consistent with the classic dual character of the Canadian federal architecture, in which each order is endowed with autonomous legislative, executive and to a lesser extent judicial branches of government. In this vision, law of general application is necessarily of a unilateral character. The practice of IGAs vividly illustrates the inadequacy of this theory to account for the interlocking practice of federalism in Canada. Not only is this practice largely situated on the margins on the formal legal system, but even when confronted with non-incorporated IGAs, courts waver between a strict adherence to the dual vision – which considers that the only sources of law of general application must be unilateral – and deference to cooperative schemes, in which the same cannot be asserted with as much certainty.

137. In a 2009 article, Professor Poirier's précis of these principles states:[137]

> La jurisprudence analysée dans cette sous-section incite à conclure qu'en l'absence de dispositions législatives formelles incorporant une entente dans les ordres juridiques respectifs des parties, celle-ci ne peut

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[136] Johanne Poirier, *Keeping Promises in Federal Systems* (PhD Dissertation, University of Cambridge, 2003) [unpublished] at 187.

[137] Johanne Poirier, "Une source paradoxale du droit constitutionnel canadien: les ententes intergouvernementales" (2009) 1:20 R.Q.D.I 1 at 21.

> aucunement modifier les droits et obligations des tiers. En somme, une entente ne peut être source de normativité en l'absence d'une norme unilatérale classique qui doit répondre à une formule légistique bien particulière. Cette approche traduit une vision classique du fédéralisme canadien : relativement cloisonné, au sein duquel tant l'autorité fédérale que les provinces jouissent d'une égale souveraineté parlementaire, gage, notamment d'égalité entre celles-ci.

138. Former law professor, now Ontario Justice, Katherine Swinton states as follows:[138]

> Just as international treaties do not become a part of Canada's domestic law until implemented by appropriate legislation, an intergovernmental agreement with provisions that purport to change existing law also needs implementing legislation. Any other approach would allow the executive branch to legislate by royal prerogative, an authority that it clearly does not have. Moreover, the terms of the requisite statute must make clear that the agreement is to become part of the law of the signatory jurisdiction if the desired result is to change existing laws or have a broad legal effect beyond binding the immediate signatories. [Citations omitted.]

139. The requirement of explicit implementing legislation protects the citizenry from a system where the executive bypasses the Legislature and effectively purports to legislate by IGA, without the trappings of a transparent, responsible government.

140. The notion, raised below by Canada and the Province, that the Crown can bind statutory Crown agents like bcIMC, with separate legal personality and independent boards, to contracts to which they are not parties based on an inchoate "duty to obey" has no support in the jurisprudence or commentary. The manner in which the Crown instructs agents of this type is through legislation, typically the constating legislation that sets out the powers and duties of the agent.[139]

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[138] Katherine Swinton, "Law, Politics and the Enforcement of the Agreement on Internal Trade" in Michael J. Trebilcock & Daniel Schwanen, eds, *Getting There: An Assessment of the Agreement on Internal Trade* (Toronto: CD Howe Institute, 1995) 196 at 198.

[139] There is in any event no evidence in the case at bar that the Province instructed bcIMC to comply with the Agreements.

iii. No Express Statutory Implementation of the Agreements

141. The entry into the RTA and CITCA was authorized by Orders in Council made under the *Ministry of Intergovernmental Relations Act*.[140] That Act is a general statute that authorizes the Minister, on behalf of the government, to enter into agreements with the government of Canada, the government of a province or the agent of the government of Canada or a province with the approval of the Lieutenant Governor in Council.

142. There is no legislation implementing the RTA or CITCA; specifically, there is no legislation incorporating their terms or providing that those Agreements have the force and effect of law as if expressly enacted.

143. Section 16(6) of the PSPPA makes no reference to the Agreements and does not incorporate their terms into legislation. It does not refer to reciprocal tax agreements entered into by the Province.

144. In summary, the necessary legislative process and content are absent in relation to s. 16(6).

B. Interpretation of s. 16(6)

i. On its Express Terms, s. 16(6) is not Effective to Bind bcIMC to the Agreements

145. The application of principles of statutory interpretation leads to the same conclusion: s. 16(6) of the PSPPA is not effective to bind bcIMC to the Agreements or to any obligations under the Agreements.

146. Section 16(6) is framed primarily as an exemption from liability, rather than an imposition of liability. This construct makes sense in a province where the Crown, subject to specific exceptions, is bound by its own statutes.

147. The Province pays, for example, sales tax, carbon tax and motor fuel tax.[141] Some statutes expressly provide that the Province is exempt from a given provincial tax,[142]

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[140] See para. 23 above; *Ministry of Intergovernmental Relations Act*, R.S.B.C. 1996, c. 303, s. 4.
[141] British Columbia Ministry of Finance, Tax Bulletin CTB 002/R2, "*Sales and Leases to Governments*" (November 2017).

which again makes sense in a province where statutory immunity has been largely overridden. In contrast to the federal Act, the British Columbia *Interpretation Act*, R.S.B.C. 1996, c. 238, makes enactments binding on the government unless the contrary is provided in the enactment or a specified exception applies.[143]

148. Absent an express exemption under provincial taxation laws then, the Province is "liable for taxation" under British Columbia statutes and so too is bcIMC pursuant to s. 16(6). At the same time, bcIMC benefits from the express statutory exemptions from provincial tax enjoyed by the Province. In short, s. 16(6) is plainly drafted to deal with the Province's (and bcIMC's) liability for and exemption from provincial taxes under provincial statutes of general application.

149. The Province is not liable for federal taxes and its entry into the Agreements does not render it liable for federal taxes. First, what the Province has committed to pay is not "tax" levied under provisions of the ETA but rather an amount in lieu of taxes. While the parties to the Agreements have used shorthand, describing what each of them pay as "taxes",[144] the RTA expressly provides in s. 4 and the CITCA in s. 65 that the parties are not deemed to have surrendered or abandoned any of the powers, rights, privileges or authorities vested in either of them under the *Constitution Act, 1867* or otherwise. Monies paid voluntarily by government entities with immunity from tax are properly described as amounts in lieu of tax.[145]

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[142] See, for example, *Community Charter*, S.B.C. 2003, c. 26, s. 220(1)(a); *Vancouver Charter*, S.B.C. 1953, c. 55, s. 396(1)(a); *Property Transfer Tax Act*, R.S.B.C. 1996, c. 378, ss. 14(3)(t) and (t.1); *Provincial Sales Tax Exemption and Refund Regulation*, B.C. Reg. 97/2013, s. 83(2); *Manufactured Home Tax Act*, R.S.B.C. 1996, c. 281, s. 4(a).

[143] See ss. 14(1), 14(2).

[144] See *e.g.* RTA, Part II, "Payment of Tax", Amended Petition, Appendix "A", Appellant's Record, Tab 7.

[145] This terminology is used, for example, in the *Payments in Lieu of Taxes Act*, R.S.C. 1985, c. M-13, and the jurisprudence dealing with payments made in lieu of taxes to municipalities and other provincial bodies levying real property taxes. See also, for example, *Payment in Lieu of Tax Regulation*, Alta. Reg. 112/2003 and *Electricity Act*, 1998, S.O. 1998, c. 15, Sch. A, s. 93.

150. Second, the Province, by committing to pay amounts in lieu of taxes, has not rendered itself "liable". The term "liable" describes a legally enforceable obligation, *i.e.*, that the person is responsible at law to pay.[146] Someone who is liable is someone on whom a payment obligation is imposed by statute or who may be compelled by a court or arbitrator to pay damages, a penalty or some other amount.[147] The Province is not obligated to pay federal tax as imposed by a taxing statute. And, as this factum outlines in more detail in the section that follows, the Agreements are not legally enforceable by Canada against the Province.

151. Under the express wording of s. 16(6) of the PSPPA, bcIMC is only liable for taxation if the Province is so liable. The Agreements do not render the Province "liable" and therefore cannot "bind" bcIMC.

152. Clarity in terminology is important in this analysis. The term "binding" is used inconsistently in the jurisprudence to describe a range of concepts, including legal enforceability, moral obligation and justiciability. Justiciability and enforceability are related concepts but are not coterminous.[148] A moral or political obligation to pay is obviously different than a legal obligation. When used as tools of cooperative federalism, IGAs frequently lack the indicia of a binding contractual commitment at common law and to the extent they are "binding", it is in a moral or political sense only.[149]

153. In order to give rise to "liability" as that term is used in s. 16(6) of the PSPPA, there must be a legally enforceable obligation to pay. In bcIMC's submission, and as described in the following section, the Agreements do not give rise to such an obligation.

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[146] See *Littlewood v. George Wimpey & Co. Ltd.*, [1953] 2 All E.R. 915 (C.A.) at 921F; *Winter v. Inland Revenue Commissioners*, [1961] 3 All E.R. 855 (H.L.) at 858; *National Trust Co. v. R.*, [1998] F.C.J. No. 968 (C.A.).
[147] See *O'Keefe v. Calwell*, [1949] A.L.R. 381 at 401, 77 C.L.R. 261 (H.C.A.).
[148] Johanne Poirier, "Intergovernmental Agreements in Canada: At the Crossroads Between Law and Politics", in J. Peter Meekison, Hamish Telford & Harvey Lazar, eds, *Canada: The State of the Federation 2002, Reconsideration the Institutions of Canadian Federalism* (Montreal & Kingston: McGill-Queen's University Press, 2004) 425 at 430-1.
[149] See Didier Culat, "Coveting Thy Neighbour's Beer": Intergovernmental Agreements Dispute Settlement and Interprovincial Trade Barriers" (1992) 33 C. de D. 616 at 619-621.

ii. The Agreements do not Give Rise to Liability

154. The federal and provincial Crown are not like private contracting parties; this is particularly apparent when the Crown is contracting with the Crown, rather than with other parties. IGAs are not equivalent to commercial contracts.

155. Any contractual commitments that the Crown makes are subject to the principle of parliamentary sovereignty. A subsequent legislature or parliament can negate a contractual commitment by legislation. In this sense, only constitutionalized IGAs are enforceable in the strict sense. While commercial contracts entered into by the Crown with private parties are routinely treated as enforceable, there has been an understandable reluctance to simply equate IGAs to private law contracts.[150]

156. An expenditure by the Crown to perform a contract requires legislative appropriation of funds. Both the federal and provincial *Financial Administration Acts*[151] contain provisions whereby any agreement providing for the payment of money by the government is subject to an appropriation being available for that agreement in the fiscal year when the payment falls due. In other words, absent an appropriation, there is no obligation to pay and no potential liability for breach of contract by the Crown.

157. Certain tools are available to government parties to pursue interpretation of their commitments under an IGA, such as a reference of questions for an opinion of this Court under s. 53 of the *Supreme Court Act*[152] or consensual submission of a controversy between Canada and a province under s. 19 of the *Federal Courts Act.*[153] In that sense disputes arising under an IGA may be justiciable, but the availability of these procedural

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[150] See *Reference re Canada Assistance Plan*, [1991] 2 S.C.R. 525 at 553-554, 83 D.L.R. (4th) 297. In *Reference re Pan-Canadian Securities*, 2018 SCC 48, this Court confirmed that an IGA that purports to prohibit a subsequent legislature from enacting, amending or repealing legislation or by which the executive purports to fetter the legislature's law-making power would be ineffective (rather than unconstitutional).

[151] R.S.C. 1985, c. F-11, s. 40; R.S.B.C. 1996, c. 138, s. 28(2).
[152] R.S.C. 1985, c. S-26.
[153] R.S.C. 1985, c. F-7.

vehicles cannot convert an agreement that does not have the force of law into one that does.

158. As one commentator notes:[154]

> The legal characteristics of intergovernmental agreements in general can be summarized as follows. First, some intergovernmental agreements have no legal status, either because the parties have made clear their intention not to be legally bound, or because the courts will characterize them as political, rather than legal. Second, intergovernmental agreements which support legal rights and obligations are enforceable by adjudication only with the consent of the parties. Unilateral legislative repudiation of an intergovernmental agreement is always a possibility. Short of constitutionalization, therefore, intergovernmental agreements are unenforceable in the sense of giving rise to effective legal remedies to order compliance or assess damages in cases of breach.

159. When stating that IGAs are binding, some decisions conflate enforceability and justiciability. Others are giving broad scope to the concept of "enforceability" such that provided the IGAs were executed by a person in government with authority and the government manifested its intention to live up to the obligations set out in the agreement, it is deemed to be "enforceable" even if no suit for common law contractual remedies could be pursued and no judicial enforcement would be available.

160. The BCCA referred to the decision of the Australian High Court in *South Australia v. Commonwealth*,[155] describing it as "instructive in identifying the issue with respect to justiciability of agreements entered into between governments and describing criteria that might be examined to determine whether an agreement is contractual or merely 'political' in nature."[156] It embraced the concept of a "spectrum" put forward by Canada as describing how the enforceability of an IGA should be assessed.

161. The *South Australia* case is the antithesis of instructive. Of the seven justices, six wrote reasons but there was no consensus on either a test for assessing when an IGA was legally enforceable or the outcome on the facts before the Court. The decision has not

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[154] Steven A. Kennett, *Managing Interjurisdictional Waters in Canada: A Constitutional Analysis* (Calgary: Canadian Institute of Resources Law, 1991) at 85.
[155] [1962] HCA 10.
[156] BCCA Reasons, para. 118, Appellant's Record, Tab 2.

formed the basis of any subsequent jurisprudence on the enforceability of IGAs in Australia. The leading authority on IGAs in that jurisdiction deals with a constitutionalized agreement, which by the terms of Australia's constitution was binding on the Commonwealth and States.[157]

162. As observed by academics, in practice there is a continuum reflecting the degree to which a Crown party intends to honour a commitment made in an IGA.[158] At one end of the continuum are purely aspirational or political agreements. At the other end of the continuum are agreements in which the parties have manifested their intention to honour their commitments by statements about being bound and by the inclusion of dispute resolution provisions.

163. As noted above, it is open to government parties to constitutionalize an IGA or to implement it legislatively. In that scenario, the IGA would have the force of law. It is submitted that it is only through these mechanisms that an IGA could be said to bind the government parties in the sense of giving rise to liability enforceable by suit (which is the approach taken in the United States).[159] Notably, the RTA contains an express provision whereby the parties agree to introduce legislative measures and undertake the

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[157] See *Sankey v. Whitlam, supra* note 130.
[158] Including Professors Poirier and Bankes.
[159] In the United States, IGAs, known as "compacts", are formal contracts between governments that are enacted through legislation and become part of state law, and in certain cases federal law. One defining feature of a binding and legally enforceable intergovernmental agreement—as opposed to a mere political or administrative agreement—is that they are enacted through legislation: Frederick L. Zimmermann & Mitchell Wendell, *The Law and Use of Interstate Compacts* (Lexington: Council of State Governments, 1969) at 1, 19. See also Jeffrey B. Litwak, *Interstate Compact Law: Cases and Materials*, version 3.0 (Semaphore Press, 2018) at 25. See also Joseph F. Zimmerman, *Interstate Cooperation: Compacts and Administrative Agreements*, 2nd ed (New York: Suny Press, 2012) at 47: "Many important issues debated by compact negotiators are debated again when a proposed compact is submitted by commissioners to each concerned state legislature for enactment".

administrative measures they deem necessary to give effect to the agreement, an acknowledgement that implementation may be necessary.[160]

164. The types of statements made by the parties to the RTA as to their intention to be bound serve a purpose, in that they help situate the IGA on the continuum of IGAs as agreements that are more than political, engaging the honour of the Crown. But they do not, contrary to what the Court of Appeal found, result in an IGA being legally enforceable without more.

165. In the alternative, to the extent a non-constitutionalized, non-legislatively implemented IGA can be said to be enforceable *inter partes* in the sense of giving rise to liability, bcIMC submits that it must, at minimum, include a dispute resolution provision under which the government parties agree to submit disputes to a neutral third party for resolution, *i.e.*, a court of competent jurisdiction or an arbitrator.[161] It is only in this fashion that the government parties can manifest their intention to be "bound", at least to the extent that is possible in light of parliamentary sovereignty. Absent a binding dispute resolution provision, the only consequences to a government party not honouring its commitments will be political.

166. The Court of Appeal did not treat the absence of a binding dispute resolution clause as fatal to the characterization of the RTA as legally enforceable. It took the view that the ability of Crown parties to refer controversies to the Federal Court under s. 19 of the *Federal Courts Act* (where there was a provincial statute agreeing to this bestowal of jurisdiction) meant a binding dispute resolution clause was unnecessary.

167. The Court of Appeal erred in relying on s. 19. That provision is jurisdiction bestowing, giving the Federal Court jurisdiction over the Provincial Crown on a consensual basis (that it would not otherwise have). It does not, and cannot, convert an agreement that is not otherwise enforceable into a legally enforceable agreement. Were it otherwise, all

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[160] RTA, s. 11, Amended Petition, Appendix "A", Appellant's Record, Tab 7.

[161] The question of whether coercive remedies could be granted against a government party is one for another day.

IGAs, even those that are patently aspirational or political, would be "legally enforceable" since governments could consensually resort, when disputes arose at some later time (after execution), to a reference to the Federal Court under s. 19.[162]

168. There are examples of IGAs in which the agreement expressly provides for dispute resolution by a court of competent jurisdiction or binding arbitration.[163] These IGAs can be contrasted with those, like the RTA, which include "soft" non-binding dispute resolution provisions.[164]

169. The ability to have the executive enter into cooperative arrangements without constitutional amendment or the formality of legislation is a largely positive and flexible

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[162] Historically, s. 19 has primarily been used as a vehicle for: (a) seeking the Court's opinion on constitutional or statutory rights of provinces as against Canada: see, for example, *Canada v. Prince Edward Island*, [1978] 1 F.C. 533, 83 D.L.R. (3d) 492 (C.A.); *Québec (Procureur général) c. R.*, 2007 FC 826, aff'd 2008 FCA 201; *Québec (Procureur général) c. Canada*, 2008 FC 713, aff'd 2009 FCA 361, aff'd 2011 SCC 11; and (b) Canada bringing a third party claim for contribution and indemnity within an action where a First Nation was suing Canada for breach of fiduciary duty, breach of trust or tort: see, for example, *Fairford First Nation v. Canada (Attorney General)*, [1996] F.C.J. No. 1242 (C.A.); *Lac Seul Band of Indians v. Canada*, 2010 FC 588, aff'd 2011 FC 351.

[163] See *Canada-Ontario Production Insurance Agreement*, s. 14.3, Annex B to *Canada Ontario Implementation Agreement for the Purposes of Implementing the Federal-Provincial-Territorial Framework Agreement on Agricultural and Agri-Food Policy for the Twenty-First Century*, dated April 1, 2003. As referenced in *Re the Interpretation of a Certain Agreement Entered Into Between Canada and Alberta* on March 29, 1973, [1983] 1 F.C. 567 (T.D.) at para. 8, the Agreement for Canada's transfer of ownership and management of the Bow River and St. Mary's irrigation projects to Alberta contained a dispute resolution clause providing for the parties to "submit the questions of fact and law in dispute to the Federal Court of Canada for determination".

[164] See, for example, the *2018 Canada – British Columbia Workforce Development Agreement* at s. 33, which provides for escalating levels of officials to "endeavor to resolve the dispute".

tool of cooperative federalism. A review of available IGAs reveals a wide array of topics covered,[165] but also a range of formats.

170. But absent constitutionalization, explicit legislative implementation, or perhaps a binding dispute resolution provision, IGAs cannot be described as "legally enforceable" as between the government parties. As such, the Agreements could not form the basis for a finding that the Province was "liable" and therefore give rise to any legal obligation of bcIMC under s. 16(6) of the PSPPA.

171. A ruling that the Agreements do not bind bcIMC and are not legally enforceable *inter partes* would not impede the continuing cooperation of governments in Canada by IGAs. Whether or not a given IGA is legally enforceable will not typically matter to the government parties, who will avail themselves of "soft" dispute resolution techniques such as dialogue between Ministers and, where necessary, a reference to a court of competent jurisdiction for an opinion in the form of declaratory relief.

PART IV – COSTS

172. bcIMC seeks its costs throughout.

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[165] Covering such subjects as fiscal arrangements, environmental cooperation, social welfare and agricultural policy.

PART V – NATURE OF ORDER SOUGHT

173. bcIMC seeks an order allowing the cross-appeal with costs throughout and granting the declaratory relief set out in paragraphs 1(b) and (c) of Part 1 of the Amended Petition, namely that bcIMC is not bound by the provisions of the RTA or CITCA, and that those Agreements are ineffective to and do not alter or derogate from its immunity from taxation.

DATED: March 5, 2019.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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Craig A.B. Ferris, Q.C.
Lisa A. Peters, Q.C.
Gordon Brandt

Counsel for the Respondent,
British Columbia Investment Management Corporation

PART VI – TABLE OF AUTHORITIES

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2.	*Canada v. Prince Edward Island*, [1978] 1 F.C. 533, 83 D.L.R. (3d) 492 (C.A.)	167
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PART VII – STATUTES RELIED UPON

Canada Shipping Act, 2001, S.C. 2001, c. 26

Salvage Convention

142(1) Subject to the reservations that Canada made and that are set out in Part 2 of Schedule 3, the International Convention on Salvage, 1989, signed at London on April 28, 1989 and set out in Part 1 of Schedule 3, is approved and declared to have the force of law in Canada.

Convention sur l'assistance

142(1) Sauf réserve faite par le Canada et dont le texte figure à la partie 2 de l'annexe 3, la Convention internationale de 1989 sur l'assistance, signée à Londres le 28 avril 1989, et dont le texte figure à la partie 1 de l'annexe 3, est approuvée et a force de loi au Canada.

Community Charter, S.B.C. 2003, c. 26

General statutory exemptions

220(1) Unless otherwise provided in this Act or the Local Government Act, the following property is exempt from taxation to the extent indicated:

(a) land, improvements or both vested in or held by the Provincial government;

Electricity Act, 1998, S.O. 1998, c. 15, Sch. A

Municipal electricity utilities

Payments in lieu of federal corporate tax

93(1) If a municipal electricity utility is exempt under subsection 149 (1) of the Income Tax Act (Canada) from the payment of tax under that Act, it shall pay to the Financial Corporation in respect of each taxation year an amount equal to the amount of the tax that it would be liable to pay under that Act if it were not exempt. 1998, c. 15, Sched. A, s. 93 (1).

Same: payments in lieu of provincial corporate tax

(2) If a municipal electricity utility is exempt under subsection 57 (1) of the Corporations Tax Act from the payment of tax under that Act in respect of a taxation year ending before January 1, 2009, it shall pay to the Financial Corporation in respect of each taxation year ending before that day an amount equal to the total amount of tax that it would be liable to pay under Parts II, II.1 and III of that Act for

Services municipaux d'électricité

Paiements tenant lieu d'impôt fédéral sur les sociétés

93(1) Si le paragraphe 149 (1) de la Loi de l'impôt sur le revenu (Canada) l'exonère d'un impôt prévu par cette loi, le service municipal d'électricité verse à la Société financière, à l'égard de chaque année d'imposition, une somme égale à l'impôt qu'il serait tenu de payer aux termes de cette loi s'il n'en était pas exonéré. 1998, chap. 15, annexe A, par. 93 (1).

Idem : paiements tenant lieu d'impôt provincial sur les sociétés

(2) Si le paragraphe 57 (1) de la Loi sur l'imposition des sociétés l'exonère de l'impôt prévu par cette loi à l'égard d'une année d'imposition qui se termine avant le 1er janvier 2009, le service municipal d'électricité verse à la Société financière, à l'égard de chaque année d'imposition qui se termine avant cette

the year if it were a corporation to which that subsection did not apply. 2007, c. 7, Sched. 12, s. 3 (4).

Same

(2.1) If a municipal electricity utility is exempt under subsection 27 (2) of the Taxation Act, 2007 from the payment of tax under that Act for a taxation year ending after December 31, 2008, it shall pay to the Financial Corporation in respect of each taxation year ending after that day an amount equal to the total amount of tax that it would be liable to pay for the taxation year under Divisions B, C and E of Part III of that Act if it were a corporation to which that subsection did not apply. 2007, c. 7, Sched. 12, s. 3 (4).

Payments to Minister of Finance

(3) After Part V is repealed under section 84.1, all payments required by this section shall be paid to the Minister of Finance, instead of to the Financial Corporation. 1998, c. 15, Sched. A, s. 93 (3); 2000, c. 42, s. 35.

Commencement of new taxation year

(4) A corporation that is required to make payments under this section shall be deemed, for the purposes of this section, to commence a new taxation year on the day this section comes into force. 1998, c. 15, Sched. A, s. 93 (4).

date, une somme égale à l'impôt total qu'il serait tenu de payer aux termes des parties II, II.1 et III de cette loi pour l'année s'il était une société à laquelle ce paragraphe ne s'appliquait pas. 2007, chap. 7, annexe 12, par. 3 (4).

Idem

(2.1) Si le paragraphe 27 (2) de la Loi de 2007 sur les impôts l'exonère de l'impôt prévu par cette loi à l'égard d'une année d'imposition qui se termine après le 31 décembre 2008, le service municipal d'électricité verse à la Société financière, à l'égard de chaque année d'imposition qui se termine après cette date, une somme égale à l'impôt total qu'il serait tenu de payer aux termes des sections B, C et E de la partie III de cette loi pour l'année s'il était une société à laquelle ce paragraphe ne s'appliquait pas. 2007, chap. 7, annexe 12, par. 3 (4).

Remise au ministre des Finances

(3) Après l'abrogation de la partie V aux termes de l'article 84.1, les paiements qu'exige le présent article sont faits au ministre des Finances plutôt qu'à la Société financière. 1998, chap. 15, annexe A, par. 93 (3); 2000, chap. 42, art. 35.

Début d'une nouvelle année d'imposition

(4) Pour l'application du présent article, la personne morale qui est tenue d'effectuer des paiements aux termes de celui-ci est réputée commencer une nouvelle année d'imposition le jour de son entrée en vigueur. 1998, chap. 15, annexe A, par. 93 (4).

Federal Courts Act, R.S.C. 1985, c. F-7

Intergovernmental disputes

19 If the legislature of a province has passed an Act agreeing that the Federal Court, the Federal Court of Canada or the Exchequer Court of Canada has jurisdiction in cases of controversies between Canada and that province, or between that province and any other province or provinces that have passed a

Différends entre gouvernements

19 Lorsqu'une loi d'une province reconnaît sa compétence en l'espèce, — qu'elle y soit désignée sous le nom de Cour fédérale, Cour fédérale du Canada ou Cour de l'Échiquier du Canada — la Cour fédérale est compétente pour juger les cas de litige entre le Canada et cette province ou entre cette province et une ou

like Act, the Federal Court has jurisdiction to determine the controversies.

plusieurs autres provinces ayant adopté une loi semblable.

Federal-Provincial Fiscal Arrangements Act, R.S.C. 1985, c. F-8

Definitions

31(1) In this Part, …

participating province means a province in respect of which there is in force a reciprocal taxation agreement entered into with the government of that province; (*province signataire*)

Payments in respect of provincial tax or fee imposed by participating province

34 Where, in respect of any transaction, matter or thing, a provincial tax or fee is imposed or levied under a law of a participating province and the provincial tax or fee would be payable by a corporation included in Schedule I if that law were applicable to the corporation, the corporation shall, in respect of any such transaction, matter or thing, pay the provincial tax or fee so imposed or levied as and when it would be required to do so if that law were applicable to it.

Définitions

31(1) Les définitions qui suivent s'appliquent à la présente partie. …

province signataire Province où est en vigueur un accord de réciprocité fiscale conclu avec le gouvernement de cette province. (participating province)

Paiements à l'égard de taxes et droits provinciaux imposés par la province signataire

34 Dans le cas où une taxe ou un droit provincial imposé ou perçu en vertu d'une loi d'une province signataire serait exigible d'une personne morale visée à l'annexe I si cette loi lui était applicable, cette personne morale les paie au moment prévu par cette loi comme si celle-ci s'y appliquait.

Financial Administration Act, R.S.B.C. 1996, c. 138

Agreements

28(1) An agreement or undertaking of any kind providing for the payment of money by the government must not be entered into if it would result in an expenditure in the then current fiscal year in excess of an appropriation for that fiscal year.

(2) It is a term of every agreement providing for the payment of money by the government that payment of money that becomes due under the agreement is subject to an appropriation being available for that agreement in the fiscal year when the payment falls due.

(3) The Treasury Board may, by directive, set conditions to be observed before agreements or undertakings providing for the payment of money by the government are entered into.

Financial Administration Act, R.S.C. 1985, c. F-11

Term of contract that money available

40(1) It is a term of every contract providing for the payment of any money by Her Majesty that payment under that contract is subject to there being an appropriation for the particular service for the fiscal year in which any commitment under that contract would come in course of payment.

Clause automatique des contrats

40(1) Tout contrat prévoyant des paiements à effectuer par Sa Majesté est censé comporter une clause qui les subordonne à l'existence d'un crédit particulier ouvert pour l'exercice au cours duquel des engagements découlant du contrat sont susceptibles d'arriver à échéance.

International Interests in Mobile Equipment (Aircraft Equipment) Act, S.C. 2005, c. 3

Force of law

4(1) Subject to subsection (2), to the extent that they apply to Canada as described in declarations, the Convention and the Aircraft Protocol have the force of law with respect to aircraft objects during the period that the Aircraft Protocol is, by its terms, in force in respect of Canada.

Force de loi

4(1) Dans la mesure de leur application au Canada aux termes des déclarations, la Convention et le Protocole aéronautique ont force de loi relativement aux biens aéronautiques pendant la durée de validité prévue par le dispositif du Protocole pour le Canada.

International Rapids Power Development Act, R.S.C. 1952, c. 157

Agreement approved

2 The agreement dated the 3rd day of December, 1951, between the Government of Canada and the Government of the Province of Ontario in the form set out in the Schedule is approved on behalf of and is binding on the Government of Canada and all things to be done by virtue thereof are approved and authorized.

Accord confirmé

2 L'accord conclu à la date du 3 décembre 1951, entre le gouvernement du Canada et le gouvernement de la province d'Ontario, sous la forme indiquée dans l'annexe, est confirmé pour le compte du gouvernement du Canada et lie ce dernier gouvernement. Tout ce qui doit être accompli en vertu dudit accord est confirmé et autorisé.

Interpretation Act, R.S.B.C. 1996, c. 238

Government bound by enactments; exception

14(1) Unless it specifically provides otherwise, an enactment is binding on the government.

(2) Despite subsection (1), an enactment that would bind or affect the government in the use or development of land, or in the planning, construction, alteration, servicing, maintenance or use of improvements, as defined in the Assessment Act, does not bind or affect the government.

Labour Mobility Act, S.B.C. 2009, c. 20

Agreement does not become law

7 Nothing in this Act renders the Agreement an enactment or otherwise gives to the Agreement the force of law.

Manufactured Home Tax Act, R.S.B.C. 1996, c. 281

Exemptions

4 This Act does not apply to manufactured homes

(a) owned by the government or by a municipality and occupied by or on behalf of the government or the municipality,

Ministry of Intergovernmental Relations Act, R.S.B.C. 1996, c. 303

Agreements with other governments

4 With the approval of the Lieutenant Governor in Council, the minister on behalf of the government may enter into agreements with the government of Canada, the government of a province or an agent of the government of Canada or a province.

Natural Resources Transfer (School Lands) Amendment Act, S.C. 1960-61, c. 62

Agreements confirmed

2 The Memorandum of Agreement between the Government of Canada and the Government of the Province of Manitoba made on the thirteenth day of July, 1961, the Memorandum of Agreement between the Government of Canada and the Province of Alberta made on the thirteenth day of July, 1961, and the Memorandum of agreement between the Government of Canada and the Government of the Province of Saskatchewan made on the fourteenth day of July, 1961, set forth in Schedules A, B and C respectively, are hereby confirmed and declared to have the force of law in Canada.

Conventions confirmées

2 La convention entre le gouvernement du Canada et le gouvernement de la province du Manitoba, conclue le treize juillet 1961, la convention entre le gouvernement du Canada et la province de l'Alberta, conclue le treize juillet 1961, et la convention entre le gouvernement du Canada et le gouvernement de la province de la Saskatchewan, conclue le quatorze juillet 1961, respectivement reproduites dans les annexes A, B et C, sont par les présentes confirmées et déclarées avoir force de loi au Canada.

Scope of the agreement

93.4(1) The multilateral agreement entered into under section 93.3 shall have the force of law in the Province on the date the Minister signs the agreement, including any provision in the agreement that…

93.4(2) The administrator of a multi-jurisdictional pension plan shall comply with any requirement set out in the multilateral agreement entered into under section 93.3 that applies with respect to the plan and with any requirement imposed under the authority of the agreement.

93.4(3) An employer or person required to make contributions to a multi-jurisdictional pension plan on the employer's behalf shall comply with any requirement set out in the multilateral agreement entered into under section 93.3 that applies with respect to the plan and with any requirement imposed under the authority of the agreement.

93.4(4) The amount of pension benefits, deferred pension or ancillary benefits or any other amount payable under a multi-jurisdictional pension plan in relation to a member or former member shall be determined in accordance with the requirements set out in the multilateral agreement entered into under section 93.3.

93.4(5) This section does not apply to a multi-jurisdictional pension plan unless the Minister has entered into a multilateral agreement under section 93.3 with the authorized representative of the designated jurisdiction to which the plan is subject.

Champ d'application de l'entente

93.4(1) À partir de la date à laquelle elle est signée par le Ministre, l'entente multilatérale conclue en vertu de l'article 93.3 a force de loi dans la province, y compris l'une quelconque de ses dispositions qui…

93.4(2) L'administrateur d'un régime de pension relevant de plus d'une autorité gouvernementale se conforme aux exigences énoncées dans l'entente multilatérale conclue en vertu de l'article 93.3 qui s'appliquent au régime ainsi qu'à toutes les exigences imposées en vertu de cette entente.

93.4(3) L'employeur ou la personne tenue de cotiser pour le compte de celui-ci à un régime de pension relevant de plus d'une autorité gouvernementale se conforme aux exigences énoncées dans l'entente multilatérale conclue en vertu de l'article 93.3 qui s'appliquent au régime ainsi qu'à toutes les exigences imposées en vertu de cette entente.

93.4(4) Est fixé conformément aux exigences énoncées dans l'entente multilatérale conclue en vertu de l'article 93.3, le montant des prestations de pension, de la pension différée ou des prestations accessoires ou tout autre montant payable en vertu d'un régime de pension relevant de plus d'une autorité gouvernementale relativement à un participant ou à un ancien participant.

93.4(5) Le présent article ne s'applique à un régime de pension relevant de plus d'une autorité gouvernementale que si le Ministre et le représentant autorisé de l'autorité législative désignée à laquelle est assujetti le régime de pension ont conclu l'entente multilatérale en vertu de l'article 93.3.

Pension Benefits Standards Act, R.S.C. 1985, c. 32 (2nd Supp.).

Force of law

6.2 (1) The provisions of a federal-provincial agreement, other than those exempted from the application of this subsection by regulation, have the force of law during the period that the agreement is in effect with respect to pension plans and are enforceable during that period as if those provisions formed part of this Act.

Inconsistency with agreement

(2) The provisions of a federal-provincial agreement that have the force of law prevail over any provision of this Act and the regulations to the extent of any inconsistency or conflict between them.

Force de loi

6.2 (1) Les dispositions de l'accord fédéral-provincial — à l'exception de celles soustraites par règlement à l'application du présent paragraphe — ont force de loi pendant la période où l'accord s'applique à l'égard des régimes de pension et sont exécutoires, durant cette période, comme si elles faisaient partie de la présente loi.

Primauté de l'accord

(2) En cas d'incompatibilité, les dispositions de l'accord fédéral-provincial qui ont force de loi l'emportent sur les dispositions de la présente loi et des règlements.

Pooled Registered Pension Plans Act, S.C. 2012, c. 16

Force of law

7(1) The provisions of a multilateral agreement, other than those exempted from the application of this subsection by regulation, have the force of law during the period that the agreement is in effect with respect to pooled registered pension plans and are enforceable during that period as if those provisions formed part of this Act.

Inconsistency with agreement

(2) The provisions of a multilateral agreement that have the force of law prevail over any provision of this Act and the regulations to the extent of any inconsistency or conflict between them.

Force de loi

7(1) Les dispositions de l'accord multilatéral — à l'exception de celles soustraites par règlement à l'application du présent paragraphe — ont force de loi pendant la période où l'accord s'applique à l'égard des régimes de pension agréés collectifs et sont exécutoires, durant cette période, comme si elles faisaient partie de la présente loi.

Inconsistency with agreement

(2) The provisions of a multilateral agreement that have the force of law prevail over any provision of this Act and the regulations to the extent of any inconsistency or conflict between them.

Property Transfer Tax Act, R.S.B.C. 1996, c. 378

14 …

(3) If a taxable transaction entitles the transferee, on compliance with the Land Title Act, to registration in a land title office, that transferee is exempt from the payment of tax if the taxable transaction is a transfer within any of the following descriptions: …

(t) a transfer to the government in accordance with a bylaw under section 27

[exchange or other disposal of park land] of the Community Charter or section 281 [exchange of park land: application of Community Charter] of the Local Government Act;

(t.1) a transfer to the government from a municipality for the purposes of exchanging land necessary for improving, widening, straightening, relocating or diverting a highway;

***Provincial Sales Tax Exemption and Refund Regulation*, B.C. Reg. 97/2013**

Telephone and communication services

83(1) In this section, "**public switched telephone network**" means a telecommunication facility, the primary purpose of which is to provide, for compensation, a landline-based telephone service to the public.

(2) The following are exempt from tax imposed under Division 5 of Part 5 of the Act:

(a) a telecommunication service in the form of a toll-free number, other than if the telecommunication service is

(i) acquired for family or domestic use, or

(ii) a teleconference service.

(a) a telecommunication service that is purchased by

(i) the government,

(ii) an agent of the government,

(iii) a regional district,

(iv) a municipality,

(v) a fire department,

(vi) a police department,

(vii) the South Coast British Columbia Transportation Authority,

(viii) the Victoria Airport Authority,

(ix) the British Columbia Ambulance Service,

(x) British Columbia Emergency Health Services,

(xi) British Columbia Transit, or

(xii) the University of Victoria

in respect of its emergency communications systems from

(xiii) E-Comm Emergency Communications for British Columbia Incorporated, or

(xiv) (xiv) the Capital Region Emergency Service Telecommunications Incorporated (CREST);

(b) conventional paging services that allow a person to receive, but not to send,

telecommunications by means of a pager;

(c) subject to subsection (3), residential telephone services provided to a purchaser by means of a wire or cable and through a public switched telephone network.

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

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.

Reciprocal Taxation Agreement Act, 1991, S.N.L. 1991, c. 23

Agreement adopted

3. From January 1, 1991, the agreement is ratified, confirmed and adopted and declared to be valid and binding on the Crown and its agents.

Effect of agreement

4. (1) The agreement so far as it binds the Crown and its agents has the force and effect of law for all purposes as if expressly enacted in this Act.

Regulatory Reform Act, S.N.L. 1996, c. R-10.1, s. 85

Acts repealed

85. The following Acts are repealed:

(a) The Animal and Poultry Feed Mill Act, 1962, SN1962 No.74;

(b) The Arts and Culture Centre (Building) Act, 1966, SN1966 No.14;

(c) Building Supplies Act, RSN1990 cB-9;

(d) The Canada-Newfoundland Unemployment Assistance Agreement Act, 1956, SN1956 No.1;

(e) Censoring of Moving Pictures Act, RSN1990 cC-5;

(f) Cold Storage Act, RSN1990 cC-21;

(g) Deferred Pensions Act, RSN1990 cD-4;

(h) Exhibition of Advertisements Act, RSN1990 cE-17;

(i) Fishery Salt, Sale and Distribution Act, RSN1990 cF-16;

(j) Fishing and Coasting Vessels Bounties Act, RSN1990 cF-17;

(k) Health and Social Agencies Act, SN1992 cH-1.1;

(l) The Industrial Development (Incentives) Act, RSN1970 c168;

(m) The Industrial and Provident Societies Act, RSN1970 c167;

(n) Industrial Standards Act, RSN1990 cI-4;

(o) Industrial Statistics Act, RSN1990 cI-5

(p) Larkin's Pond Reservoir Act, RSN1990 cL-7;

(q) Livestock Community Sales Act, RSN1990 cL-21;

(r) Loan and Finance Corporations Licensing Act, RSN1990 cL-24;

(s) Mobile Home Dealers Act, RSN1990 cM-17;

(t) Municipal Grants Act, RSN1990 cM-22;

(u) The Newfoundland Fisheries Board Act, RSN1952 c207;

(v) Ore-Treatment Tailings Disposal Act, RSN1990 cO-8;

(w) Petroleum Corporation Act, RSN1990 cP-9;

(x) The Reciprocal Taxation Agreement Act, SN1977 c86;

(y) The Reciprocal Taxation Agreement Act, 1981, SN1981 c77;

(z) The Reciprocal Taxation Agreement Act, 1987, SN1987 c34;

(aa) Reciprocal Taxation Agreement Act, RSN1990 cR-6;

(bb) Reciprocal Taxation Agreement Act, 1991, SN1991 c23;

(cc) Salt Fish Marketing Act, RSN1990 cS-7;

(dd) Sports Federation Act, RSN1990 cS-21;

(ee) Stamp Act, RSN1990 cS-22;

(ff) Waters Protection Act, RSN1990 cW-5; and

(gg) Welfare Institutions Act, RSN1990 cW-6.

Supreme Court Act, **R.S.C. 1985, c. S-26**

Referring certain questions for opinion

53(1) The Governor in Council may refer to the Court for hearing and consideration important questions of law or fact concerning

(a) the interpretation of the Constitution Acts;

(b) the constitutionality or interpretation of any federal or provincial legislation;

(c) the appellate jurisdiction respecting educational matters, by the Constitution Act, 1867, or by any other Act or law vested in the Governor in Council; or

(d) the powers of the Parliament of Canada, or of the legislatures of the provinces, or of the respective governments thereof, whether or not the particular power in question has been or is proposed to be exercised.

Other questions

(2) The Governor in Council may refer to the Court for hearing and consideration important questions of law or fact concerning any matter, whether or not in the opinion of the Court ejusdem generis with the enumerations contained in subsection (1), with reference to which the Governor in Council sees fit to submit any such question.

Questions deemed important

(3) Any question concerning any of the matters mentioned in subsections (1) and (2), and referred to the Court by the Governor in Council, shall be conclusively deemed to be an important question.

Opinion of Court

(4) Where a reference is made to the Court

Questions déférées pour avis

53 (1) Le gouverneur en conseil peut soumettre au jugement de la Cour toute question importante de droit ou de fait touchant :

(a) l'interprétation des Lois constitutionnelles;

(b) la constitutionnalité ou l'interprétation d'un texte législatif fédéral ou provincial;

(c) la compétence d'appel en matière d'enseignement dévolue au gouverneur en conseil par la Loi constitutionnelle de 1867 ou une autre loi;

(d) les pouvoirs du Parlement canadien ou des législatures des provinces, ou de leurs gouvernements respectifs, indépendamment de leur exercice passé, présent ou futur.

Autres questions

(2) Le gouverneur en conseil peut en outre, s'il l'estime indiqué, déférer à la Cour toute question importante de droit ou de fait touchant toute autre matière, que celle-ci soit ou non, selon la Cour, du même ordre que les matières énumérées au paragraphe (1).

Questions réputées importantes

(3) Les questions touchant les matières visées aux paragraphes (1) et (2) sont d'office réputées être importantes quand elles sont ainsi déférées à la Cour par le gouverneur en conseil.

Avis de la Cour

(4) La Cour est tenue d'étudier tout renvoi fait aux termes des paragraphes (1) ou (2) et de répondre à chaque question qui lui est ainsi déférée. Elle transmet ensuite au gouverneur en conseil, pour son information, un avis

under subsection (1) or (2), it is the duty of the Court to hear and consider it and to answer each question so referred, and the Court shall certify to the Governor in Council, for his information, its opinion on each question, with the reasons for each answer, and the opinion shall be pronounced in like manner as in the case of a judgment on an appeal to the Court, and any judges who differ from the opinion of the majority shall in like manner certify their opinions and their reasons.

Notice to be given to provinces interested

(5) Where the question relates to the constitutional validity of any Act passed by the legislature of any province, or of any provision in any such Act, or in case, for any reason, the government of any province has any special interest in any such question, the attorney general of the province shall be notified of the hearing in order that the attorney general may be heard if he thinks fit.

Notice to interested persons

(6) The Court has power to direct that any person interested or, where there is a class of persons interested, any one or more persons as representatives of that class shall be notified of the hearing on any reference under this section, and those persons are entitled to be heard thereon.

Appointment of counsel by Court

(7) The Court may, in its discretion, request any counsel to argue the case with respect to any interest that is affected and with respect to which counsel does not appear, and the reasonable expenses thereby occasioned may be paid by the Minister of Finance out of any moneys appropriated by Parliament for expenses of litigation.

certifié et motivé sur chacune des questions, de la même manière que dans le cas d'un jugement rendu sur appel porté devant elle; tout juge dont l'opinion diffère de celle de la majorité transmet pareillement son avis certifié et motivé.

Avis aux provinces intéressées

(5) Si la question touche à la validité constitutionnelle d'une loi — ou de l'une quelconque de ses dispositions — adoptée par la législature d'une province, ou si, pour une raison quelconque, le gouvernement d'une province porte un intérêt particulier à cette question, le procureur général de cette province est obligatoirement avisé de la date d'audition afin qu'il puisse être entendu s'il le juge à propos.

Avis aux intéressés

(6) La Cour a le pouvoir d'ordonner qu'une personne intéressée ou des représentants d'une catégorie de personnes intéressées soient avisés de l'audition de toute question déférée à la Cour dans le cadre du présent article; ces personnes ont le droit d'être entendues à ce sujet.

Avocat commis d'office

(7) La Cour a le pouvoir discrétionnaire de commettre d'office un avocat, en l'absence de toute autre représentation, relativement à un intérêt auquel il est porté atteinte; les frais entraînés peuvent être payés par le ministre des Finances sur les crédits affectés par le Parlement aux frais de justice.

The Pension Benefits Act, C.C.S.M. c. P32

Reciprocal agreements re administration of pension plans

11(1) The minister may enter into an agreement with the government or an authorized representative of the government of a designated province or of Canada, or with more than one

of them, to do one or more of the following things:

(a) provide for the reciprocal registration, audit and inspection of pension plans, and the reciprocal enforcement of specified laws affecting pension plans;

(b) authorize the pension commission, superintendent or other authorized representative of the designated province or Canada to exercise any of the powers or perform any of the duties of the commission or the superintendent under this Act;

(c) authorize the commission or the superintendent in Manitoba to exercise any of the powers or perform any of the duties of the pension commission, superintendent or other authorized representative of the designated province or Canada under the laws of that jurisdiction governing pensions;

(d) establish an association of pension commissions in Canada and to authorize such an association to exercise such powers and perform such duties of the commission as the agreement may provide.

Existing agreements

11(2) Any agreement of a type described under subsection (1) that is in force at the time that subsection (1) comes into force continues in effect as if entered into under subsection (1).

Reciprocal agreements re application of laws

11(3) The minister may enter into an agreement with the government or an authorized representative of a designated province or of Canada, or with more than one of them, concerning the pension benefits legislation that governs a pension plan that is subject to both this Act and the law of the other jurisdiction.

Contents

11(3.1) An agreement under subsection (3) may provide for any or all of the following:

(a) that this Act or part of it is not to apply to the pension plan, and that the law or part of the law of the other jurisdiction is to apply instead, subject to any specified conditions;

(b) that this Act or part of it is to apply to the pension plan, and the law or part of the law of the other jurisdiction is not to apply, subject to any specified conditions;

(c) that a requirement of this Act or a regulation is deemed to be satisfied in respect of the pension plan if a corresponding requirement of the law of the other jurisdiction is satisfied in specified circumstances;

(d) for the allocation or splitting of the assets and liabilities of the pension plan between Manitoba and the other jurisdiction at the times and in the manner specified;

(e) additional requirements to apply with respect to the pension plan in specified circumstances.

Superintendent authorized to administer for persons outside Manitoba

11(3.2) The superintendent is authorized to administer this Act in respect of persons outside Manitoba who are members of a pension plan that is subject to this Act in accordance with an

agreement referred to in subsection (3), but only if the government of the designated province or of Canada enacts legislation that adopts this Act into its substantially similar pension standards legislation and authorizes the superintendent to administer the adopted legislation.

Effective date of laws

11(4) An agreement entered into under subsection (1) or (3) shall specify the date on which it comes into force and the agreement acquires the force of law in Manitoba as of that date.

Public notice of reciprocal agreements re laws

11(5) As soon as practicable after entering an agreement or any amendment to an agreement under subsection (3), the minister shall cause the text of the agreement or the amendment to be published in the gazette.

United Nations Foreign Arbitral Awards Convention Act, R.S.C. 1985, c. 16 (2nd Supp.)

Convention approved

3 The Convention is approved and declared to have the force of law in Canada during such period as, by its terms, the Convention is in force.

Approbation

3 La Convention est approuvée et a force de loi au Canada pendant la durée de validité prévue par son dispositif.

Vancouver Charter, S.B.C. 1953, c. 55

Property tax exemptions

396(1) All real property in the city is liable to taxation subject to the following exemptions: —

Crown exempt; tenant or occupier liable

(a) Crown lands; provided, however, that the right or interest of an occupier of Crown lands, not holding in an official capacity, shall be liable to taxation, and he shall be personally liable therefor as if he were the owner of such real property, but the property shall not be subject to lien under section 414 nor subject to tax sale under section 422: