

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

BETWEEN:

**ATTORNEY GENERAL OF CANADA**

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

and

**BRITISH COLUMBIA INVESTMENT MANAGEMENT CORPORATION**

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

and

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

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

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**FACTUM ON CROSS-APPEAL OF  
THE ATTORNEY GENERAL OF CANADA**  
(Pursuant to Rule 43 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

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## TABLE OF CONTENTS

PART I: OVERVIEW AND FACTS .....	1
A. Overview .....	1
B. Statement of facts .....	2
a) The Reciprocal Taxation Agreement .....	2
b) The CITCA and the “pay and rebate” scheme .....	5
c) Dispute resolution provisions in the RTA and the CITCA .....	7
d) The RTA, the CITCA, and the GST reassessments in this case .....	8
e) The lower court decisions .....	8
PART II: ISSUES ON CROSS-APPEAL .....	10
PART III: ARGUMENT .....	10
A. The issue respecting the RTA and the CITCA is premature and speculative .....	10
B. The RTA and the CITCA bind the Province and render it liable to pay GST .....	11
C. bcIMC possesses no immunity from taxation to assert where the Province has committed to not assert its own .....	15
PART IV: SUBMISSIONS CONCERNING COSTS .....	17
PART V: ORDER SOUGHT .....	17
PART VI: SUBMISSIONS ON THE IMPACT OF ANY SEALING OR CONFIDENTIALITY ORDER .....	17
PART VII: TABLE OF AUTHORITIES .....	18

## PART I: OVERVIEW AND FACTS

### A. Overview

1. The Reciprocal Taxation Agreement and the Comprehensive Integrated Tax Coordination Agreement between Canada and the Province of British Columbia are binding legal agreements. They are both authorized by statute and regulation. The form and text of the agreements manifests a mutual intention to be bound. They further important policy objectives, including to facilitate the collection of sales taxes by non-government vendors, which could not be achieved if Crown agents like bcIMC could decide unilaterally not to pay tax. As consumption taxes represent an important source of government revenue, it is difficult to conceive that Canada and the Province did not intend these agreements to be binding.
2. As a statutory agent of the government of British Columbia, bcIMC's liability for taxes is commensurate with that of the provincial government. The statutory grant of agency confers on bcIMC the same immunity to taxation – and the same limits to that immunity – as the provincial Crown, when bcIMC acts on behalf of the Province and within the scope of its agency. No additional statutory provision is needed to confer that immunity. Accordingly, the effect of subsection 16(6) of the *Public Sector Pension Plans Act*, which provides that bcIMC is not liable for taxation except as the government is liable, must be not to confer immunity on bcIMC but to circumscribe that immunity. The legislation binds bcIMC to pay taxes that its principal has committed itself to pay. Moreover, as an agent of the provincial government, bcIMC is not a true third party to the agreement.
3. Discussion of the legal nature of the agreements should not obscure the fact that they are not engaged in this case because they do not apply to bcIMC as a supplier. The agreements bind Canada, the Province, and their respective agents to pay GST when they receive taxable supplies of services and would otherwise be immune from taxation under section 125 of the *Constitution Act, 1867*. bcIMC has been assessed for failing to collect tax as a supplier of services. How those agreements might apply to bcIMC, and what the parties to them would do if the agreements were engaged, are matters that have not arisen in this case and which remain speculative.

**B. Statement of facts**

4. The facts stated by bcIMC in its factum are not complete for purposes of appreciating the context of the intergovernmental dispute and the legal and policy framework in which the agreements were entered into. For purposes of the cross-appeal, therefore, the Attorney General relies on the facts stated below.<sup>1</sup>

*a) The Reciprocal Taxation Agreement*

5. Generally, a reciprocal taxation agreement provides for Canada and an agreeing province to pay each other's general sales taxes and specific taxes on goods or services under certain circumstances. Reciprocal taxation agreements are concluded in order to further three policy objectives:

- a. increased simplicity for non-government vendors by limiting the use of tax exemption certificates by both levels of government when making taxable purchases of goods and services;
  - b. enhanced competitive equity between the public and private sectors by ensuring that goods or services supplied by government bodies in competition with the private sector receive the same tax treatment; and
  - c. enhanced national consistency by establishing similar tax treatment for similar government entities engaged in similar activities across the country.<sup>2</sup>
6. Canada is specifically authorized by statute to enter into a reciprocal taxation agreement with a province, including for the payment by Canada of provincial sales tax and of GST by the province, and any amount to be paid under such an agreement may be paid out of the Consolidated Revenue Fund.<sup>3</sup> British Columbia is not specifically statutorily authorized to

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<sup>1</sup> As outlined in the Appellant's Factum, British Columbia was an HST-participating province from July 1, 2010 to March 31, 2013, but for simplicity this factum will refer only to GST throughout.

<sup>2</sup> Affidavit # 1 of Claudine Gagnon ("Gagnon Affidavit"), para 8 attesting to para 46 of the Response to Amended Petition (Appellant's Record, vol III, Tab 20, p 50).

<sup>3</sup> *Federal-Provincial Fiscal Arrangements Act*, RSC 1985, c F-8, ss 32-33.

enter into such an agreement, but may generally enter into any agreement with the government of Canada, or with an agent of the government of Canada, with the approval of the Lieutenant Governor in Council.<sup>4</sup>

7. Under a reciprocal taxation agreement, Canada and the agreeing province commit that all government entities, including Crown corporations and other Crown agents, will pay sales tax and certain other taxes and fees levied by the other government. Provincial government departments and agents that are listed on a schedule to the agreement pay GST and later claim a rebate of taxes paid. The schedule of provincial government entities that will receive that rebate is negotiated between Canada and the province. Canada's policy is that provincial government entities that provide goods or services similar to those provided by private sector businesses should generally not be included in the schedule and should pay federal sales taxes without a rebate (subject to refunds, rebates, and credits available to all taxpayers under the applicable legislation).<sup>5</sup>
8. Since at least the 1970s, Canada and those provinces that levy provincial sales taxes have followed a joint policy of implementing reciprocal taxation agreements.<sup>6</sup> The 2010 Canada-British Columbia Reciprocal Taxation Agreement (the "RTA")<sup>7</sup> was an update of a prior agreement between the parties.<sup>8</sup> Since the period at issue in this case, the Canada-British Columbia RTA has been amended as a result of British Columbia withdrawing from the harmonized sales tax effective April 1, 2013.

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<sup>4</sup> *Ministry of Intergovernmental Relations Act*, RSBC 1996, c 303, s 4. The 2010 Canada-British Columbia Reciprocal Taxation Agreement was approved by B.C. Order in Council No. 485 of June 29, 2010 (Appellant's Record, vol X, Tab 24, p 24).

<sup>5</sup> Gagnon Affidavit, para 8 attesting to para 47 of the Response to Amended Petition (Appellant's Record, vol III, Tab 20, p 50).

<sup>6</sup> Gagnon Affidavit, para 8 attesting to para 44 of the Response to Amended Petition (Appellant's Record, vol III, Tab 20, p 50).

<sup>7</sup> Reciprocal Taxation Agreement, effective July 1, 2010, Appendix "A" to Amended Petition filed by bcIMC on May 28, 2014 (Appellant's Record, vol 2, Tab 7, p 30).

<sup>8</sup> See, *eg*, Affidavit #1 of Paul Flanagan ("Flanagan Affidavit"), exhibits "K" and "L" (Appellant's Record, vol VI, p 55 *et seq* and 71 *et seq*).

9. This case concerns the 2010 version of the RTA.
10. Under the 2010 RTA, Canada and the Province committed to pay each other's general sales taxes in the following terms:
5. Canada agrees:
- (a) to pay the Provincial Taxes or Fees in accordance with the provincial laws, as if these laws were applicable to it;
6. The Province agrees:
- ...
- (d) to pay, subject to clauses 6(e) and 7(1) the Value-Added Tax in accordance with the Federal Act;<sup>9</sup>
11. The language of the Province's commitment in paragraph 6(d) of the RTA differs from what is stated in paragraph 21 of bcIMC's factum on appeal. The Province did not commit to pay GST (i.e., "Value-Added Tax") "as if [the ETA] were applicable to it". The Province committed to pay GST "*in accordance with [the ETA].*"
12. The RTA provides that it is binding on Canada, the Province, and their respective agents.<sup>10</sup>
13. The RTA provides that, subject to any refunds, input tax credits, or rebates under the ETA, provincial entities that are listed on Schedule A to the agreement are entitled to a "Government Rebate" of all GST paid pursuant to the agreement. During the periods at issue in this appeal, rebates of GST paid by provincial entities listed on Schedule A were to be paid in accordance with certain provisions of the Comprehensive Integrated Tax Coordination Agreement (the "CITCA").<sup>11</sup>
14. Provincial Crown agents that are not listed on Schedule A to the RTA may nonetheless be entitled to full or partial relief from GST that they pay through claims for input tax credits or various rebates available to public sector bodies under ETA provisions. This is because,

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<sup>9</sup> RTA, paras 5-6 (Appellant's Record, vol II, Tab 7, pp 34-35).

<sup>10</sup> RTA, para 3 (Appellant's Record, vol II, Tab 7, p 34).

<sup>11</sup> RTA, paras 1 (definitions of "Government Rebate" and "CITCA"), 6(e), and 7(1) and (2) (Appellant's Record, vol II, pp 33, 35-36).

under the RTA, those entities are treated the same, for ETA purposes, as taxpayers who are not entitled to any Crown immunity.<sup>12</sup>

***b) The CITCA and the “pay and rebate” scheme***

15. A comprehensive integrated tax coordination agreement is an agreement between Canada and a province under which the province agrees to harmonize its provincial general sales tax with the GST.<sup>13</sup> Harmonized sales tax is levied as a single tax under the ETA, with federal and provincial components. Under a CITCA, the federal government collects all HST and pays each province a revenue entitlement in respect of the provincial component.
  
16. Canada is specifically authorized by statute to enter into a tax coordination agreement for, *inter alia*, the integration of “sales taxes applicable in the province into taxes collected, administered and enforced under a single Act of Parliament.” In such case, the participating province would receive the “provincial component” of the tax without specific appropriation by Parliament.<sup>14</sup> Like a reciprocal taxation agreement, British Columbia has authority, under the *Ministry of Intergovernmental Relations Act*, to enter into such an agreement, with the approval of the Lieutenant Governor in Council.
  
17. In the 2009 CITCA, Canada and the Province agreed to harmonize the federal and provincial general sales taxes by the Province repealing its retail sales tax when Canada began to collect the HST.<sup>15</sup> In addition, Canada and the Province explicitly agreed that each would pay the HST in respect of supplies of property and services acquired by their respective governments or by their respective agents and other entities thereof.<sup>16</sup>

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<sup>12</sup> Gagnon Affidavit, para 8 attesting to para 52 of the Response to Amended Petition (Appellant’s Record, vol III, Tab 20, p 50).

<sup>13</sup> Affidavit #1 of Terence Brown (“Brown Affidavit”), para 8 attesting to para 53 of the Response to Amended Petition (Appellant’s Record, vol IV, Tab 21, p 3).

<sup>14</sup> *Federal-Provincial Fiscal Arrangements Act*, ss 8.3-8.4, 8.6.

<sup>15</sup> Brown Affidavit, para 8 attesting to para 56 of the Response to Amended Petition (Appellant’s Record, vol IV, Tab 21, p 1).

<sup>16</sup> CITCA, para 51 (Appeal Record, vol II, Tab 7, p 57).

18. The CITCA was in effect until April 1, 2013, when the Province withdrew from the HST and returned to a GST/PST sales tax model.
19. Under the CITCA, where interjurisdictional immunity applies, any HST paid by Canada, the Province, or their agents or other entities thereof may be rebated by the Minister of National Revenue (the “MNR”). However, rebates are not available under the CITCA where the HST is payable under any agreement regarding the reciprocal payment of sales or commodity taxes between Canada and the Province (i.e., the RTA).<sup>17</sup>
20. The CITCA denies rebates of HST to provincial entities that pay HST pursuant to the RTA in order to harmonize the CITCA with the RTA. By signing the RTA, the Province committed provincial entities that would be immune from federal taxes like the HST to pay those taxes in any event. Those provincial entities would receive a rebate of HST only if they are listed on Schedule A of the RTA. Provincial entities not entitled to a Government Rebate under the RTA would still be entitled to input tax credits and other public sector body rebates where applicable under the ETA.<sup>18</sup> Accordingly, the RTA would be frustrated if, under the CITCA, all provincial entities automatically received rebates of HST paid.
21. Together, the RTA and the CITCA reflect a “pay and rebate” scheme for dealing with intergovernmental immunity from sales taxes. Both levels of government commit to paying each other’s taxes on the purchase of taxable goods and services, and subsequently receive rebates of tax where the parties have agreed that interjurisdictional immunity applies. The “pay and rebate” model represents a change from the prior versions of the RTA, under which provincial government entities and agents listed on Schedule A asserted immunity from federal taxation by presenting tax exemption certificates at the point of purchase. The pay and rebate system was viewed as an improvement on the exemption certificate system

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<sup>17</sup> CITCA, para 52 (Appellant’s Record, vol II, Tab 7, p 57).

<sup>18</sup> Brown Affidavit, para 8 attesting to para 58 of the Response to Amended Petition (Appellant’s Record, vol IV, Tab 21, p 1).

because exemption certificates created unnecessary complexities for non-government vendors.<sup>19</sup>

***c) Dispute resolution provisions in the RTA and the CITCA***

22. Both the RTA and the CITCA include provisions for dispute resolution mechanisms between Canada and the Province.
23. Part V of the RTA provides that Canada or the Province may refer a matter relating to the interpretation or application of the RTA to a Board for resolution.
24. A Board consists of three members. Canada and the Province are each entitled to appoint one member. Those members may agree on the third member or, failing agreement, must request the Chief Justice of the Federal Court to select the third member. Within a reasonable time after receiving a report of the Board, Canada and the Province (and all other interested parties) shall approve or reject the recommendation of the Board. If the recommendations are agreed with, they become applicable at the time specified therein or at any agreed time.<sup>20</sup>
25. Part V of the RTA does not, however, apply in the case of a dispute as to any matter related to the administration or enforcement of any Act that imposes a tax that a party has agreed to pay pursuant to the RTA. Such disputes are to be resolved in accordance with the applicable statutory appeal procedures.<sup>21</sup>
26. Part XIV of the CITCA provides a series of mechanisms for resolving disputes between the parties, which include: (a) consensus-seeking between federal and provincial officials; (b) referral to the federal and provincial Ministers of Finance; (c) referral of particular issues

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<sup>19</sup> Gagnon Affidavit, para 8 attesting to para 60 of the Response to Amended Petition (Appellant's Record, vol III, Tab 20, p 50).

<sup>20</sup> RTA, paras 9(1) through (9) (Appellant's Record, vol. II, Tab 7, pp 100-101).

<sup>21</sup> RTA, para. 9(9) (Appellant's Record, vol II, Tab 7, p 101); Gagnon Affidavit, para 8 attesting to para 70 of the Response to Amended Petition (Appellant's Record, vol III, Tab 20, p 50).

to other particular federal and provincial Ministers; and (d) referral by the appropriate Minister of an issue to a third party for consideration and advice.<sup>22</sup>

***d) The RTA, the CITCA, and the GST reassessments in this case***

27. The GST audit undertaken by the MNR and the reassessments resulting from it were never an attempt to enforce the RTA and the CITCA against bcIMC.
28. The MNR issued the reassessments on the basis that the ETA requires bcIMC to collect GST in respect of the supply of investment management services to the pooled investment portfolios because bcIMC made taxable supplies of services to a recipient that did not have Crown immunity from federal taxation.<sup>23</sup> Under s. 122(b) of the ETA, the Province and its agents must collect GST when acting as suppliers of property and services, independent of any agreement with Canada.
29. The MNR concluded that the RTA and the CITCA did not apply because bcIMC was liable for failing to collect and remit GST as a supplier, not for failing to pay GST as the recipient of services. In addition, the MNR did not rely on the agreements in reassessing bcIMC because the authority to assess GST derives from the ETA, not from the agreements.<sup>24</sup>
30. Accordingly, the reference to the RTA and the CITCA as a basis of the reassessments in the original working papers prepared by the Canada Revenue Agency auditor in November 2015 was an error. The auditor responsible for the reassessments issued revised working papers stating that position in February 2016.<sup>25</sup>

***e) The lower court decisions***

31. The chambers judge approached the issue as being whether the agreements are legislatively binding on bcIMC. He rejected an argument that binding bcIMC to the agreements meant

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<sup>22</sup> CITCA, paras 38-41 (Appellant's Record, vol II, Tab 7, p 55).

<sup>23</sup> Affidavit #1 of Richard Young, para 17 (Appellant's Record, vol III, Tab 18, p 36); Affidavit #1 of Virginia Kwok ("Kwok Affidavit"), paras 21-22 and Exhibit "E" (Appellant's Record, vol IX, Tab 23, pp 5 and 146-152).

<sup>24</sup> Kwok Affidavit, paras 18-19 (Appellant's Record, vol IX, Tab 23, p 5).

<sup>25</sup> Kwok Affidavit, paras 20-21 (Appellant's Record, vol IX, Tab 23, p 6).

that the Province’s general legislative authority to enter into agreements with Canada under the *Ministry of Intergovernmental Relations Act* would impermissibly override bcIMC’s specific legislative grant of immunity in the *Public Sector Pension Plans Act* (the “**PSPPA**”). He held that subsection 16(6) of the PSPPA is a specific provision that cannot be ignored and that it binds bcIMC to the Province’s commitment to pay GST.<sup>26</sup>

32. On appeal, the Court of Appeal held that “there is no doubt” that agreements between federal and provincial governments may be mere political agreements or legally enforceable. The Court adopted the analysis in *South Australia v Commonwealth*,<sup>27</sup> holding that where any particular agreement falls on this spectrum will depend on the circumstances of the case and whether the parties intended to be legally bound.<sup>28</sup>
33. Examining the particular terms of the RTA and the CITCA, the Court of Appeal then held that those agreements bear the hallmarks of agreements that were intended to create legally binding obligations.<sup>29</sup>
34. With respect to the significance of a binding dispute resolution mechanism, the Court of Appeal rejected the argument that an intergovernmental agreement cannot be legally enforceable without such a term. The Court accepted that a binding dispute resolution mechanism is but one indicia of a legally enforceable agreement. The Court also held that the combination of section 19 of the *Federal Courts Act*<sup>30</sup> and section 1 of the *British Columbia Federal Courts Jurisdiction Act*,<sup>31</sup> which grants the Federal Court jurisdiction to determine

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<sup>26</sup> Reasons for Judgment of the British Columbia Supreme Court (“**BCSC Reasons**”), paras 162-167 (Appellant’s Record, vol I, Tab 1, pp 31-32).

<sup>27</sup> *South Australia v Commonwealth* (1962), 108 CLR 130, 141 (HC).

<sup>28</sup> Reasons for Judgment of the British Columbia Court of Appeal (“**BCCA Reasons**”), paras 142 (Appellant’s Record, vol I, Tab 2, p 65).

<sup>29</sup> BCCA Reasons, paras 143-147 (Appellant’s Record, vol I, Tab 2, pp 65-66).

<sup>30</sup> RSC 1985, c F-7, s 19.

<sup>31</sup> RSBC 1996, c 135, s 1(a).

controversies between Canada and British Columbia, do provide an avenue for binding dispute resolution.<sup>32</sup>

## **PART II: ISSUES ON CROSS-APPEAL**

35. The first issue as framed by bcIMC in its factum on cross-appeal is overbroad. Because of bcIMC's status as an agent of the government of British Columbia, this Court need not embark on a searching inquiry into how an intergovernmental agreement between the government of Canada and a province may have the force of law in relation to third parties.
36. Rather, the issue is whether the RTA and the CITCA create enforceable commitments between Canada and the Province, which commitments bcIMC is bound to discharge when acting as an agent of the Province.

## **PART III: ARGUMENT**

### **A. The issue respecting the RTA and the CITCA is premature and speculative**

37. The RTA and Part XVI of the CITCA subject the Province and its agents to the ETA in the capacity of *recipients* of taxable supplies of property or services. When managing pooled investments portfolios, bcIMC acts as a supplier for the benefit of a statutory trust. As a supplier, bcIMC (like its principal the Province) is specifically subject to the ETA and the agreements have no application to it.<sup>33</sup>
38. The RTA and the CITCA would only come into play if bcIMC received a taxable supply of property or services and was otherwise immune from paying the tax. If this Court allows Canada's appeal and holds that the provisions of the ETA apply to the statutory trusts of

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<sup>32</sup> BCCA Reasons, paras 148-150 (Appellant's Record, vol I, Tab 2, p. 67).

<sup>33</sup> ETA, s. 122(b).

which bcIMC is trustee, then the conditions for the RTA and the CITCA to apply would not be met. bcIMC would not be the recipient of the supply of investment management services. The RTA and the CITCA would not be relevant to bcIMC's liability, and the issue of whether those agreements are binding as between the signatories, or binding on bcIMC, would simply not arise.

39. If, on the other hand, this Court dismisses Canada's appeal and confirms that the provisions of the ETA do not apply to the statutory trusts that bcIMC manages, then the RTA and the CITCA *might* be engaged. However, it is not clear what either party (i.e., Canada or the Province) would do in that case, whether a dispute would materialize between the parties, or what the outlines of the dispute may be. To the extent that bcIMC's cross-appeal presumes that Canada would seek to rely on the agreements as a basis to compel bcIMC to pay GST from which it would otherwise be immune, which events have not yet occurred, the issue raised by bcIMC is premature.

40. If at some point Canada relied on the RTA and the CITCA to require bcIMC to pay GST, the issue of whether those agreements are binding on bcIMC would arise. Should this Court decide it is necessary to address this issue, Canada relies on the following submissions.

**B. The RTA and the CITCA bind the Province and render it liable to pay GST**

41. Although intergovernmental agreements are often entered into for policy reasons, they are nonetheless contractual agreements and are often found to be binding on their signatories and to give rise to enforceable legal obligations.<sup>34</sup> The fact that they are motivated by policy considerations, or that they could not change the law or be binding on third parties, does not prevent them from being effective contractual agreements between the signatories to the agreements when the elements of a contract are present.<sup>35</sup> Holdings such as in *Reference re*

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<sup>34</sup> René Dussault and Louis Borgeat, *Traité de droit administratif*, 2<sup>nd</sup> ed, vol 1 (Québec: Presses de l'Université Laval, 1984), p 605.

<sup>35</sup> Paul Lordon, *Crown Law* (Toronto: Butterworths, 1991), pp 305-306; *Attorney-General of Quebec v. Moses*, 2010 SCC 17 at para 86; René Dussault and Louis Borgeat, *Traité de droit administratif*, 2<sup>nd</sup> ed, vol 1 (Québec: Presses de l'Université Laval, 1984), pp 605-606; Peter W Hogg et al, *Liability of the Crown*, 4<sup>th</sup> ed (Toronto: Carswell, 2011), pp 304-308 and 313-316.

*Pan-Canadian Securities Regulation*,<sup>36</sup> which analogized intergovernmental agreements to international agreements that are not binding on the provinces unless they enact legislation to that effect, cover a distinct situation.

42. Intergovernmental agreements typically fall on a spectrum between agreements that are merely political declarations and agreements that create legal relations and which are enforceable. The principal distinguishing factor between the different types of agreements is whether the agreement discloses that the parties mutually intended to create a binding legal relationship and to make enforceable commitments.<sup>37</sup>

43. For the purposes of the binding nature of the agreements between Canada and the Province, including bcIMC, it is irrelevant whether the payments to be made thereunder are akin to payments in lieu of taxes<sup>38</sup> (for which the Province could be contractually liable in any event<sup>39</sup>), whether the agreements are specifically implemented by statute or expressly declared by statute to be binding,<sup>40</sup> or whether a specific appropriation has been made with regards to the agreements.<sup>41</sup> Even in that latter situation, the absence of sufficient appropriation may only affect the execution of the agreement, not its validity.<sup>42</sup> That situation can only occur for British Columbia, as Canada is specifically authorized to make payments under the RTA and the CITCA without appropriation.<sup>43</sup>

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<sup>36</sup> 2018 SCC 48, at para 66.

<sup>37</sup> *South Australia v Commonwealth* (1962), 108 CLR 130, 141 (HC) (*per* Dixon CJ).

<sup>38</sup> Factum of bcIMC, para 149.

<sup>39</sup> See, *eg*, *Montréal (City) v Montreal Port Authority*, 2010 SCC 14; *Halifax (Regional Municipality) v Canada (Public Works and Government Services)*, 2012 SCC 29.

<sup>40</sup> Factum of bcIMC, paras 120-144.

<sup>41</sup> Dussault and Borgeat, *supra* note 35 at pp 710-712; Patrice Garant et al., *Précis de droit des administrations publiques*, 6<sup>th</sup> ed (Cowansville: Éditions Yvon Blais, 2018), pp 180-181; Hogg et al., *supra* note 35 at p 316; Patrice Garant, *Droit administratif*, 7<sup>th</sup> ed (Montréal: Éditions Yvon Blais, 2017), pp 452-457.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Federal-Provincial Fiscal Arrangements Act*, RSC 1985, c F-8, ss 8.6 (CITCA) and 33 (RTA); see René Dussault and Louis Borgeat, *Traité de droit administratif*, 2<sup>nd</sup> ed, vol 1 (Québec: Presses de l'Université Laval, 1984), p 711.

44. Whether an agreement discloses a common intention to create a binding relationship is determined by reviewing the agreement for indicia of legal status. Such indicia include specific detailed obligations to be performed by each party, language that contemplates rights and entitlement, language that reveals an intention to be bound, and language that provides for dispute resolution.<sup>44</sup>
45. As the Court of Appeal held, the RTA and the CITCA display many such indicia of legal status.<sup>45</sup> Both agreements are more than merely joint statements of policy goals. The agreements go beyond aspirational language and use specific and detailed language that contemplates rights, entitlements, and obligations.
46. In addition, the agreements contain numerous features that support characterizing them as binding contractual documents, including that:
- a. they are created in the form of a contract between Canada and the Province complete with recitals and definitions;
  - b. they include provisions acknowledging an intention to be bound;
  - c. they include provisions restricting each party's ability to terminate the agreement unilaterally; and
  - d. they include provisions for dispute resolution.
47. The above factors are bolstered by the fact that both governments have affirmatively stated throughout this case their intention to be bound. Neither party disputes that this was their common intention.
48. If accepted, bcIMC's position that the agreements are non-binding would undermine the policy objectives underlying the agreements: non-government vendors' obligations in the

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<sup>44</sup> Steven A Kennett, "Hard Law, Soft Law and Diplomacy: The Emerging Paradigm for Intergovernmental Cooperation in Environmental Assessment" (1993), 31 *Alta L Rev* 644, pp 653-656.

<sup>45</sup> BCCA Reasons, paras 143-147 (Appellant's Record, vol I, Tab 2, pp 65-66).

administration of GST would become more burdensome, competitive equity would be undermined, and consistency across Canada could suffer.

49. An agreement to submit to binding dispute resolution is not a prerequisite for the formation of a contractual agreement. Contracts are formed by the exchange of offer and acceptance, by the performance of reciprocal obligations in consideration of each other, when a meeting of the minds occurs, and when an intention to be bound is shared.<sup>46</sup>
50. Although a provision permitting disputes regarding an agreement to be referred to the Federal Court may be a strong indicator of the agreement's legal status, it is not required by *In re Canada-Alberta Agreement*<sup>47</sup> (cited by bcIMC in its factum) or any other case law. Indeed, that case was not about this issue, and the court did not inquire into the binding effect of the intergovernmental agreement.
51. The dispute resolution provisions that the RTA and the CITCA do include are notable. Their presence indicates an intention to be bound by the commitments made in the agreements. Those provisions go further than what would be expected in a merely political document. Further, it is significant that those provisions restrict each government's ability to exercise a prerogative immunity which would normally be within its unilateral authority.
52. It is also noteworthy that, in the RTA, Canada and the Province agree to submit certain questions relating to the administration and enforcement of certain tax statutes, including the ETA, to the statutory appeal procedures outlined in those statutes. Most taxing statutes, including the ETA, include comprehensive and mandatory appeal procedures.
53. Moreover, in addition to the dispute resolution provisions found in the agreements, nothing prevents either party to the agreements from requesting the superior court of a province, acting under its inherent jurisdiction,<sup>48</sup> to resolve any dispute arising out of the agreements.

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<sup>46</sup> GHL Fridman, *The Law of Contract in Canada*, 6th ed (Toronto: Carswell, 2011), ch 2; also Hogg et al, *supra* note 35 at p 307.

<sup>47</sup> *In re Canada-Alberta Agreement*, [1983] 1 FC 567 (TD).

<sup>48</sup> *Three Rivers Boatman Ltd v Conseil canadien des relations ouvrières*, [1969] SCR 607 at p 618.

Or, as the Court of Appeal acknowledged, it would be open to either party to refer an issue to the Federal Court under s. 19 of the *Federal Courts Act*, given that British Columbia has enacted the *Federal Courts Jurisdiction Act*.<sup>49</sup>

54. Accordingly, the RTA and the CITCA are properly characterized as binding agreements. Both Canada and the Province are required to pay certain of each other's taxes. They render the Province liable – in contract rather than by statute – to pay GST. That obligation is in turn impressed on bcIMC by s. 16(6) of the PSPPA. bcIMC is not, therefore, a “true” third party to the agreements. Except to the extent that bcIMC may be entitled to a rebate of GST paid under the schedule to the RTA – which is not in issue in this case – bcIMC's legal liability to pay GST cannot be separated from the Province's liability.

**C. bcIMC possesses no immunity from taxation to assert where the Province has committed to not assert its own**

55. bcIMC's refusal to comply with the Province's obligations under the RTA and the CITCA is incompatible with the fundamental principles of agency that govern its status as a Crown agent. The legislative framework should be interpreted to prevent it from doing so.
56. The immunity from taxation that bcIMC enjoys flows from its status as an agent of the Province under s. 16(5) of the PSPPA. bcIMC has no independent immunity from taxation. bcIMC enjoys immunity from taxation only when acting in its capacity as a provincial Crown agent.<sup>50</sup>
57. An agent's duty to its principal includes an obligation to perform the duties for which the agent was constituted as an agent, in accordance with the authority granted to it. An agent is not entitled to act in its own interest when discharging its agency, nor is it entitled to exceed the scope of the authority conferred on it by its principal.<sup>51</sup> An agent “stands in the shoes” of

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<sup>49</sup> RSBC 1996, c 135, s 1(a).

<sup>50</sup> *R v Eldorado Nuclear Ltd*, [1983] 2 SCR 551 [“*Eldorado Nuclear*”] at p 565; *Nova Scotia Power Inc v Canada*, 2004 SCC 51 at para 14.

<sup>51</sup> *Eldorado Nuclear* at pp 567-568.

the principal. These fundamental principles of agency apply equally to Crown and to non-Crown agents.<sup>52</sup>

58. The Province's immunity is limited to immunity from paying GST when it *receives* a supply of property or services that would otherwise be taxable under the ETA. The Province does not enjoy immunity from the obligation to collect and remit GST when it *makes* a supply of property or services that is taxable under the ETA, or from liability for failing to collect and remit GST in accordance with the ETA when it acts as a supplier.<sup>53</sup>
59. The RTA and the CITCA include commitments by the Province to pay GST on the receipt of taxable supplies notwithstanding that it is otherwise immune from federal taxation. Those commitments are contractual in nature, not statutory, but they are nonetheless binding on the Province. As an agent of the Province, bcIMC should not be entitled to assert an immunity that flows from its agency when the Province has bound itself not to invoke that immunity. Yet, bcIMC seeks to do precisely that in this case.
60. Since bcIMC's immunity results from the grant of agency in s. 16(5), s. 16(6) must have some other effect or it would be redundant.<sup>54</sup> The effect of s. 16(6) is to qualify that immunity by obliging bcIMC to pay taxes that the Province is bound to pay. This interpretation of s. 16(6) is a reasonable one that gives the provision a distinct effect from s. 16(5). It is also compatible with the fundamental principles of agency. The fact that s. 16(6) is found in the PSPPA should be conclusive as to its binding nature.
61. Sections 16(5) and (6) therefore operate together to delineate the scope of bcIMC's agency. Together, they provide that bcIMC is an agent performing a function of the provincial government and therefore it is entitled to the same treatment as the government (i.e., immunity from taxation) when it performs that function, but it is not entitled to immunity when the government itself is bound to pay tax (whether contractually or otherwise).

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<sup>52</sup> GHL Fridman, *Law of Agency*, 7<sup>th</sup> ed (Toronto: Butterworths, 1996), ch 8.

<sup>53</sup> ETA, s 122(b).

<sup>54</sup> *Placer Dome Canada Ltd v. Ontario (Minister of Finance)*, 2006 SCC 20 at para 45.

62. The chambers judge was correct that s. 16(6) of the PSPPA provides “specific legislative authority” to bind bcIMC to comply with the Province’s obligations, and that the specific statutory language of that provision “should not be ignored”.<sup>55</sup> The Court of Appeal was right not to interfere with his decision,<sup>56</sup> and nor should this Court.

**PART IV: SUBMISSIONS CONCERNING COSTS**

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

**PART V: ORDER SOUGHT**

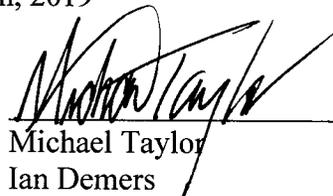
64. The Appellant requests that the cross-appeal be dismissed, with costs.

**PART VI: SUBMISSIONS ON THE IMPACT OF ANY SEALING OR  
CONFIDENTIALITY ORDER**

65. Not applicable.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

Vancouver, British Columbia, this 14<sup>th</sup> day of March, 2019



Michael Taylor  
Ian Demers  
Selena Sit

Counsel for the Appellant/Respondent in  
Cross-Appeal

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<sup>55</sup> Reasons of the British Columbia Supreme Court, para 166 (Appellant’s Record, vol I, Tab 1, p 32).

<sup>56</sup> BCCA Reasons, paras 154-155 (Appellant’s Record, vol I, Tab 2, p 68).

## PART VII: TABLE OF AUTHORITIES

<b>Jurisprudence</b>	<b>Cited at paragraph (s)</b>
<a href="#"><i>Attorney-General of Quebec v. Moses</i>, 2010 SCC 17</a>	41
<a href="#"><i>Halifax (Regional Municipality) v Canada (Public Works and Government Services)</i>, 2012 SCC 29</a>	43
<i>In re Canada-Alberta Agreement</i> , [1983] 1 FC 567 (TD)	50
<a href="#"><i>Montreal (City) v Montreal Port Authority</i>, 2010 SCC 14</a>	43
<a href="#"><i>Nova Scotia Power Inc. v Her Majesty the Queen</i>, 2004 SCC 51</a>	56
<a href="#"><i>Placer Dome Ltd. v. Ontario (Minister of Finance)</i>, 2006 SCC 20</a>	60
<a href="#"><i>R v Eldorado Nuclear Ltd.</i>, [1983] 2 SCR 551</a>	56, 57
<a href="#"><i>Reference re Pan-Canadian Securities Regulation</i>, 2018 SCC 48</a>	41
<a href="#"><i>South Australia v Commonwealth</i> (1962), 108 CLR 130, 141 (HC)</a>	32, 42
<a href="#"><i>Three Rivers Boatman Ltd v Conseil canadien des relations ouvrières</i>, [1969] SCR 607</a>	53
<b>Secondary Sources and Other Materials</b>	
GHL Fridman, <i>Law of Agency</i> , 7 <sup>th</sup> ed (Toronto: Butterworths, 1996)	57
GHL Fridman, <i>The Law of Contract in Canada</i> , 6th ed (Toronto: Carswell, 2011)	49
Patrice Garant et al., <i>Précis de droit des administrations publiques</i> , 6 <sup>th</sup> ed (Cowansville: Éditions Yvon Blais, 2018)	43
Patrice Garant, <i>Droit administratif</i> , 7 <sup>th</sup> ed (Montréal: Éditions Yvon Blais, 2017)	43
Paul Lordon, <i>Crown Law</i> (Toronto: Butterworths, 1991)	41
Peter W Hogg et al, <i>Liability of the Crown</i> , 4 <sup>th</sup> ed (Toronto: Carswell, 2011)	41, 43, 49
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Steven A Kennett, “Hard Law, Soft Law and Diplomacy: The Emerging Paradigm for Intergovernmental Cooperation in Environmental Assessment” (1993), 31 <i>Alta. L Rev</i> 644	44
<b>Legislation</b>	
<i>Constitution Act, 1867</i> (UK), 30 & 31 Victoria, c 3,  (English) s. <a href="#">125</a> (Français) art. <a href="#">125</a>	3
<i>Excise Tax Act, RSC 1985</i> , c E-15,  (English) s. <a href="#">122</a> (Français) art. <a href="#">122</a>	28, 37, 58
<i>Federal Courts Act, RSC 1985</i> , c F-7,  (English) s. <a href="#">19</a> (Français) art. <a href="#">19</a>	34, 53
<i>Federal Courts Jurisdiction Act, RSBC 1996</i> , c 135,  s. <a href="#">1</a>	34, 53
<i>Federal-Provincial Fiscal Arrangements Act, RSC 1985</i> , c F-8,  (English) s. <a href="#">8.3</a> (Français) art. <a href="#">8.3</a>  (English) s. <a href="#">8.4</a> (Français) art. <a href="#">8.4</a>  (English) s. <a href="#">8.6</a> (Français) art. <a href="#">8.6</a>  (English) s. <a href="#">32</a> (Français) art. <a href="#">32</a>  (English) s. <a href="#">33</a> (Français) art. <a href="#">33</a>	16  16  16, 43  6  6, 43

<i>Ministry of Intergovernmental Relations Act</i> , RSBC 1996, c 303, s. <a href="#">4</a>	6
<i>Public Sector Pension Plans Act</i> , SBC 1999, c 44, s. <a href="#">16</a>	2, 31, 54, 56, 60, 61, 62

## STATUTES RELIED ON

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

#### **Exemption of Public Lands, etc.**

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

#### **Terres publiques, etc., exemptées des taxes**

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

### *Excise Tax Act, RSC 1985, c E-15, Section 122*

#### **Application**

**122** This Part is binding

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

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

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

#### **Sa Majesté**

**122** La présente partie lie :

a) Sa Majesté du chef du Canada;

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

c) [Abrogé, 1993, ch. 27, art. 9]

### *Federal Courts Act, RSC 1985, c F-7, Section 19*

#### **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

#### **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

jurisdiction in cases of controversies between Canada and that province, or between that province and any other province or provinces that have passed a like Act, the Federal Court has jurisdiction to determine the controversies.

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 plusieurs autres provinces ayant adopté une loi semblable.

***Federal Courts Jurisdiction Act, RSBC 1996, c 135, Section 1***

**Jurisdiction conferred on Supreme Court of Canada and Federal Court in certain cases**

**1** (1) The Supreme Court of Canada and the Federal Court of Canada, or the Supreme Court of Canada alone, according to the Acts of the Parliament of Canada known as the *Supreme Court Act* and the *Federal Court Act*, have jurisdiction in the following cases:

- (a) controversies between Canada and British Columbia;
- (b) controversies between British Columbia and any other province of Canada that has passed an Act similar to this Act;
- (c) suits, actions or proceedings in which the parties to them, by their pleadings, have raised a question as to the validity of an Act of the Parliament of Canada, or of an Act of the Legislature, if, in the opinion of the court in which the suits, actions or proceedings are pending, the question is material.

(2) A judge who hears a case referred to in subsection (1) (c) must, at the request of the parties, and may without that request, if he or she thinks fit, order the case to be removed to the Supreme Court of Canada to decide the question of validity.

*Federal-Provincial Fiscal Arrangements Act, RSC 1985, c F-8,*

**Sections 8.3, 8.4, 8.6, 32 and 33**

**Sales tax harmonization agreement**

**8.3 (1)** The Minister, with the approval of the Governor in Council, may on behalf of the Government of Canada enter into an agreement or arrangement with the government of a province respecting sales taxes and, without restricting the generality of the foregoing, respecting

- (a) the integration of sales taxes applicable in the province into taxes collected, administered and enforced under a single Act of Parliament;
- (b) the collection of taxes applicable in the province, whether imposed under an Act of Parliament or levied under an Act of the legislature of the province, and the administration and enforcement of the Acts imposing the taxes;
- (c) the provision to the Government of Canada by the government of the province, or to the government of the province by the Government of Canada, of information acquired in the administration and enforcement of Acts imposing taxes, Acts relating to the disclosure, displaying or advertisement of prices for property or services and Acts providing for rebates, refunds or reimbursements of sales taxes, paid or payable, or of amounts paid or payable as or on account of sales taxes, in respect of the supply, bringing into the province or

**Accord d'harmonisation de la taxe de vente**

**8.3 (1)** Avec l'approbation du gouverneur en conseil, le ministre peut conclure, avec le gouvernement d'une province et pour le compte du gouvernement du Canada, un accord ou un arrangement en matière de taxes de vente et notamment un accord ou un arrangement qui portent sur les points suivants :

- a) l'intégration des taxes de vente applicables dans la province en taxes dont la perception et l'application s'effectuent en application d'une seule loi fédérale;
- b) la perception des taxes applicables dans une province, qu'elles soient imposées par une loi fédérale ou perçues aux termes d'une loi provinciale, ainsi que l'application des lois les imposant;
- c) la communication au gouvernement du Canada par le gouvernement provincial, ou inversement, de renseignements obtenus lors de l'application et de l'exécution de lois imposant des taxes, de lois concernant l'indication, la présentation ou la publication du prix de biens ou de services et de lois prévoyant le remboursement ou la remise des taxes de vente payées ou payables, ou des montants payés ou payables au titre des taxes de vente, relativement à la fourniture, au transfert dans la province ou à l'importation de certains biens ou services;

importation of certain property or services;

**(d)** the accounting for taxes collected in accordance with the agreement;

**(e)** the implementation of the system of integration of the sales taxes contemplated under the agreement and the transition from the system of taxation administered before the agreement to the system of taxation contemplated under the agreement;

**(f)** payments, and the eligibility for payments, by the Government of Canada to the government of the province in respect of the revenues from, and the transitional costs incurred in converting to, the system of taxation contemplated under the agreement and to which the province is entitled under the agreement, the time when such payments will be made, and the remittance by the government of the province to the Government of Canada of any overpayments by the Government of Canada or the right of the Government of Canada to set off any overpayments against other amounts payable by the Government of Canada to the government of the province, whether under the agreement or any other agreement or arrangement or any Act of Parliament;

**(g)** the payment by the Government of Canada and its agents and subservient bodies, and by the government of the province and its agents and subservient bodies, of the sales taxes payable under the system of taxation contemplated under the agreement and the accounting for the sales taxes so paid;

**d)** la façon de rendre compte des taxes perçues en conformité avec un accord;

**e)** la mise en oeuvre d'un régime d'intégration des taxes de vente prévue par un accord et le passage du régime de taxation en place avant l'entrée en vigueur de l'accord à celui prévu par celui-ci;

**f)** les versements effectués par le gouvernement du Canada au gouvernement provincial — et auxquels la province a droit aux termes de l'accord — relativement aux recettes provenant du régime de taxation prévu par l'accord et aux coûts de transition engagés en vue de passer à ce régime, les conditions d'admissibilité à ces versements, le calendrier de paiement et le versement par le gouvernement provincial au gouvernement du Canada des paiements en trop effectués par ce dernier ou le droit du gouvernement du Canada d'appliquer ces paiements en trop en réduction d'autres montants à payer au gouvernement provincial, que ce soit aux termes de l'accord, de tout autre accord ou arrangement ou d'une loi fédérale;

**g)** le paiement par le gouvernement du Canada et ses mandataires et entités subalternes, ainsi que par le gouvernement provincial et ses mandataires et entités subalternes, des taxes de vente payables dans le cadre du régime de taxation visé par l'accord et la façon de rendre compte des taxes ainsi payées;

**h)** l'observation par le gouvernement du Canada et ses mandataires et entités

(h) the compliance by the Government of Canada and its agents and subservient bodies, and by the government of the province and its agents and subservient bodies, with the Act of Parliament under which the system of taxation is administered and regulations made under that Act;

(i) the enactment, administration and enforcement of laws respecting the disclosure, display and advertisement of the prices for property and services in respect of the supply of which sales taxes are payable under the system of taxation contemplated under the agreement;

(j) the administration and enforcement of Acts of Parliament or the legislature of the province respecting the rebate, refund or reimbursement of sales taxes paid in respect of the supply, bringing into the province or importation of certain property or services; and

(k) other matters that relate to, and that are considered advisable for the purposes of implementing or administering, the system of taxation contemplated under the agreement.

### **Amending agreements**

(2) The Minister, with the approval of the Governor in Council, may on behalf of the Government of Canada enter into an agreement with the government of a province amending or varying an agreement or arrangement with the province entered into under subsection (1) or this subsection or ratified and confirmed under section 8.7.

subalternes, ainsi que par le gouvernement provincial et ses mandataires et entités subalternes, de la loi fédérale en vertu de laquelle le régime de taxation est appliqué et de ses règlements d'application;

i) l'adoption et l'application de lois concernant l'indication, la présentation et la publication du prix de biens et de services dont la fourniture donne lieu au paiement de taxes de vente aux termes du régime de taxation visé par un accord;

j) l'application de lois fédérales ou provinciales portant sur le remboursement ou la remise des taxes de vente payées relativement à la fourniture, au transfert dans la province ou à l'importation de certains biens ou services;

k) d'autres questions concernant le régime de taxation visé par l'accord et dont l'inclusion est indiquée aux fins de la mise en oeuvre ou de l'application de ce régime.

### **Accords modificatifs**

(2) Avec l'approbation du gouverneur en conseil, le ministre peut conclure, avec le gouvernement d'une province et pour le compte du gouvernement du Canada, un accord modifiant un accord ou un arrangement conclu avec la province aux termes du paragraphe (1) ou du présent paragraphe, ou ratifié et confirmé aux termes de l'article 8.7.

### **Versements à la province**

**8.4** Si un accord d'harmonisation de la taxe de vente a été conclu avec le gouvernement d'une province, le ministre

## Payments to province

**8.4** If there is a sales tax harmonization agreement with the government of a province, the appropriate minister may pay to the province out of amounts received in a fiscal year under Part IX of the [Excise Tax Act](#)

(a) amounts determined in accordance with the agreement as provided, and at such times as are specified, in the agreement; and

(b) subject to the regulations, advances in respect of the amounts referred to in paragraph (a).

## Statutory authority to make payments

**8.6** Notwithstanding any other Act, the payments paid under a sales tax harmonization agreement under the authority of section 8.4 or 8.5 may be made without any other or further appropriation or authority.

## Reciprocal taxation agreements

**32** Notwithstanding any other Act, the Minister may enter into reciprocal taxation agreements with the government of any province, providing, without restricting the generality of the foregoing, for all or any of the following matters, namely

(a) for the payment by Her Majesty in right of Canada of any provincial tax or fee imposed or levied under a law of that province that would be payable by Her Majesty in right of Canada if that law were applicable thereto;

(b) for the payment by Her Majesty in right of that province of any tax or fee imposed or levied under the [Excise](#)

compétent peut verser à la province, sur les sommes reçues au cours d'un exercice sous le régime de la partie IX de la [Loi sur la taxe d'accise](#) :

a) des montants déterminés en conformité avec l'accord et prévus par celui-ci, selon le calendrier prévu par l'accord;

b) sous réserve des dispositions réglementaires, des avances sur les montants visés à l'alinéa a).

## Autorisation d'effectuer des versements

**8.6** Malgré toute autre loi, les versements effectués aux termes d'un accord d'harmonisation de la taxe de vente sous le régime des articles 8.4 ou 8.5 peuvent être effectués sans autre affectation de crédits ou autorisation.

## Accords de réciprocité fiscale

**32** Nonobstant toute autre loi, le ministre peut, pour l'application de la présente partie, conclure des accords de réciprocité fiscale avec le gouvernement d'une province; ces accords prévoient notamment :

a) le paiement par Sa Majesté du chef du Canada des taxes et droits imposés ou perçus en vertu des lois de cette province et dont elle serait redevable si ces lois lui étaient applicables;

b) le paiement par Sa Majesté du chef de cette province des taxes et droits imposés ou perçus en vertu de la [Loi sur la taxe d'accise](#) et dont elle est redevable, ainsi que le renoncement aux paiements visés aux articles 68.14 ou 68.19 de cette loi;

Tax Act that is payable by Her Majesty in right of that province and the waiver of the right to a payment in respect of that tax or fee provided in section 68.14 or 68.19 of that Act;

(c) for the payment by Her Majesty in right of Canada to that province or the assignees of that province of amounts determined under the agreement in respect of amounts paid by Her Majesty in right of that province and amounts paid by persons identified in the agreement as or on account of any tax imposed under the Excise Tax Act;

(d) for the payment by Her Majesty in right of Canada of interest on any amounts equal to any provincial tax or fee imposed or levied under a law of the province that would be collected by Her Majesty in right of Canada if that law were applicable to Her Majesty in right of Canada where those amounts have not been remitted or paid to the province at the rate and in the manner and at the time provided for in the applicable law of the province; and

(e) for the collection and the remittance by Her Majesty in right of Canada of any provincial tax or fee imposed or levied under a law of the province that would be collected pursuant to that law by Her Majesty in right of Canada if that law were applicable to Her Majesty in right of Canada.

### **Payment out of Consolidated Revenue Fund**

**33** The amounts authorized to be paid by Her Majesty in right of Canada under a reciprocal taxation agreement may be paid

c) le paiement par Sa Majesté du chef du Canada à cette province ou aux cessionnaires de celle-ci de montants déterminés aux termes des accords relativement à des sommes payées par Sa Majesté du chef de cette province ou par des personnes identifiées dans les accords au titre d'une taxe imposée par la Loi sur la taxe d'accise;

d) le paiement par Sa Majesté du chef du Canada des intérêts sur toutes sommes égales aux taxes et droits provinciaux imposés ou perçus en vertu des lois de la province qui seraient perçus par elle si ces lois lui étaient applicables, lorsque ces sommes n'ont été ni envoyées ni payées à la province au taux, de la manière et dans le délai prévus par la loi provinciale applicable;

e) la perception et le versement par Sa Majesté du chef du Canada de toutes taxes et droits provinciaux imposés ou perçus en vertu des lois de la province qu'elle percevrait en vertu de ces lois si celles-ci lui étaient applicables.

### **Paiement sur le Trésor**

**33** Les sommes que Sa Majesté du chef du Canada est autorisée à payer en vertu d'un accord de réciprocité fiscale peuvent l'être par prélèvement sur le Trésor aux dates et selon les modalités prescrites.

out of the Consolidated Revenue Fund at such times and in such manner as may be prescribed.

***Ministry of Intergovernmental Relations Act, RSBC 1996, c 303, Section 4***

**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.

***Public Sector Pension Plans Act, SBC 1999, c 44, Section 16***

**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.