



Case in Brief: **Canada (Attorney General) v. British Columbia Investment Management Corp.**

Judgment of December 13, 2019 | On appeal from the Court of Appeal for British Columbia

Neutral citation: 2019 SCC 63

The federal government couldn't force a BC Crown corporation to pay GST on its own property, but it still had to pay because BC agreed, the Supreme Court has ruled.

British Columbia Investment Management Corporation (BCI) was a Crown corporation owned by the British Columbia government. BCI managed and invested pension and other money for several public-sector organizations.

The federal government collected GST under the *Excise Tax Act*. BCI didn't charge direct fees for some of its investment services. Instead, it took some of the profits from those investments to cover the costs of its services. It didn't charge GST.

Under the Constitution, the federal and provincial governments each have different powers. They can't interfere with each other's powers. The Constitution says that they can't force each other to pay tax. They have "immunity" against each other's taxes.

But the federal government said BCI had to charge GST for the investment services. According to the federal government, BCI was holding the investments "in trust" for (for the benefit of) pension boards. The pension boards were private and not part of any government. Because the pension boards were getting a service, the federal government said they had to pay GST, which BCI had to collect.

The federal government also said BCI still had to pay GST even if the investments weren't being held "in trust" for anyone else. This was because the BC government had agreed to pay GST in some situations. According to the federal government, BCI was bound by BC's agreement to pay GST. The federal government said BCI owed over \$40 million, plus interest and penalties, for three years.

BCI asked a British Columbia court to legally declare that it didn't have to pay federal taxes. The BC court decided the federal government couldn't force BCI to pay under the *Excise Tax Act*. But the court also said that BCI still had to pay because of BC's agreements with the federal government. The Court of Appeal agreed.

The majority of judges at the Supreme Court of Canada agreed with the lower courts. BC law didn't actually say who the "beneficiary" of the trust was (that is, who got the real benefits from it). BCI legally owned the investments. BCI was a Crown corporation managing the investments. So if the federal government charged BCI GST for investment services under the *Excise Tax Act*, it would be charging tax on property owned by the province. That's not allowed under the Constitution.

But the majority of judges agreed that BCI still had to pay because it was a provincial Crown corporation. Just as it benefitted from the province's tax immunity, it was also bound by the province's agreements to pay GST to the federal government. The majority said that even though one level of government can't force the other to pay tax, that doesn't mean they can't agree to pay tax if they choose to.

Another issue in this case was which court should decide the dispute. The Tax Court is the only court that has the power to decide if a federal tax assessment is correct. Because it is a provincial superior court, the BC court has the power to hear any legal issue, unless the power to hear it has been given to another court. The issue about whether BC's agreements to pay GST applied to BCI wasn't about a specific tax assessment, so the Tax Court wouldn't have had the power to decide it. Since it made sense to hear all the issues together, it was right for the BC court to hear it.

Breakdown of the decision: **Majority:** Justice Andromache [Karakatsanis](#) dismissed both the appeal and cross-appeal (Justices [Abella](#), [Moldaver](#), [Brown](#), [Rowe](#), and [Martin](#) agreed) | **Dissenting in part:** Chief Justice Richard

[Wagner](#) said BCI had to pay GST on services for the property in the trust and would have allowed the appeal on the immunity issue

More information (case # 38059): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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