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***The Supreme Court rules that companies cannot undo transactions that later cause them unintended taxes.***

This is a case involving two companies, Rite-Way Metals Ltd. and Harvard Industries Ltd., which were wanting to avoid paying taxes on some of their assets. The companies followed guidelines published by the Canada Revenue Agency (CRA). According to these guidelines, section 75(2) of the *Income Tax Act* allowed companies to avoid taxes on dividends if paid to a family trust. A dividend is a part of the profit a company pays to its shareholders. A family trust is a legal entity created to hold assets. Once assets are transferred into the trust, they are no longer the property of the person who transferred them. Instead, they belong to the trust, which is then administered for the benefit of the trustees (or beneficiaries), who are usually members of the relevant family. In this case, the trusts were for the Collins and Cochran families. The trusts were created in 2008.

A few years later, in an unrelated case, the Tax Court of Canada issued a decision with a different interpretation of section 75(2). The effect of the ruling was that family trusts owe taxes on any such dividends.

The Collins and Cochran family trusts applied to the Supreme Court of British Columbia to cancel the transactions that led to the dividends. British Columbia's Supreme Court agreed to do so. The Court of Appeal dismissed the appeal by the Attorney General of Canada on behalf of the CRA. The Attorney General then appealed to the Supreme Court of Canada.

The Supreme Court has agreed with CRA's interpretation of the law.

**The transactions cannot be cancelled.**

Writing for the majority of Supreme Court judges, Justice Russell Brown said principles of equity and tax law prevent the companies from reversing their transactions. "Taxpayers should be taxed based on what they actually agreed to do and did, and not on what they could have done or later wished they had done," Justice Brown wrote.

A court may grant relief to parties only when it would be unfair to enforce transactions. The judges wrote there is nothing unfair about the ordinary application of tax laws to transactions freely undertaken. If any changes are required, it would be up to Parliament to make them, not the courts, the majority noted.

**Retroactive tax planning is not allowed.**

The Supreme Court has previously stated that retroactive tax planning is not allowed. This means people cannot later change their tax arrangements to prevent any unintended negative consequences. Although taxpayers can arrange their finances as they see fit to reduce their taxes, their planning may have the opposite effect. If so, they must bear that responsibility.

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**Breakdown of the decision:** **Majority:** Justice [Brown](#) allowed the appeal, preventing the rescission of the transactions (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Karakatsanis](#), [Rowe](#), [Martin](#), [Kasirer](#) and [Jamal](#) agreed) | **Dissenting:** Justice [Côté](#) would have dismissed the appeal

**More information (case # 39383):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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