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## Publisher's Note

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# McMechan & Bourgard Tax Court Practice

## Release 2023-4

### Highlights

Chapters 1, 3, 4, 7, and 8 have been updated. The following are some notable highlights.

#### Volume 1

- **Chapter 1, The Tax Court of Canada**, updates the Judges of the Tax Court and Hearings Coordinators.

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## Volume 2

• **Chapter 3, *Tax Court of Canada Act***, the following provisions have been updated: **s. 12 Inherent or Implied Jurisdiction Over Its Own Process** (*Canada v. Dow Chemical Canada ULC*; *John Doe v. The King*; *SPE Valeur Assurable Inc.c. Le Roi*; *Osadchuck v. The King*); **s. 12 Judicial Comity** (*Parker v. The King*; *Enns v The King*); **s. 12 Power to Enforce Settlement Agreements** (*Doussot v. The King*; *Quebec Fonte*); note to **s. 16.1** has been amended; **subsec. 18.15(3) Not Bound by Rules of Evidence** (*Parker v. The King*); **subsec. 18.15(3) Interlocutory Proceedings Discouraged** (*Beauregard (Succession) v. The King*); **s. 19.1 Vexatious Proceedings** (*Turmel v Canada*).

• **Chapter 4, *General Procedure Rules***, the following provisions have been updated: **s. 7 Effect of Non-Compliance** (*Hillcore Financial Corporation v. The King*); **s. 8 Attacking Irregularity** (*Chad v. The King*); **s. 16.1 Confidentiality Order** (*Rémillard c. Canada (Revenu national)*; *Gaudreau v The King*; *Hirjee v. The King*); **s. 26 Consolidation** (*Newfoundland Broadcasting Company Limited v. The King*); **s. 29.1 Party Under Legal Disability** (*John Doe v. The King*); **s. 43 Function of Pleadings** (*Hillcore Financial Corporation v. The King*); **s. 48 Contents of Notice of Appeal** (*Jensen v. Samsung Electronics Co. Ltd.*); **s. 48 Rules of Pleadings — Notice of Appeal** (*Reyes v. The King*; *Deans Knight Income Corp. v Canada*); **s. 49 Structure of Rule 49** (*Martineau v. The King*); **s. 49 Overview** (*The Estate of Venence Cote v. The King*); **para. 49(1)(a) Facts that are admitted** (*Hillcore Financial Corporation v. The King*); **para. 49(1)(d) Assumptions of Fact** (*Hillcore Financial Corporation v. The King*; *Davis v. The King*); **s. 49 Assumptions: Assumptions of Fact, Not Evidence** (*Hillcore Financial Corporation v. The King*); **para. 49(1)(d) Assumptions: Conclusions of Law or Mixed Fact and Law** (*Canada v Preston*; *The Estate of Venence Cote v. The King*; *Hillcore Financial Corporation v. The King*); **para. 49(1)(d) Assumptions: Conclusions of Law** (*3792391 Canada Inc. v. The King*); **s. 49 Assumptions: Relevance** (*Hillcore Financial Corporation v. The King*); **para. 49(1)(d) Assumptions: Relevance** (*The Estate of Venence Cote v. The King*); **s. 49 Assumptions -Third Parties** (*Hillcore Financial Corporation v. The King*); **para. 49(1)(d) Assumptions -Third Parties** (*Ebert v. The King*; *Status-One Investments Inc. v. The Queen*); **s. 49 Other Material Facts — Pleading Misrepresentation and Gross Negligence** (*Gessner v. The King*); **s. 50 Answer** (*Martineau v. The King*); **subsec. 51(1) Pleading Documents** (*Jensen v. Samsung Electronics Co. Ltd.*); **subsec. 51(3) Inconsistent Allegations in a Previous Pleading** (*Martineau v. The King*); **subsec. 53(1) Striking Out Pleading or Other Document: General Principles** (*Canada v Preston*); **subsec. 53(1) Striking Out Pleadings** (*Ebert v. The King*); **para. 53(1)(a) Prejudice or Delay** (*The Estate of Venence Cote v. The King*; *Canada v Preston*; *Hillcore Financial Corporation v. The King*); **para. 53(1)(b) Scandalous, Frivolous, Vexatious** (*Nevsun Resources Ltd. v Araya*; *Hillcore Financial Corporation v. The King*); **para. 53(1)(b) Motion to Strike — Scandalous,**

frivolous, vexatious (*The Estate of Venence Cote v. The King*); para. 53(1)(c) Abuse of Process (*Canada v Preston*); para. 53(1)(c) Abuse of the Process of the Court (*Hillcore Financial Corporation v. The King*); para. 53(1)(d) No Reasonable Grounds-Natural Persons (*Osadchuk v. Canada*); s. 53 Provincial Tax, Provincial Credits, Provincial Penalties, Province of Residence (*Melenchuk v. The King*); s. 53 Reassessment with Taxpayers Consent (*Reyes v. The King*; *Kubbernus v. The Queen*); s. 53 Taxpayer Bill of Rights (*Azzopardi v. The King*); s. 53 Directors — Underlying Assessments (*Little v. The King*); s. 54 Rule 54 Amendments (*Bristol-Myers Squibb Co. v. Apotex Inc.*; *Davis v. The King*); s. 71 Evidence by Affidavit (*Mand v. Canada*); s. 72 Contents of Affidavit (*Shoan v. Canada (Attorney General)*); s. 72 Striking Affidavits (*Aventis Pharma Inc. v. Mayne Pharma (Canada) Inc.*); s. 82 Accountant Communications (*Gaudreau v The King*); s. 82 Confidentiality; s. 241 ITA/ s. 295 ETA (*Rémillard c. Canada (Revenu national)*); s. 82 Investigation Privilege (*Canada (Attorney General) v. Hutton*); s. 82 Litigation Privilege (*Hagedorn v. “Helios I” (The)*; *Pederson v. Allstate Insurance Company of Canada*; *Air Passenger Rights v. Canada*; *Lifford Wine Agencies Ltd. v. Ontario (Alcohol & Gaming Commission)*; *Mitsui & Co. (Point Aconi) Ltd. v. Jones Power Co.*; *Gower v. Tolko Manitoba Inc.*; *College of Physicians & Surgeons (British Columbia) v. British Columbia (Information & Privacy Commissioner*; *General Motors Acceptance Corp. of Canada Ltd. v. The Queen*; *Minister of National Revenue v. Revcon Oilfield Constructors Inc.*); s. 82 Solicitor-Client Privilege (*Canada (Office of the Information Commissioner) v. Canada (Prime Minister)*; *Air Passenger Rights v. Canada (Attorney General)*; *Canada (National Revenue) v BMO Nesbitt Burns Inc.*); s. 82 Waiver of Privilege (*Air Passenger Rights v. Canada (Attorney General*; 632738 *Alberta Ltd. v. The King*); s. 89 Use at Hearing (*Marine Atlantic Inc. v. The King*); subsec. 95(1) Questions Raising Claims of Privilege (632738 *Alberta Ltd. v. The King*); s. 126 Case Management (*Njoroge v. Canada (Attorney General)*); subsec. 135(2) Order of Presentation at Hearing (*LBL Holdings Limited v. The King*); s. 135 Burden of Proof — General Rule (*Preston Family Trust II v. The Queen*); s. 135 Demolishing Assumptions with a *Prima Facie* Case (*Hammoud v. The Queen*); s. 135 Burden — Assumptions Exclusively or Peculiarly within Ministers Knowledge (*The Estate of Venence Cote v. The King*); s. 135 Burden — Director’s Liability and s. 160 ITA, s. 323 ETA Non-Arm’s Length Transfer Assessments (*Little v. The King*); s. 135 Burden — Misrepresentation (*MF Electric Incorporated v. The King*); s. 135 Burden — Penalties — Gross Negligence — False Statements (*MF Electric Incorporated v. The King*); s. 137 Adjournment (*Robinson v. The King*); para. 145(7)(c) Expert Available (*Hirjee v. The King*); subsec. 147(1) Costs — in any proceeding (*Mand v. Canada*); subsec. 147(1) Principled Approach (*Canada v Bowker*); subsec. 147(1) Tariff Costs (*Canada v Bowker*); para. 147(3)(a) Costs — The result of the Proceeding (*Canada v Bowker*); para. 147(3)(b) Costs — Amounts in Issue (*Hull v The Queen*); para. 147(3)(d) Costs-Written Settlement

**Offer** (*Canada v Bowker*; *H-D U.S.A. LLC v. Berrada*); **para. 147(3)(i) Improper or Negligent Step** (*Canada v Bowker*); **para. 147(3)(j) Any other matter relevant to costs** (*Whitford v. Chakita*; *Canada v Bowker*); **subsec. 147(3.1) Enhanced Costs — Settlement Offers** (*Hull v. Canada*); **s. 170 Judgments by Consent on Appeal: Limits on Minister** (*Canada v Bowker*); **s. 170.1 Judgments on Admissions** (*Iris Technologies Inc. v. The King*); **subsec. 172(2) Motion to set aside or vary** (*Doussot v. The King*); **para. 172(2)(c) Other Relief Than That Originally Directed** (*Bouchard v. The King*).

- **Chapter 7, Canada Pension Plan Appeals**, the following provision has been updated: **s. 28 CPP Appeal — Extension of Time** (*McMurray Montessori Academy Inc. v. M.N.R.*).

- Chapter 8, *Employment Insurance Act Appeals*, the following provisions have been updated: **s. 103 Nature of an Appeal under para 5(3)(b) E.I. Act** (*Bingley v M.N.R.*); **s. 103 Contract of Service — Civil Law** (*Payette c. M.R.N.*); **s. 103 Contract of Service — Common Law** (*Hachula v M.N.R.*); **s. 103 Contract of Service or Contract for Services — Common Law** (*0808498 BC Ltd. v. M.N.R.*); **s. 104 No Costs Unless Abuse of Process** (*0808498 BC Ltd. v. M.N.R.*).

**Appendix D, Practice Notes, Directions and Notices**, two new Notices to the Public and the Profession have been added, one regarding the closure of the Tax Court of Canada Hamilton location, and the second regarding the Extension of time to file a Reply to the Notice of Appeal. Also added, a Practice Direction and Order regarding Filing a reply with the Registry after service of the notice of appeal.

- over 80 new case annotations; and
- Table of Cases and Index have been updated to reflect the current Release.