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TAX EVASION AND FRAUD: JAIL TIME FOR BIG CRIME

By David W. Chodikoff, Partner and Tax Leader, Miller Thomson LLP

If you are either a student of judicial history or have practiced the defence of tax prosecutions and fraud long enough, you are likely to have noticed a serious shift in sentencing of tax evaders and fraudsters.

In the past, it was common for the courts to find those guilty of tax crimes punished by imposing fines, and in what seemed like the rare occasion, “light” jail sentences. In a shift that appears to have occurred in the last few years, the courts have adopted a much harsher attitude towards those convicted of tax evasion and/or fraud.

It is very useful to reflect upon the fundamental principles for sentencing. The starting point is section 718 of the *Criminal Code*.¹ The purpose of sentencing is primarily twofold. First, it is intended to protect society and this coincides with societal crime prevention initiatives. Second, it is directed towards maintaining a just, peaceful and safe society. Hence, the courts impose sentences which seek to achieve multiple objectives. These goals include:

- denouncing unlawful conduct and the harm caused to society by the unlawful conduct;
- deterrence; and
- rehabilitation, reparations and an acknowledgement by the offender of the harm perpetrated on the community.

Section 718.1 of the *Criminal Code* states that a sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the offender. As the Supreme Court of Canada stated in *R. c. M. (L.)*,² sentencing is a very individualized process which requires consideration of all the relevant circumstances. Section 718.2 of the *Criminal Code* adds to the list of sentencing principles that must be considered by the courts when imposing a sentence. In essence, the court must consider all relevant ag-

June 2022 - ISSUE 15-2

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¹ R.S.C. 1985, c. C-46.
² 2008 SCC 31 (S.C.C.), at paragraph 22.

gravating or mitigating circumstances relating to the offence of the individual that committed the crime. This consideration requires the court to ultimately exercise restraint when it comes to a sentence that results in incarceration. Specifically, section 718.2(d) of the *Criminal Code* states that “an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances.” Furthermore, section 718.2(e) provides that “all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to the victims or to the community should be considered for all offenders, with particular attention to Aboriginal offenders.”

When it comes to the arguments on sentencing, a common practice for Crown prosecutors is to remind the court that the income tax system in Canada is a self-reporting system that relies on the honesty and integrity of taxpayers. (See for example: *Knox Contracting Ltd. v. R.*)³ The typical Crown argument would continue with some sort of statement that tax evasion and fraud are serious crimes and as such, unless there are mitigating factors, a convicted accused deserves some form of custodial sentence. Certainly, in recent years, a number of sentencing decisions have supported this Crown position. The following two cases immediately come to mind:

1. *R. v. Dyck*, 2018 MBCA 33 (Man. C.A.): Here, the offender was sentenced to three years in jail for income tax evasion of over \$2 Million and \$166,367 of unpaid GST remittances.
2. *R. v. Gould*, 2016 BCSC 1757 (B.C. S.C.): The convicted offender in this case was sentenced to 18 months in jail for evading \$193,333.26 in income tax.

Courts are now faced with larger dollar-based tax evasion and fraud cases. It is hard to conclude without extensive scientific study why the tax evasion and fraud schemes appear to be larger in dollar value. As a consequence, the courts, need for denunciation and deterrence has to take precedence over other considerations. We have a reputation in Canada that our system “goes easy” on tax evaders and fraudsters. A closer examination suggests that past practices no longer represent the current environment. If it is a serious crime then the tax evader or fraudster is likely to face jail time.

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INFLATION IS IMPACTING EQUITIES¹

By Levon Barker, Senior Research Analyst, Cumberland Private Wealth Management Inc.

Rising inflation expectations have been pressuring stock prices for the past year, but inflation turned markedly higher after the Russian invasion of Ukraine. Rising rates and negative investor sentiment have also lowered equity valuations. Investors seeking lower volatility have driven valuations higher in select industries while more

³ [[1990] 2 S.C.R. 338 (S.C.C.)] (at paragraph 350).

¹ The views expressed in this article reflect the author and not necessarily the opinions of Cumberland Private Wealth Management Inc.

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volatile segments of the market have been abandoned and now trade at discounted valuations. A sustained market recovery will likely require some indication that inflation is under control and a recession will be avoided.

RISING INFLATION AND LOWER STOCK PRICES

Last summer, the expectation was that inflation would average ~2.4% annually over the course of 10 years. Since then, supply chain problems, war, energy and food security concerns, and continued covid lockdowns in China, all coupled with strong consumer demand for goods have driven average 10-year inflation expectations to over 3% per year in late March.

10-Year US Treasury yields have followed inflation expectations, rising from 1.3% in July of 2021 to over 3% today. Interest rates have an inverse correlation with stock prices, as the present value of future cash flow (earnings and dividends) are reduced when the discount rate moves higher. The present value function disproportionately affects stocks with higher price-to-earnings ratios, which explains why the technology heavy Nasdaq has performed far worse than the S&P 500. In July of last year, the S&P 500 price-to-earnings ratio was 21.5x but today trades at 17.5x— down 19%. The Nasdaq traded as high as 31x but today is 23x— down 25%.

Until March of this year, the market seemed to be digesting the higher inflation and rate expectations. The Nasdaq and high price-to-earnings stocks underperformed, but lower price-to-earnings stocks held their value. However, with the invasion of Ukraine, inflation expectations have taken a sharp turn higher, and concern over rising rates and a potential recession have further compressed earnings multiples.

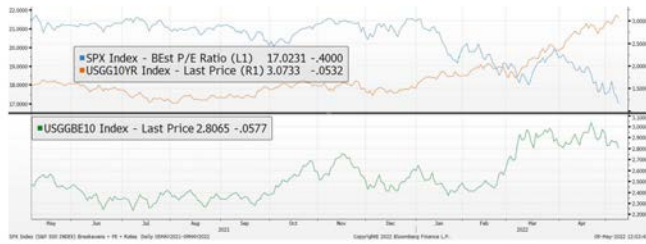


Figure 1: S&P 500 price-to-earnings ratio v US 10 Year Treasury Yield (top panel) v 10 Year Breakeven Bonds (bottom panel). Equity valuations (blue) have an inverse relationship to treasury yields (orange) and 10 year inflation expectations (green). Source: Bloomberg.

SENTIMENT IS WORSENING

The American Association of Individual Investors (AII) publishes a survey of investor sentiment and, as of the end of April, 59.4% of members felt bearish about stocks, up from the five-year average of 32.79% (see Figure 2). It’s not very common that investors become so bearish. In fact, 59.4% is almost a three-standard-deviation event and among the highest readings in 30 years. The only time investors felt worse about stocks was in March of 2009, near the end of the global financial crisis, and, before that, in 1990, in the middle of a severe recession. The AII survey is often cited as a contrarian indicator, meaning that when investors are bearish it could be a good time to buy stocks. However, one must be cautious with their stock and sector allocations as bearish sentiment can persist for many months before an eventual rally takes place.



Figure 2: Bear Index from American Association of Individual Investors. Intra-month highs set in 1990 and 2009 do not show on this monthly chart. Source: American Institute of Individual Investors.

Market breadth is weaker but could suggest short-term selling is close to being finished. The percentage of companies trading above their 50-day moving average in the S&P 500 has reached 30% which has tended to favour positive returns over the next 30 days.

INVESTORS ARE PAYING UP FOR LOWER VOLATILITY

With the market negativity, investors are preferring lower volatility industries, increasing the valuation in relation to higher-risk industries. In Figure 3, below, each of the S&P 500 industries are plotted by valuation and volatility. Industries that are expensive are in the top part of the graph. Industries with lower volatility are on the left hand side of the chart. The trend line shows that investors are paying more for safety as the lower volatility industries tend to be more expensive.

In Figure 3, some of the industries in the top left quadrant (expensive and less volatile) include the usual suspects: food & staples retailing; gas and electrical utilities; real estate investment trusts; beverages; and health care providers.

Curiously, industries in the lower left quadrant (inexpensive but less volatile) are not being used as a safe haven. Pharmaceuticals, tobacco, telecommunications are all lower volatility, but for one reason, or another, investors are not buying them in this market.

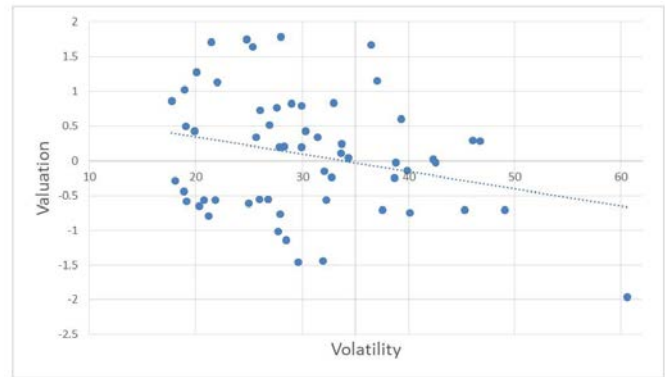


Figure 3: Valuation v Volatility. Each scatter plot represents a GICS industry in the S&P 500. Valuation is a standardized composite of various price-multiples according to their relevance to the industry. Volatility is 90 day price volatility. Source: Cumberland Private Wealth Management, Bloomberg.

VOLATILITY TO PERSIST A WHILE LONGER

With investor sentiment, breadth, and risk averse positioning reaching extreme levels, one wonders if the negativity is already priced in. However, as mentioned above, negative sentiment can persist for some months. If the market sold off on rising inflation, the market will likely need some indication that inflation is under control before any sustainable rally can take place. Rising inflation and interest rates are likely to slow down the economy. Copper, which has been a source of inflation, has started to roll over recently. However, because of its wide use across many sectors, copper is often seen as a leading indicator of economic activity.

Long-term investors may find value here, but negative volatility is likely to persist for a while longer. At Cumberland Private Wealth Inc., we have been tilting our mandates towards less volatile industries (left side of Figure 3) with predictable earnings and towards value-oriented investments (lower price-to-earnings ratios), which we believe will better insulate our clients from the current market conditions.

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E-COMMERCE TAXATION — FOUR MISTAKES THAT CAN DECIMATE PROFITS

By David S. Kerzner, Ph.D. (Law), Kerzner Law¹

INTRODUCTION

The ongoing proliferation of e-commerce transactions in the Canadian and U.S. economies heralds new planning opportunities and challenges for accountants and lawyers working with clients in the owner-entrepreneur and small- and medium-sized business categories involving e-commerce transactions. Recent developments in e-commerce taxation includes such topics as:

- the Canada-Tax Treaty Articles dealing with Business Profits (Article VII) and Royalties (Article XII);
- how the United States taxes e-commerce;
- understanding IRS regulations dealing with computer programs, transactions involving digital content, and digital cloud transactions; and
- Canada's new GST/HST digital tax rules.

CORPORATE STRUCTURE

Often an afterthought is strategic planning surrounding the choice of entity and location of the entity for the e-commerce business at hand. Sometimes, for tax minimization purposes, more than one entity may be indicated. There are many multi-jurisdictional tax, business, legal, financial and personal factors which may potentially give rise to the choice of entity, including but not limited to, the financing, operational, exit, and succession requirements and opportunities for the business and its owners. These concepts are explored in more depth in my book: *International Taxation Core Concepts*, 2nd Edition (Thomson-Reuters) with Arthur J. Cockfield. Related e-commerce specific considerations. Various categories of e-commerce activities need to be considered including the computer server including if a hosting service is used gives rise to a taxable presence of in tax jargon, a permanent establishment.

CORPORATE FINANCE

Investors and stakeholders in an e-commerce business should give consideration to the three temporal stages of the business — its initial capitalization, operations, and exit strategies. How should financing be made for a start-up e-commerce venture? How is this question influenced by the location and expected roles of the investors? Often, stakeholders may be located in multiple jurisdictions, and the tax laws on financing may be different; for example, the U.S. debt equity characterization rules are unique. During operations, how will profits be paid out or repatriated? How may these choices be impacted by roles of investors, including potentially as independent contractors or members of the C-Suite? What unique IRS rules may impact these choices? Another dimension often overlooked in e-commerce businesses is the advantage to organize the overall business function assets and risks into more than one entity, and in so doing, provide for effective transfer pricing strategies

in finance, services, IP (intellectual property) and management to name a few. What happens in yet another cycle of the business involving a major refinancing or sale?

CROSS BORDER TRANSACTIONS INVOLVING COMPUTER PROGRAMS

In order to correctly apply a treaty provision, a proper characterization of the technology transfer must first be made under U.S. tax law. For example, a transfer characterized as purely a service will be governed by the articles dealing with business profits and permanent establishment, whereas a transfer characterized as purely a transfer of a copy right may be governed by the article on royalty income as a license. A common failure in international business planning arises in the absence of timely and proper characterization and critically, choices facing the business owners, in how to structure their customer deliverable to achieve their business goals in a tax savvy manner. The IRS regulations provide that a transaction involving the transfer of a computer program, or the provision of services or of know-how with respect to computer programs is treated as being solely one of the following:

- (i) A transfer of a copyright in the computer program;
- (ii) A transfer of a copy of the computer program (a copyrighted article);
- (iii) The provision of services for the development or modification of the computer program; or
- (iv) The provision of know-how relating to computer programming techniques.

Where a customer acquires a copy of a computer program but does not acquire any of the copyright rights associated with the transfer, the transaction is treated as a transfer of a copyrighted article. The determination of whether a transfer of a copyrighted article is a sale or exchange is made on the basis of whether, taking into account all the facts and circumstances, the benefits and burdens of ownership have been transferred. A transaction that does not constitute a sale or exchange because of insufficient benefits and burdens of ownership of the copyrighted article will be classified as a lease generating rental income. So many tax errors are made in failing to know this information at the outset, and then compounding the error with the wrong use of the relief under the Canada-U.S. Tax Treaty.

CROSS BORDER TRANSACTIONS OF CLOUD TRANSACTIONS

In general, a cloud transaction involves access to property or use of property, instead of the sale, exchange, or license of property, and therefore typically would be classified as either a lease of property or a provision of services. U.S. tax rules provide factors that are relevant for classifying a transaction as either a lease of property or a provision of services. The IRS rules define a cloud transaction as a transaction through which a person obtains non-demand network access to computer hardware, digital content, or other similar resources. Certain cloud transactions may have characteristics of both a lease of property and the provision of services. The new cloud computing transactions may potentially apply to a broad range of activities, including but not limited to:

- computing data centers on computing farms and designed servers;
- both software development platforms, access to software, and website hosting;

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- download of software and access to online software via an Application.

These are just a few of the scenarios; many others exist.

Being strategic in e-commerce planning requires that these rules and their potential implication to the tax and accounting of the business are understood in advance.

CONCLUSION

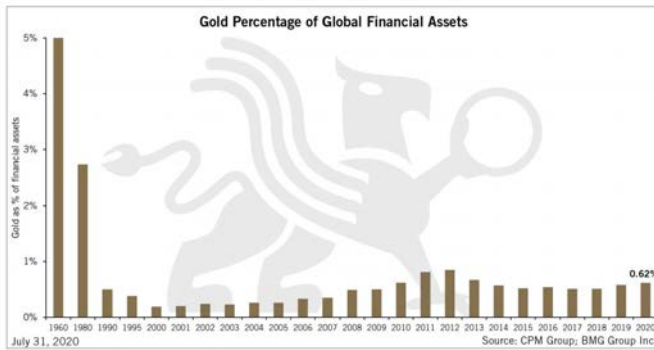
As illustrated with these four above examples, failing to get out in front of your client’s e-commerce train with detailed strategic cross border tax planning can result in misunderstanding of the interplay between the business and the tax rules, and a missed opportunity to align the business platform in an optimal position with the U.S. and Canadian tax rules.

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PROTECTING PORTFOLIOS DURING THE COMING MARKET CRASH

By Nick Barisheff, Founder, President and CEO of BMG Group Inc.

Today very few portfolios, institutional or personal, have any allocation to gold bullion.



For the last 24 years, I have been puzzled by this phenomenon because any analysis of the data shows that the benefits of gold are obvious. This can be easily verified using the Portfolio Simulator tool at <https://www.gold.org/goldhub/portfolio-tools/simulator>.

Below is an example for the period from January 2000 to March 2022 comparing the traditional 60/40 portfolio of stocks and bonds to a portfolio with 10% gold, 35% bonds and 55% stocks, and a portfolio divided into four equal parts of stocks, bonds, REITs and gold.

Portfolio	Initial Balance	Final Balance	CAGR	Stdev	Best Year	Worst Year	Max. Drawdown	Sharpe Ratio	Sortino Ratio	US Mkt Correlation
Portfolio 1	\$100,000	\$390,371	6.34%	8.85%	22.01%	-20.65%	-30.84%	0.87	0.84	0.88
Portfolio 2	\$100,000	\$420,790	6.70%	8.39%	21.88%	-18.40%	-20.94%	0.94	0.97	0.90
Portfolio 3	\$100,000	\$620,807	8.93%	9.40%	22.38%	-16.44%	-27.81%	0.77	1.16	0.73

The results from this simulation demonstrate that the addition of gold to a portfolio will:

1. Improve returns;
2. Minimize maximum drawdowns; and
3. Improve Sharpe and Sortino ratios.

However, all investments are based on a currency. Since gold is money and all currencies are a representation of debt, gold should be compared to currencies. The table below shows gold’s performance in all the major currencies. Since 2000, gold has averaged a 10.9% return per annum in all the major currencies.

Year	US Dollar	Canadian Dollar	Euro	Japanese Yen	British Pound	Brazilian Real	Russian Ruble	Indian Rupee	Chinese Yuan	African Rand	E. Korean Won	Saudi Rial	Swiss Franc	South Korean Won	Mexican Peso	British Pound	Israeli Sheqel
2000	3.01%	2.11%	2.09%	4.02%	2.47%	1.98%	2.20%	1.43%	0.27%	19.11%	3.69%	2.21%	1.21%	2.28%	3.27%	3.27%	1.89%
2001	0.73%	7.21%	6.59%	14.92%	5.70%	19.37%	7.22%	4.07%	0.72%	67.58%	4.99%	5.53%	7.54%	-0.11%	12.01%	9.71%	9.71%
2002	25.17%	24.04%	5.53%	13.40%	12.80%	32.28%	11.56%	24.87%	25.42%	4.11%	12.99%	3.36%	17.78%	42.98%	3.64%	21.88%	21.88%
2003	19.90%	-2.34%	-0.44%	8.09%	7.89%	-1.91%	9.73%	14.07%	19.80%	7.99%	20.07%	6.79%	17.04%	29.30%	-1.21%	9.30%	9.30%
2004	4.44%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
2005	17.77%	13.68%	35.38%	35.20%	40.17%	5.53%	22.11%	21.54%	14.83%	31.99%	14.22%	10.06%	19.89%	12.20%	41.52%	23.61%	23.61%
2006	23.20%	22.87%	10.20%	14.68%	8.14%	12.03%	12.40%	21.14%	19.15%	36.20%	14.12%	14.03%	13.38%	25.14%	5.20%	17.63%	17.63%
2007	31.93%	19.40%	18.02%	24.00%	26.90%	9.97%	22.48%	17.48%	29.46%	28.40%	38.40%	32.74%	22.54%	33.60%	33.33%	29.27%	29.47%
2008	4.30%	26.62%	10.30%	11.11%	43.33%	30.61%	26.90%	28.94%	43.73%	43.67%	43.67%	43.67%	43.67%	43.67%	43.67%	43.67%	43.67%
2009	55.03%	7.49%	20.78%	27.61%	12.62%	6.49%	26.26%	19.43%	25.10%	-1.41%	9.48%	20.67%	21.71%	18.83%	13.62%	16.66%	16.66%
2010	26.24%	22.71%	39.24%	13.69%	36.00%	23.09%	21.80%	24.20%	24.99%	19.26%	26.30%	17.44%	14.21%	21.88%	21.48%	24.30%	24.30%
2011	8.93%	11.58%	22.49%	3.78%	8.17%	22.54%	11.09%	26.91%	4.00%	33.68%	12.46%	6.38%	10.47%	22.71%	11.82%	14.41%	14.41%
2012	9.26%	10.95%	8.17%	20.98%	8.72%	18.90%	3.92%	12.11%	6.97%	13.19%	19.89%	5.44%	1.70%	10.07%	2.94%	7.08%	7.08%
2013	-7.13%	-7.36%	30.49%	-11.44%	28.98%	-10.21%	-21.87%	18.21%	-29.39%	6.30%	-28.71%	-29.31%	-24.60%	-26.88%	28.21%	-23.44%	-23.44%
2014	0.21%	9.02%	13.75%	14.13%	4.25%	12.44%	11.03%	2.21%	2.69%	4.99%	3.89%	11.41%	4.89%	12.44%	10.94%	10.94%	10.94%
2015	-12.11%	4.30%	1.86%	-11.54%	7.65%	11.27%	9.37%	-7.48%	-0.10%	11.68%	-0.30%	11.68%	-0.30%	8.76%	-4.11%	-0.50%	-0.50%
2016	8.16%	4.86%	11.44%	3.12%	30.21%	11.71%	11.01%	10.99%	15.75%	1.41%	-0.18%	10.87%	10.30%	26.32%	16.06%	9.06%	9.06%
2017	12.66%	4.96%	-0.99%	8.34%	7.62%	14.68%	8.96%	5.99%	5.37%	1.41%	-0.18%	7.90%	4.16%	7.62%	2.04%	5.37%	5.37%
2018	12.66%	12.66%	20.71%	16.96%	14.41%	16.07%	19.21%	4.92%	4.71%	16.07%	16.07%	16.07%	16.07%	16.07%	16.07%	16.07%	16.07%
2019	18.44%	12.90%	10.71%	16.96%	14.41%	22.66%	5.96%	21.41%	19.89%	15.71%	22.46%	14.27%	16.99%	13.89%	22.81%	17.47%	17.47%
2020	24.81%	22.71%	14.09%	18.34%	30.56%	41.01%	49.16%	27.64%	17.00%	30.31%	17.08%	13.53%	22.44%	31.26%	9.31%	26.28%	26.28%
2021	45.31%	48.57%	31.41%	8.48%	8.11%	2.67%	0.33%	-0.26%	-0.08%	8.89%	4.46%	9.83%	0.51%	17.92%	8.89%	22.18%	22.18%
2022	9.20%	4.53%	8.32%	10.02%	10.54%	16.95%	15.52%	12.99%	13.52%	14.51%	3.96%	4.28%	8.38%	11.76%	8.87%	10.98%	10.98%
Overall	14.86%	11.70%	14.80%	13.08%	16.25%	24.21%	21.64%	12.92%	13.85%	18.86%	15.95%	13.31%	11.83%	16.62%	14.02%	15.54%	15.54%
Overall	10.49%	8.81%	11.70%	5.17%	12.40%	5.75%	8.87%	7.97%	10.79%	3.40%	11.09%	10.54%	10.99%	10.84%	12.64%	9.46%	9.46%

While portfolio analysis provides a comparison during relatively stable economic conditions, gold tends to shine during periods of economic turbulence. Many experts believe we are heading into a

period of stagflation — a deadly combination of increasing inflation and declining GDP. The table below shows the performance of gold during previous stagflationary periods.

Biggest S&P 500 Declines	S&P 500	Gold
September 21, 1976 - March 6, 1978	-19.41%	53.79%
August 25, 1987 - December 4, 1987	-33.51%	6.17%
July 16, 1990 - October 11, 1990	-19.92%	6.81%
March 17, 2000 - October 9, 2002	-49.03%	12.39%
October 9, 2007 - March 9, 2009	-56.78%	25.51%
May 10, 2011 - October 3, 2011	-19.01%	9.38%
September 20, 2018 - December 24, 2018	-19.36%	4.12%
February 12, 2020 - March 31, 2020	-23.20%	2.89%

Source: Ycharts; LBMA; BMG Group Inc

Today we are faced with a number of economic challenges that include war, economic sanctions and supply chain imbalances together with a bubble in equities and real estate. As central banks raise interest rates, the bond market will suffer losses and GDP will collapse, resulting in the stock bubble bursting.

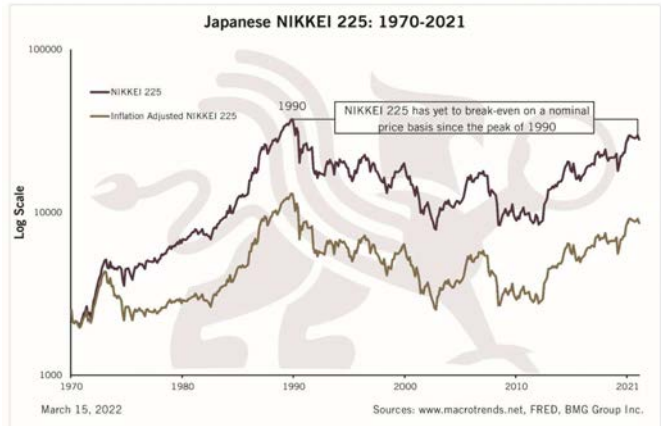
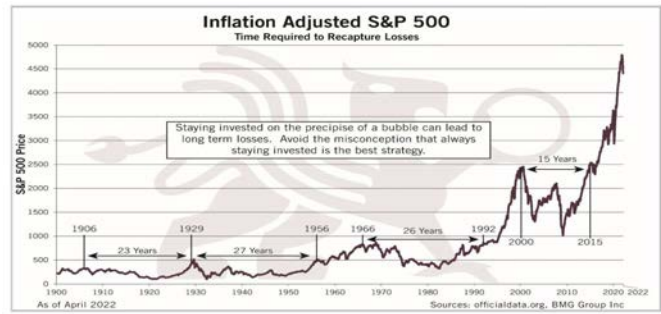
It seems that investors are suffering from Normalcy Bias and complacency, since we have experienced the longest-running bull market in stocks and bonds in history, and they fail to recognize that we are in the midst of a paradigm shift. The next 20 years are likely to be the diametric opposite of the last 20 years. The issue of a paradigm shift is set out by Ray Dalio in this article: <https://economicprinciples.org/downloads/Paradigm-Shifts.pdf>.

Most investors believe that staying invested is the best strategy. Unfortunately, they do not take into consideration how long it takes to break even after a decline. The table below shows the gains necessary to recover from losses.

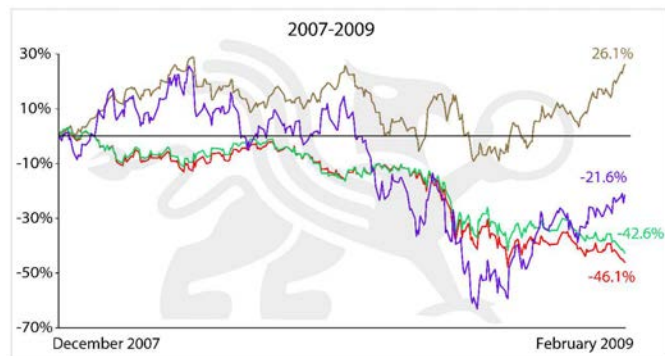
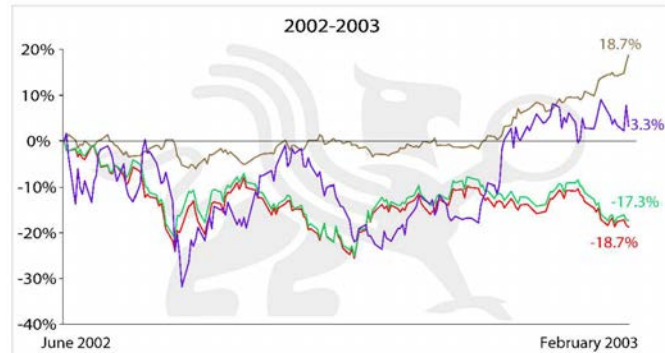
Decline	Gain Needed To Break-Even
-10%	11.1%
-25%	33.3%
-50%	100%
-75%	300%

While institutions have a long investment time horizon, most individual investors do not. After the Wall Street crash of 1929, the market didn't break even until 1954; the NASDAQ took 15 years to break even after the Tech Crash in 2000; and the Japanese NIKKEI still hasn't broken even.

Since most of the world's wealth is held by baby boomers today, many of them will not live long enough to break even if they stay invested during the coming market crash.



In summary, gold will improve portfolio returns as demonstrated by the Portfolio Simulator, but more importantly it will mitigate against losses during a correction, as can be seen from the two charts below.



The best time to buy fire insurance is before you have a fire. Once the fire starts, you won't be able to buy insurance.

Nick Barisheff is the Founder, President and CEO of BMG Group Inc. Nick can be reached at 905.474.1001 or n.barisheff@bmg-group.com.

HOW CAN YOUR INVESTMENTS IMPACT GLOBAL WARMING?

By Tina Tehranchian, MA, CFP®, CLU®, CHFC®, MFA-P™ (Philanthropy), Senior Wealth Advisor and Branch Manager, Assante Capital Management Ltd.

The COP 26 summit in Glasgow, held in November 2021, highlighted the painful reality that the world is failing to limit global warming to 1.5°C above pre-industrial levels despite promising to do so in the Paris agreement of 2015. Yet the summit put a series of new procedures in place that keep alive the possibility of reaching that goal, provided of course that countries agree to embrace drastic measures.

The latest report from the United Nation's Intergovernmental Panel on Climate Change stated that human-induced climate change is already responsible for extreme weather conditions, and that even more warming is assured even if emissions are cut.

Naturally, many investors are concerned about mitigating the effects of climate change and have been expressing support for Environmental, Social and Governance measures, or ESG factors by embracing ESG funds and ETFs in recent years.

According to Morningstar Direct, global ESG fund assets increased to \$2.24 trillion in June 2021 from \$1.65 trillion at the end of 2020 and \$1.28 trillion at the end of 2019. In the U.S., ESG fund assets under management reached \$330 billion in September 2021, up from \$236 billion at the end of 2020.

However, are all these funds doing what they promise to do and how much greenwashing is going on?

In August 2021, the U.S. Securities and Exchange Commission (SEC) and Germany's financial regulator, BaFin, started looking into allegations that Deutsche Bank AG's asset management arm, DWS Group, overstated the environmental merits of some of its ESG products. These claims have been denied by DWS Group.

This investigation is a warning sign for ESG funds. Gary Gensler, the Chair of SEC, has said that he directed his staff to consider whether fund managers should disclose the criteria they use when branding funds as "green" or sustainable.

According to the U.K. based non-profit InfluenceMap, more than half of funds that claim to be low-carbon or green energy exaggerate their merits.

After the European Union's anti-greenwashing rules took effect in 2021, the Global Sustainable Investment Alliance reported a US\$2-trillion decrease in the size of Europe's sustainable investment market, which suggests that there was considerable exaggeration in claims made by many ESG fund managers.

HOW ARE REGULATORS REACTING?

Regulators around the world are taking note and investors should too. The CFA institute attempted to address this issue in 2020 by requiring voluntary ESG disclosures. So far, their focus is on disclosure in terms of describing products rather than prescribing features an ESG product must have. This means that it is up to investors to check the products and they should not trust the labels.

Interestingly, the Investment Funds Institute of Canada's submission to the CFA consultation said that without minimum requirements for naming ESG products, the proposed standards "could facilitate rather than mitigate 'greenwashing'".

The Responsible Investment Association has said it wants to develop its own fund-certification framework to complement CFA disclosures.

However, when disclosures are not mandatory, determining which issuers belong in a fund can be challenging. Therefore, regulation may be coming for issuers themselves as the Ontario Securities Commission introduced climate disclosure requirements for public comment in early 2022.

In the meantime, the onus is on investors to determine how they can help the environment by the way they invest.

HOW CAN INVESTORS MAKE A REAL POSITIVE IMPACT?

One thing to keep in mind is that when you are investing in shares of a publicly traded company, you are not supporting that company's earnings. In other words, your money will not help those businesses to increase their mining activities or make harmful products (such as tobacco products or arms). Instead, by buying the stocks of these companies you would just be buying a piece of that business on the open market and you would have a share in their profits.

While morally you may not wish to share in the profits of companies that pollute the environment or make harmful products, the best way to ensure that you are hurting the profitability of these companies is by voting with your wallet, which means by not buying their products or services. When you purchase stocks of these companies or ETFs that include their stocks, you are not financially profiting these companies, but when you purchase their products and services you are directly contributing to their bottom line. Therefore, buying a Socially Responsible mutual fund or ETF is not going to help make the world a better place, but not purchasing the products and services of the companies that are not socially and environmentally responsible will.

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ISSUE ESTOPPEL BEFORE THE ASSESSMENT REVIEW BOARD

By Jamie G. Walker, Partner, Walker Longo & Associates LLP

As we enter year three of the COVID-19 pandemic, Ontario's provincial government has yet to announce any update on when the next province-wide reassessment will take place.¹ In practice, this means that all property values across the province will continue to be based on a statutory valuation date of January 1, 2016 until at least 2023. While this may provide stakeholders with some degree of certainty over the short term, there is increasing concern among property owners in sectors that have been disproportionately affected by the pandemic that assessed values no longer bear any meaningful relationship to current market conditions. This in turn has led many owners and businesses to file or re-file their appeals before the Assessment Review Board ("Board") seeking tax relief. In response, the Municipal Property Assessment Corporation ("MPAC") is seeking to dismiss a number of these appeals on the basis of issue estoppel: the principle that prevent parties re-litigating an issue that has already been fairly decided in a prior proceeding. This article will provide an overview of the issue estoppel "test case" that is currently before the Board and offer insights on how the decision could affect businesses and property owners alike.

WHAT IS "ISSUE ESTOPPEL"?

The judicial doctrine of *res judicata*, Latin for "a matter judged", is a long-established principle that prevents any party from re-litigating a claim, defence or issue already decided and comprises two distinct subcategories of estoppel:

- **Issue Estoppel:** the first category prevents a party from re-litigating an issue that had been fairly decided in a prior proceeding or from attempting to prove the contrary of that which had been already proved in that prior proceeding. Its aim is to prevent harassment, abuse of the decision-making process and the misuse of judicial resources.²
- **Cause of Action Estoppel:** the second category provides that where the legal rights or liabilities of the parties have already been determined in a prior cause of action, the matter which formed the basis of that cause of action should not be re-litigated by the same parties.³

The three criteria required for issue estoppel to apply have been articulated by the Board in *Wabi Iron & Steel Corp. v. Municipal Property Assessment Corp.*, Region No. 29,⁴ which was subsequently upheld on appeal by the Ontario Divisional Court in 2005:⁵

1. The issue(s) previously decided are the same;
2. The judicial decision which is said to create the issue estoppel was final; and

3. The parties to the judicial decision were the same persons as the parties to the proceedings in which the estoppel is raised.

Even where all three criteria are met, the Supreme Court of Canada in *Danyluk v. Ainsworth Technologies Inc.*⁶ identified seven factors for an agency to consider in determining whether it would be just and fair under the circumstances to apply estoppel. The most important of these factors is the potential injustice that would result if *issue estoppel* were applied.

ISSUE ESTOPPEL BEFORE THE ASSESSMENT REVIEW BOARD

Presently, two properties are involved in the test case before the Board in which MPAC has brought separate motions attempting to dismiss the outstanding appeals using issue estoppel.⁷

- **Yorkville Village:** an enclosed shopping mall with over 210,000 square feet located on the northeast corner of Avenue Road and Yorkville Avenue in the City of Toronto.
- **The Skyline Hotel & Waterpark:** a hotel and waterpark located at 4800 Bender Street in Niagara Falls.

In both instances, the outstanding appeals were resolved by way of minutes of settlement that were executed in 2019 prior to the pandemic. In the case of Yorkville Village, it is especially noteworthy that the settlement took place before the full exchange of pleadings, no specific issues were resolved and was based solely on the parties arriving at a "value figure".

In MPAC's view, the outstanding appeals should be dismissed because all three criteria for issue estoppel are met. Because of the province's decision to extend the January 1, 2016 assessment cycle to include all taxation years up to 2023, the 2019 settlements were effectively carried forward to these later years.⁸ By framing the "issue" as broadly as possible (i.e., what is the correct current value as of January 1, 2016), MPAC has argued that the appellants should be prohibited from re-filing their appeals since the prescribed valuation date is the same for all years under appeal.

In response, the appellants submit that MPAC's motions fundamentally mischaracterize issue estoppel as it applies to the years under appeal. Specifically:

- The prior settlements were based solely on a "numbers" or "value figure" and did not resolve any of the "issues" with respect to the components of those values such as vacancy allowances, net operating income or expense allowances;
- The issues cited in the present appeals identified new circumstances that arose due to changes in the properties' "state and condition". MPAC is required under the *Assessment Act*⁹ to return the assessment roll annually based on the state and condition of the land as it exists at the second Tuesday following December 1 of the previous

¹ See pages 238-239 of the Ontario 2022 Budget, online: <https://budget-ontario.ca/2022/pdf/2022-ontario-budget-en.pdf>.

² *Toronto (City) v. Rainal*, 2006 ONCJ 335 (Ont. C.J.) at para. 47.

³ *Bell v. Bell*, 1998 CarswellOnt 4722 (Ont. Gen. Div.).

⁴ *Wabi Iron & Steel Corp. v. Municipal Property Assessment Corp.*, Region No. 29 (February 18, 2002), Doc. DM 081/2, [2002] O.A.R.B.D. No. 219 (Ont. Assess. Review Bd.).

⁵ *Wabi Iron & Steel Corp. v. Municipal Property Assessment Corp.*, Region No. 29, 2005 CarswellOnt 627 (Ont. Div. Ct.).

⁶ *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 (S.C.C.) at paras. 67-80.

⁷ The two property types involved in the test case are retail and hospitality, both of which have been among the businesses hardest hit during the pandemic.

⁸ When these settlements were reached in 2019, it is worth noting that the province had not announced its decision to extend the assessment cycle and the effects of the pandemic had yet to be felt.

⁹ *Assessment Act*, R.S.O. 1990, c. A.31, s. 36(1).

taxation year. This requires taking into account physical and legal changes to the property, including changes to use and occupation, but not market changes. In the appellants' view, there were valid changes to the properties' use and occupation that ought to have been reflected on the state and condition date;

- There were a number of legal changes to the properties' state and condition as a consequence of the pandemic. Specifically, the properties' net operating incomes, vacancy and expense allowances were adversely impacted as a direct consequence of the numerous lockdowns and capacity restrictions imposed by the province under the *Emergency Management and Civil Protection Act*,¹⁰ and
- The circumstances warranted the Board to exercise its discretion not to apply issue estoppel. The parties did not (and could not) have anticipated the assessment cycle being extended to 2023 or how COVID-19 would affect the property values when they reached the initial agreements.

CONCLUDING THOUGHTS

The outcome of the issue estoppel test case will have far-reaching implications for ratepayers, businesses and local government across the province.

On the one hand, the Board has an opportunity to reaffirm and strengthen appellants' statutory right of appeal under the *Assessment Act* and provide further nuance to the existing jurisprudence on "state and condition" in the context of COVID-19. On the other hand, the Board may effectively prohibit new appeals for properties adversely impacted over the last three years where prior resolutions have already been made, notwithstanding those settlements that predate both the extension of the assessment roll and impacts of the pandemic.

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If you have any questions regarding issue estoppel as it relates to assessment appeals or the status of the test case, the author can be reached at: 416.238.5266 or jwalker@walkerlongo.ca.

MULTIPLE WILL MISHAP¹

By Honor Lay, Associate, Miller Thomson LLP

INTRODUCTION

A recent decision from the Ontario Superior Court of Justice, *Gordon v. Gordon et al*, ("*Gordon*")² shines a light on the importance of prudent drafting when undertaking multiple wills planning. Multiple wills, when properly drafted, can provide an estate with significant savings in estate administration tax ("probate tax"). By the same token, a simple drafting error in the wills can potentially botch the entire strategy, costing the estate more in the end rather than less.

PROBATE TAX AND THE MULTIPLE WILL STRATEGY

The use of multiple wills in Ontario is a common estate planning tool to save on probate tax. Probate tax is the tax paid to the court in exchange for a Certificate of Appointment of Estate Trustee ("Certificate of Appointment"), which legitimizes the executor's authority to administer the assets of the estate. In Ontario, probate tax is levied at the rate of 1.5% on estates worth more than \$50,000.³ Third parties, such as financial institutions in the case of bank or investment accounts, and the Land Registry Office in the case of real estate, often require a probated will before they will agree to transfer those assets of the deceased into the hands of the executor.

Certain assets, such as personal effects (household furniture, jewelry, and so on) or shares in private corporations, tend not to require the involvement of third parties for the executor to gain possession of and administer the asset.⁴ Such assets can be "carved out" and dealt with under a "Secondary Will" while assets tending to require probate can be dealt with under the "Primary Will".⁵ Carving assets out via the Secondary Will reduces the value of estate assets submitted for probate (on which value probate tax is calculated), thereby reducing the overall probate tax payable by the estate.

BACKGROUND OF GORDON

The deceased, Mr. Gordon, owned assets in excess of \$34,000,000 at the time of his death in 2018. Much of the value of his estate derived from a successful excavation business that he had run during his lifetime. Prior to his death, Mr. Gordon employed the multiple will strategy to carve out the value of his private corporations (the "Corporations") into a Secondary Will referred to in the decision as a "Limited Will" (i.e., a will limited to those assets not requiring probate). Unfortunately, there was a typographical error in the Primary Will leading to an ambiguity between the Primary and Secondary Wills (the "Wills"). While the Limited Will properly referred to the Corporations, the Primary Will, which ordinarily would specify that it dealt with assets *other than* the Corporations, instead referred to "all property" owned by the deceased. Thus, there was an apparent contradiction between the two Wills: the Limited Will, purporting to deal with the Corporations, and the Primary Will, purporting to deal with all property (arguably including the Corporations).

The executors of the Gordon estate applied to court twice for a Certificate of Appointment in respect of the Primary Will but were rejected by the court both times on account of the issue of whether the Primary Will was, in fact, limited to assets other than the Corporations. The Court Registrar directed the executors to obtain a

³ Estates which are valued at less than \$50,000 are exempt from probate tax. Probate tax works out to be roughly \$15,000 on every \$1 million in an estate.

⁴ Personal effects tend not to involve third parties insisting on a probated will unless the item is of significant or disputable value, such as can be the case with art work. In the case of shares of a private corporation, if the company is owned by a family or other small number of shareholders, the other shareholders likewise tend not to insist on a probated will to allow the executor to administer the shares.

⁵ See section 1 of the Ontario *Estates Administration Tax Act*, 1998, S.O. 1998, c. 34, Sched., which defines "value of the estate" as "the value which is required to be disclosed under section 32 of the Estates Act." Subsection 32(3) of the Ontario *Estate Act*, R.S.O. 1990, c. E.21 permits Certificates of Appointment to be issued where the probate application has been limited to certain assets. Also see *Gordon*, at paras. 42-43.

¹⁰ Examples include O. Reg. 51/20, O. Reg. 82/20 and O. Reg. 263/20.

¹ This article was previously published in the *Wealth Matters* Miller Thomson LLP Newsletter on April 28, 2022.

² 2022 ONSC 550 (Ont. S.C.J.).

determination from a judge as to whether the Certificate of Appointment in respect of the Primary Will could be issued or whether a rectification order would be required to correct the typographical error in the Primary Will by explicitly limiting it to assets other than the Corporations. The executors of the estate estimated that an additional \$470,000 in probate tax would be payable by the estate if the court found that the value of the Corporations fell within the ambit of the Primary Will.⁶

DECISION IN GORDON

Fortunately for the executors, the court found in their favour and agreed that it could issue the Certificate of Appointment limited to Mr. Gordon's non-corporate assets, meaning the Corporations did not form part of the Primary Will subject to probate tax. To make their case, the executors relied on the affidavit evidence of the lawyer who drafted the Wills. The lawyer was able to swear to the circumstances surrounding the execution of the Wills thanks to the executors' waiver of the deceased's right to solicitor-client privilege, which information would otherwise be confidential.⁷ The court found that the lawyer's evidence established that:

- (1) notwithstanding the ambiguity in "all my Property" in the Primary Will, it was clearly Mr. Gordon's intention for this not to include the Corporations in order to shield their value from probate tax by dealing with them in the Limited Will; and
- (2) the Limited Will was executed *after* the Primary Will.⁸

The latter point was significant because of the rule that "to the extent that there is any inconsistency in terms of the subject-matter of the Primary Will and the Limited Will, the latter revokes the former only as to those parts in which they are inconsistent."⁹ In other words, the language in the Limited Will, which confined the subject property to the Corporations, revoked the inclusion of the Corporations in the words "all my Property" in the Primary Will such that the Corporations were deleted from the ambit of the Primary Will, resolving the ambiguity.

LESSONS AND REMINDERS FROM GORDON

A drafting error which ultimately botches the estate plan is an estate lawyer's greatest nightmare. Drafting errors in general can:

- cause confusion and delay in the administration of the estate;
- be costly to the estate by requiring the Secondary Will to be probated or leading to interpretation issues requiring court direction;
- undermine a testator's privacy interests, including by forcing disclosure of (i) the drafting lawyer's client records or (ii) private instructions contained in the Secondary Will, which were not intended to be exposed in court or to the public eye; and
- result in an insurance claim against the lawyer,

among other unsavoury results.

The *Gordon* case illustrates several important reminders:

- Prudent drafting is critical to ensure the estate plan ultimately works. However, even prudent lawyers make mistakes from time to time. Estate lawyers should consider the value of peer review when drafting wills.
- Ensure estate planning done outside the will or Primary Will does not inadvertently revoke that Will. A peculiar detail in *Gordon* is the twist that, in fact, it was the Limited Will's partial revocation of the Primary Will which helped to resolve the ambiguity. However, we generally do not want the Secondary Will to revoke the Primary Will!
- The order of execution may be an important consideration depending on the jurisdiction, or the will or other document being incorporated by reference.
- Always keep detailed records of the client's instructions and intentions when crafting an estate plan. Detailed records are critical if the drafting lawyer is ever put on the stand in a will challenge scenario.

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BAD ADVICE FROM CRA? REMISSION AS AN ALTERNATIVE TO TAX APPEALS IN DUNN V. THE QUEEN

By Justin Ng, Articling Student, Miller Thomson LLP

A recent decision from the Tax Court of Canada affirmed that a tax appeal may not always be the most suitable route for taxpayers seeking relief from an assessment issued by the Minister of National Revenue ("Minister") due to incorrect or misleading advice offered by the Canada Revenue Agency ("CRA"). Readers may be surprised to learn that a remission order, rather than a tax appeal, may be an alternative avenue to seek redress where a taxpayer has relied on erroneous advice provided by the CRA to his or her detriment.

In *Dunn v. The Queen*,¹ Ms. Dunn was reassessed to include \$5,000 into her income, which was the amount that she withdrew from her RRSP as part of her homebuyers plan ("HBP").

The sole issue on appeal was whether the \$5,000 withdrawal (the maximum withdrawal limit allowable under the HBP), that was directed toward the purchase of a condominium by the taxpayer, satisfied the definition of a "regular eligible amount" pursuant to subsection 146.01(1) of the *Income Tax Act* ("ITA").² If so, she would not be obligated to include the \$5,000 into her income.

BACKGROUND FACTS

Like many first-time homebuyers, Ms. Dunn availed herself of the HBP in the course of purchasing her home. To that end, she initially withdrew \$20,000 from her RRSP in 2015 which she had directed to the preconstruction deposit for her condominium unit. Due to protracted construction delays and delays in occupancy and closing dates beyond her control, Ms. Dunn made a subsequent withdrawal of \$5,000 from her RRSP in 2017 which was paid toward the outstanding balance of her condominium purchase.

⁶ *Gordon*, at para. 11.

⁷ *Ibid.*, at paras. 39 and 8.

⁸ *Ibid.*, at para. 45.

⁹ *Ibid.*, at para. 48.

¹ 2022 TCC 44 (T.C.C. [Informal Procedure]) [*Dunn*].

² R.S.C., 1985, c. 1 (5th Supp.) [*ITA*].

At trial, Ms. Dunn testified that she had sought advice from the CRA about whether she would be able to make a second withdrawal as part of her HBP given the anticipated closing delays. According to Ms. Dunn, the CRA Agent she spoke to advised her that she would be entitled to make a second withdrawal to pay her closing costs. She also testified that the CRA Agent neglected to explain to her that she was required to make all RRSP withdrawals within a two-year period as part of her HBP. This testimony was not challenged by the Minister on appeal.

TCC DECISION

Although Justice Boyle was sympathetic to the taxpayer, he ultimately held that he was bound by the ITA to rule in the Minister's favour given that the statutory language was clear and unequivocal.

In this case, the Tax Court found that Ms. Dunn's second withdrawal could not be characterized as a "regular eligible amount" under the relevant HBP provisions, as the \$5,000 was not withdrawn in the same year as her initial \$20,000 withdrawal, or in the year immediately following it pursuant to the exception under paragraph 146.01(2)(d) of the ITA. Since Ms. Dunn did not comply with this two-year period in making the \$5,000 withdrawal as required by the ITA, the Court was obliged to find in the Minister's favour.

As neither provision of the ITA could be satisfied, the second withdrawal could not be an "excluded amount" pursuant to the RRSP provisions of the ITA.³ Therefore, the Court held that the Minister appropriately assessed the \$5,000 as an RRSP withdrawal, which was required to be included as income in Ms. Dunn's tax return for the relevant taxation year.

In reaching this conclusion, Justice Boyle recognized that, in Ms. Dunn's particular circumstances, the application of the two-year period to the taxpayer's situation did not appear "appropriate, reasonable or just" from a tax policy perspective.⁴ The HBP provisions were written decades ago, and only appeared to contemplate a scenario in which an agreement to purchase a home would extend to the following year.⁵ This may not reflect the commercial realities of the contemporary Canadian real estate market. Nevertheless, Justice Boyle held that he was obliged to apply the laws duly passed by Parliament, and accordingly, he dismissed the appeal.

REMISSION REQUEST

However, before concluding his decision, Justice Boyle raised the spectre that Ms. Dunn may have an alternative option available to her under section 24 of the *Financial Administration Act*:⁶ a remission order. He observed that once Ms. Dunn's notice of objection had been denied by CRA Appeals, she might have applied for a remission order rather than proceeding to the Tax Court of Canada.⁷

Put simply, a remission order is an extraordinary remedy, which allows for full or partial relief from tax, interest, and penalties under a taxing statute administered by CRA.⁸ Remission orders are rare

and not often granted, given that they are within the purview and discretion of the Minister and the Governor in Council or Parliament, as opposed to a court.

In general, a remission order will be appropriate in circumstances where relief may be warranted, but cannot be achieved under the relevant taxing legislation, through an assessment or through other actions.⁹ The CRA has identified the following non-exhaustive scenarios in which a taxpayer may be eligible for a remission review:

1. where the taxpayer has suffered extreme financial hardship;
2. where the taxpayer has endured a setback with an extenuating factor;
3. where the CRA has made a mistake; and
4. where the administration of tax legislation leads to unintended results of the legislation.¹⁰

Accordingly, if the taxpayer in *Dunn* were to proceed with a remission request, she would likely allege that the CRA made a mistake in advising her that she was entitled to make a second RRSP withdrawal. Interestingly, although the Court accepted Ms. Dunn's testimony with respect to her communications with the CRA Agent, Ms. Dunn would almost certainly be required to provide evidence to substantiate her allegations if she elected to proceed with a remission request. The challenges associated with obtaining the necessary documentation and evidence to support a remission request may prove to be an obstacle to Ms. Dunn and other taxpayers who proceed with a remission request.

TAKEAWAYS

Justice Boyle's decision in *Dunn* is a welcome reminder that other avenues are available to taxpayers besides initiating a tax appeal. Although the taxpayer in *Dunn* may have been disappointed with the outcome given her allegations that the CRA's erroneous advice had led her to contravene the relevant provisions of the ITA, the Court found that it was bound by the unequivocal language of the ITA to rule as it did.

A remission request is generally viewed as a method of last resort for those seeking relief from tax, interest and penalties under federal taxing legislation. A remission request will not be appropriate in all instances, and readers are encouraged to consult their tax professionals to determine whether a remission request is appropriate to their particular circumstances.

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³ *Ibid.*, s. 146.01(1).

⁴ *Ibid.*, at para. 8.

⁵ *Ibid.*, at para. 7.

⁶ R.S.C. 1985, c. F-11, s. 24.

⁷ *Dunn*, *supra* note 1 at para. 12.

⁸ Canada Revenue Agency, "Remissions: When to request a remission

review" (April 15, 2021), online: <<https://www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/complaints-disputes/when-request-remission-review.html>> [Remissions].

⁹ *Ibid.*

¹⁰ *Ibid.*



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- (f) **Third Party Providers.** Our products and services may include data and software from third parties. Some third party providers require Thomson Reuters to pass additional terms through to you. The third party providers change their terms occasionally and new third party providers are added from time to time. To see the current third party additional terms for our products and services click the following URL: www.thomsonreuters.com/thirdpartyterms. You agree to comply with all applicable third party terms.
- (g) **Third Party Supplemental Software.** You may be required to license third party software to operate some of our products and services. Additional terms may apply to the third party software.
- (h) **Limitations.** Unless otherwise expressly permitted in the Agreement, you may not: (i) sell, sublicense, distribute, display, store, copy, modify, decompile or disassemble, reverse engineer, translate or transfer our property in whole or in part, or as a component of any other product, service or material; (ii) use our property or our third party providers’ property to create any derivative works or competitive products; or (iii) allow any third parties to access, use or benefit from our property in any way. Exercising legal rights that cannot be limited by agreement is not precluded. If you are in the business of providing audit, tax, accounting, or legal services to your clients, this Section 1(h) does not preclude you from using our products to benefit your customers in the ordinary course of your business. Except as expressly set forth in this Agreement we retain all rights and you are granted no rights in or to our products, services and data.
- (i) **Services.** We will provide the services using reasonable skill and care. The professional services applicable to your order, if any, are described in the ordering document or a statement of work.
- (j) **Security.** Each of us will use and will require any third party data processors to use industry standard organizational, administrative, physical and technical safeguards to protect the other’s information. Each party will inform the other in accordance with applicable law if such party becomes aware of any unauthorized third-party access to the other party’s content and will use reasonable efforts to remedy identified security vulnerabilities.

2. INFORMATION SERVICES

- (a) **License.** In the ordinary course of your business and for your internal business purposes only you may view, use, download and print data from our information services for individual use and may on an infrequent, irregular and ad hoc basis, distribute limited extracts of our data. Neither such extracts nor downloaded, printed or stored data may reach such quantity as to have

independent commercial value and using such data as a substitute for any service (or a substantial part of it) provided by Thomson Reuters, our affiliates or our third party providers is prohibited. Thomson Reuters and the third party content provider, if applicable, must be cited and credited as the source where data is permitted to be used or distributed. Copyright notices must be retained on transmitted or printed items. Access to certain data may be restricted depending on the scope of your license.

- (b) **Further Distribution.** You may also distribute our data: (i) to authorized users; (ii) to government and regulatory authorities, if specifically requested; and (iii) to third party advisors, limited to the extent required to advise you and provided they are not competitors of Thomson Reuters. Laws applicable in your jurisdiction may allow additional uses.

3. INSTALLED SOFTWARE

- (a) **License.** You may install and use our software and documentation only for your own internal business purposes. Software licenses include updates (bug fixes, patches, maintenance releases), and do not include upgrades (releases or versions that include new features or additional functionality) or APIs unless expressly stated in the order form. Your order form details your permitted installations, users, locations, the specified operating environment and other permissions. You may use our software in object code only. You may make necessary copies of our software only for backup and archival purposes.
- (b) **Delivery.** We deliver our software by making it available for download. When you download our software and documentation, if any, you are accepting it for use in accordance with the Agreement.

4. THOMSON REUTERS HOSTED SOFTWARE

- (a) **License.** You may use our hosted software only for your own internal business purposes.
- (b) **Delivery.** We deliver our hosted software by providing you with online access to it. When you access our hosted software, you are accepting it for use in accordance with the Agreement.
- (c) **Content.** Our hosted software is designed to protect the content you upload. You grant Thomson Reuters permission to use, store and process your content in accordance with applicable law. Access and use of your content by Thomson Reuters, our employees and contractors will be directed by you and limited to the extent necessary to deliver the hosted software, including training, research assistance, technical support and other services. We may delete or disable your content if required under applicable laws and in such instances we will use our reasonable efforts to provide notice to you. If your content is lost or damaged, we will assist you in restoring the content to the hosted software from your last available back up copy.

5. CHARGES

- (a) **Payment and Taxes.** You must pay our charges within 30 days of the date of invoice in the currency stated on your order form. If you are a non-government subscriber and you fail to pay your invoiced charges, you are responsible for collection costs including attorneys’ fees. You must also pay applicable taxes and duties, other than taxes on our income, in addition to the price quoted unless you provide valid proof that you are exempt. Invoice disputes must be notified within 15 days of the date of the invoice.
- (b) **Changes.** Except as otherwise specifically stated in the order form, we may change the charges for our products and services with effect from the start of each renewal term by giving you at least 30 days written notice.
- (c) **Excess Use.** You must pay additional charges if you exceed the scope of use specified in your order form, based on the rates specified on the order form or our current standard pricing, whichever is greater. We may change the charges if you merge with, acquire or are acquired by another entity which results in additional access to our products, services or data.

6. PRIVACY

Each of us will at all times process, protect and disclose personally identifiable information received as a result of this Agreement (“PII”) in accordance with applicable law. Each of us will use reasonable efforts to assist one another in

relation to the investigation and remedy of any claim, allegation, action, suit, proceeding or litigation with respect to the unauthorized or unlawful destruction, loss, alteration, disclosure or access to PII. You acknowledge and agree to the transfer and processing of PII in the geographical regions necessary for Thomson Reuters to fulfill our obligations. When applicable to your location, additional terms may apply to the Agreement, including the General Data Protection Regulation (2016/679) (GDPR) terms located at www.tr.com/privacy-information.

7. CONFIDENTIALITY

Confidential information received from each other will not be disclosed to anyone else except to the extent required by law or as permitted under the Agreement. If a court or government agency orders either of us to disclose the confidential information of the other, the other will be promptly notified so that an appropriate protective order or other remedy can be obtained unless the court or government agency prohibits prior notification. This section shall survive three (3) years after the termination of the Agreement or until the information is no longer deemed confidential under applicable law, whichever occurs first.

8. WARRANTIES AND DISCLAIMERS

THE WARRANTIES IN THIS SECTION ARE THE EXCLUSIVE WARRANTIES FROM US AND EXCLUDE ALL OTHER WARRANTIES, CONDITIONS OR OTHER TERMS (EXPRESS OR IMPLIED), INCLUDING WARRANTIES OF PERFORMANCE, MERCHANTABILITY, NON-INFRINGEMENT, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS AND CURRENTNESS. IN ENTERING THIS AGREEMENT, NEITHER PARTY HAS RELIED UPON ANY STATEMENT, REPRESENTATION, WARRANTY OR AGREEMENT OF THE OTHER PARTY EXCEPT FOR THOSE EXPRESSLY CONTAINED IN THIS AGREEMENT.

(a) **EXCLUSION OF WARRANTIES. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, WE DO NOT WARRANT OR REPRESENT OR INCLUDE ANY OTHER TERM THAT THE PRODUCTS OR SERVICES WILL BE DELIVERED FREE OF ANY INACCURACIES, INTERRUPTIONS, DELAYS, OMISSIONS OR ERRORS, OR THAT ANY OF THESE WILL BE CORRECTED. WE DO NOT WARRANT THE LIFE OF ANY URL OR THIRD-PARTY WEB SERVICE.**

(b) **INFORMATION. OUR INFORMATION PRODUCTS ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY, CONDITION OR ANY OTHER TERM OF ANY KIND.**

(c) **SOFTWARE. WE WARRANT OUR SOFTWARE PRODUCTS WILL CONFORM TO OUR DOCUMENTATION FOR 90 DAYS AFTER DELIVERY.**

(d) **DISCLAIMER. YOU ARE SOLELY RESPONSIBLE FOR THE PREPARATION, CONTENT, ACCURACY AND REVIEW OF ANY DOCUMENTS, DATA, OR OUTPUT PREPARED OR RESULTING FROM THE USE OF ANY PRODUCTS OR SERVICES AND FOR ANY DECISIONS MADE OR ACTIONS TAKEN BASED ON THE DATA CONTAINED IN OR GENERATED BY THE PRODUCTS OR SERVICES. IN NO EVENT SHALL WE OR OUR THIRD PARTY PROVIDERS BE LIABLE FOR ANY AMOUNTS IMPOSED BY ANY GOVERNMENTAL OR REGULATORY AUTHORITY.**

(e) **NO ADVICE. WE ARE NOT PROVIDING FINANCIAL, TAX AND ACCOUNTING, LEGAL AND ANY OTHER PROFESSIONAL ADVICE BY ALLOWING YOU TO ACCESS AND USE OUR PRODUCTS, SERVICES OR DATA. YOUR DECISIONS MADE IN RELIANCE ON THE PRODUCTS OR SERVICES OR YOUR INTERPRETATIONS OF OUR DATA ARE YOUR OWN FOR WHICH YOU HAVE FULL RESPONSIBILITY.**

9. LIABILITY

(a) **LIMITATION. EACH PARTY'S OR ANY OF ITS THIRD PARTY PROVIDERS' ENTIRE LIABILITY IN ANY CALENDAR YEAR FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, INCLUDING FOR NEGLIGENCE, WILL NOT EXCEED THE AMOUNT YOU PAID IN THE PRIOR 12 MONTHS FOR THE PRODUCT OR SERVICE THAT IS THE SUBJECT OF THE CLAIM FOR DAMAGES. NEITHER PARTY IS LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF DATA, OR LOSS OF PROFITS (IN EITHER CASE, WHETHER DIRECT OR INDIRECT) EVEN IF SUCH DAMAGES OR LOSSES COULD HAVE BEEN FORESEEN OR PREVENTED.**

(b) **Unlimited Liability.** Section 9(a) does not limit either party's liability for (i) fraud, fraudulent misrepresentation, willful misconduct, or conduct that demonstrates reckless disregard for the rights of others; (ii) negligence causing

death or personal injury; or (iii) infringement of intellectual property rights. Section 9(a) does not limit your liability in relation to Section 9(d) or for claims for reimbursement arising in that section; or to pay the charges on the order form and all amounts for use of the products and services that exceed the usage permissions and restrictions granted to you.

(c) **Third Party Intellectual Property.** If a third party sues you claiming that our products, services or data, excluding any portions of the same provided by our third party providers infringes their intellectual property rights and your use of such products, services or data has been in accordance with the terms of the Agreement, we will defend you against the claim and pay damages that a court finally awards against you or that are included in a settlement approved by Thomson Reuters, provided the claim does not result from: (i) a combination of all or part of our products, services or data with technology, products, services or data not supplied by Thomson Reuters; (ii) modification of all or part of our products, services or data other than by Thomson Reuters or our subcontractors; (iii) use of a version of our products, services or data after we have notified you of a requirement to use a subsequent version; or (iv) your breach of this Agreement. Our obligation in this Section 9(c) is conditioned on you (A) promptly notifying Thomson Reuters in writing of the claim; (B) supplying information we reasonably request; and (C) allowing Thomson Reuters to control the defense and settlement.

(d) **Your Responsibilities.** You are responsible for (i) complying with this Agreement; (ii) proper use of our products and services in accordance with all usage instructions; (iii) adhering to the minimum recommended technical requirements; (iv) changes you make to our product, services or data; (v) your combination of our products, services or other property with any other materials; (vi) implementing and maintaining proper and adequate virus or malware protection and proper and adequate backup and recovery systems; (vii) installing updates; (viii) claims brought by third parties using or receiving the benefit of our products, services or data through you, except claims covered by Section 9(c); and (ix) claims resulting from your violation of law, or violation of our or any third party rights. You must reimburse us for any losses we incur with respect to your failure to comply with or otherwise in relation to these responsibilities. We will not be responsible if our product fails to perform because of your third party software, your hardware malfunction, or your actions or inaction. If we learn that our product failed because of one of these, we reserve the right to charge you for our work in investigating the failure. At your request we will assist you in resolving the failure at a fee to be agreed upon.

10. TERM, TERMINATION

(a) **Term.** The term and any renewal terms for the products and services are described in your order form. If not otherwise stated in the order form, the Agreement will automatically renew annually unless either of us gives the other at least 60 days written notice before the end of the then current term.

(b) **Suspension.** We may on notice terminate, suspend or limit your use of any portion or all of our products, services or other property if (i) requested to do so by a third party provider, court or regulator; (ii) you become or are reasonably likely to become insolvent or affiliated with one of our competitors; or (iii) there has been or it is reasonably likely that there will be: a breach of security; a breach of your obligations under the Agreement or another agreement between us; a breach of our agreement with a third party provider; or a violation of third party rights or applicable laws. Our notice will specify the cause of the termination, suspension or limitation and, if the cause of the termination suspension or limitation is reasonably capable of being remedied, we will inform you of the actions you must take to reinstate the product or service. If you do not take the actions or the cause cannot be remedied within 30 days, we may suspend, limit or terminate the Agreement in whole or in part. Charges remain payable in full during periods of suspension or limitation arising from your action or inaction.

(c) **Termination.** We may terminate all or part of the Agreement in relation to a product or service which is being discontinued. Either of us may terminate the Agreement immediately upon written notice if the other commits a material breach and fails to cure the material breach within 30 days of being notified to do so. Any failure to fully pay any amount when due under this Agreement is a material breach for this purpose.

(d) **Effect of Termination.** Except to the extent we have agreed otherwise, upon termination, all your usage rights end immediately and each of us must uninstall or destroy all property of the other and, if requested, confirm this in writing. Termination of the Agreement will not (i) relieve you of your obligation to pay Thomson Reuters any amounts you owe up to and including the date of termination; (ii) affect other accrued rights and obligations; or (iii) terminate those parts of the Agreement that by their nature should continue.

(e) **Amendments.** We may amend these General Terms and Conditions from time to time by giving you at least 30 days prior written notice. You may request good faith negotiations regarding the amended terms and conditions. If the parties cannot reach mutual agreement on the amended terms and conditions

within 30 days, you may terminate the agreement immediately upon written notice.

11. FORCE MAJEURE

We are not liable for any damages or failure to perform our obligations under the Agreement because of circumstances beyond our reasonable control. If those circumstances cause material deficiencies in the products or services and continue for more than 30 days, either of us may terminate any affected product or service on notice to the other.

12. THIRD PARTY RIGHTS

Our affiliates and third-party providers benefit from our rights and remedies under the Agreement. No other third parties have any rights or remedies under the Agreement.

13. GENERAL

(a) **Assignment.** You may not assign, delegate or otherwise transfer the Agreement (including any of your rights or remedies) to anyone else without our prior written consent. We may assign or otherwise transfer the Agreement (including any of our rights or remedies) in whole or in part to an affiliate or any entity that succeeds to all or substantially all of the assets or business associated with one or more products or services, and will notify you of any such assignment or transfer. We may subcontract any of the services in our sole discretion. Any assignment, delegation or other transfer in contravention of this Section 13(a) is void.

(b) **Feedback.** You grant Thomson Reuters a perpetual, irrevocable, transferable, non-exclusive right to use any comments, suggestions, ideas or

recommendations you provide related to any of our products or services in any manner and for any purpose.

(c) **Agreement Compliance.** We or our professional representatives may review your compliance with the Agreement throughout the term of the Agreement. If the review reveals that you have exceeded the authorized use permitted by the Agreement, you will pay all unpaid or underpaid charges.

(d) **Governing Law.** If not otherwise stated in the order form, the Agreement will be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein and each of us hereby irrevocably submits to the exclusive jurisdiction of the Courts of the Province of Ontario and all courts competent to hear appeals therefrom to settle all disputes or claims arising out of or in connection with the Agreement.

(e) **Precedence.** The descending order of precedence is: third party license terms contained in Section 1(f) of these terms; the applicable order form; and the remaining provisions of the Agreement.

(f) **Trials.** All trials of our products and services are subject to the terms of these General Terms & Conditions, unless we notify you otherwise. Access to our products and services for trials may only be used for your evaluation purposes.

(g) **Support Provided.** To assist in resolving technical problems with the Services, Thomson Reuters may provide telephone and/or online access to its helpdesk, or may provide self-help tools. Additional information related to the support provided by Thomson Reuters may be described on <http://thomsonreuters.com/support-and-training> or as otherwise provided by Thomson Reuters.

Ces conditions générales régissent votre utilisation des produits et services Thomson Reuters inscrits dans votre bon de commande (dans tout format). « Nous », « nos » et « Thomson Reuters » désignent l'entité Thomson Reuters identifiée dans le bon de commande et, le cas échéant, ses filiales ; « Vous » et « votre » désignent le client ou l'abonné identifié dans le bon de commande. Votre bon de commande identifie les produits et services, les quantités, les frais et autres détails de votre commande. Il fait également référence aux documents pouvant s'appliquer aux produits ou services que vous avez sélectionnés et les incorpore. Le bon de commande, les documents incorporés applicables et les présentes conditions générales constituent l'intégralité de l'accord (l'« ACCORD ») et remplacent les discussions, les accords ou les déclarations et garanties antérieures et actuels concernant votre commande. Les autres conditions que vous incorporez dans tout bon de commande ou autre ne font pas partie de l'Accord et ne s'appliquent pas.

1. NOS PRODUITS ET SERVICES

(a) **Licence limitée.** Avec nos concédants de licence, nous détenons et conservons la propriété de tous les droits de quelque nature que ce soit, sur nos produits, nos services et nos données (qu'ils soient matériels ou immatériels). Vous pouvez accéder à notre propriété, la visualiser, l'installer, l'utiliser, la copier, la modifier et la distribuer uniquement de la manière expressément spécifiée dans l'Accord et chacun de nous doit, à tout moment, agir conformément aux lois applicables, y compris les contrôles à l'exportation et les sanctions économiques reliées à l'Accord.

(b) **Changements apportés au service.** Nos produits et services changent de temps à autre.

(c) **Mots de passe.** Votre accès à certains produits et services est protégé par un mot de passe. Vous êtes responsable de l'attribution des mots de passe et de leur confidentialité. Le partage des mots de passe est strictement interdit. Chacun de nous doit maintenir des environnements informatiques conformes aux normes de l'industrie pour s'assurer que votre propriété et nous-mêmes sommes sécurisés et inaccessibles aux personnes non autorisées.

(d) **Technologie non autorisée.** Sauf avec l'autorisation préalable de Thomson Reuters, vous ne devez pas (i) exécuter ou installer de logiciel ou de matériel informatique sur nos produits, nos services ou notre réseau ; utiliser toute technologie pour télécharger, exploiter, capturer ou indexer automatiquement nos données ; et (ii) connecter automatiquement (via des API ou autrement) nos données à d'autres données, logiciels, services ou réseaux. Aucun de nous n'introduira sciemment de technologie ou de logiciel malveillant dans un produit, un service ou un réseau.

(e) **Renseignements sur l'utilisation.** Nous pouvons collecter des renseignements relatifs à votre utilisation de nos produits, de nos services et de nos données. Nous pouvons utiliser ces renseignements pour tester, développer et améliorer nos produits et services ainsi que pour protéger et appliquer nos droits en vertu de l'Accord, et nous pouvons transmettre ces renseignements à nos fournisseurs tiers aux mêmes fins.

(f) **Fournisseurs tiers.** Nos produits et services peuvent comprendre des données et des logiciels tiers. Certains fournisseurs tiers exigent que Thomson Reuters vous transmette des conditions supplémentaires. Les fournisseurs tiers modifient leurs conditions de temps à autre et de nouveaux fournisseurs tiers sont ajoutés à l'occasion. Pour consulter les conditions supplémentaires de nos tiers concernant nos produits et services, cliquez sur l'URL suivante : www.thomsonreuters.com/thirdpartyterms. Vous acceptez de vous conformer à toutes les conditions applicables aux tiers.

(g) **Logiciels complémentaires tiers.** Il se peut que vous ayez à fournir une licence pour un logiciel tiers afin d'utiliser certains de nos produits et services. Des conditions supplémentaires peuvent s'appliquer au logiciel tiers.

(h) **Limites.** Sauf avec l'autorisation expresse contraire mentionnée dans l'Accord, vous ne pouvez pas : (i) vendre, concéder en sous-licence, distribuer, afficher, stocker, copier, modifier, décompiler ou désassembler, manigancer, traduire ou transférer notre propriété en totalité ou en partie, ou en tant que composant de tout autre produit, service ou matériel ; (ii) utiliser notre propriété ou celle de nos fournisseurs tiers pour créer des œuvres dérivées ou des produits concurrents ; ou (iii) permettre à des tiers d'accéder, d'utiliser ou de bénéficier de notre propriété de quelque manière que ce soit. L'exercice des droits légaux qui ne peuvent être limités par un accord n'est pas exclu. Si vous fournissez des services de vérification, fiscaux, comptables ou juridiques à vos clients, cette Section 1 (h) ne vous empêche pas d'utiliser nos produits au bénéfice de vos clients dans le cours normal de vos activités. Sauf disposition expresse du présent Accord, nous conservons tous les droits et vous n'avez aucun droit sur nos produits, nos services et nos données.

(i) **Services.** Nous fournissons les services avec des compétences et des soins raisonnables. Les services professionnels applicables à votre commande, le cas échéant, sont décrits dans le document de commande ou un énoncé des travaux.

(j) **Sécurité.** Chacun de nous utilisera et exigera de tout processeur de données tiers d'utiliser les sauvegardes organisationnelles, administratives, physiques et techniques standard de l'industrie pour protéger les renseignements de l'autre partie. Chaque partie informera l'autre conformément à la loi applicable si cette partie a connaissance de l'accès non autorisé de tiers au contenu de l'autre partie et s'efforcera raisonnablement de remédier aux vulnérabilités de sécurité identifiées.

2. SERVICES DE RENSEIGNEMENTS

(a) **Licence.** Dans le cadre normal de votre activité et à des fins commerciales internes, vous pouvez uniquement visualiser, utiliser, télécharger et imprimer des données de nos services de renseignements à des fins individuelles et distribuer, de manière ponctuelle, irrégulière et ponctuelle, des extraits limités de nos données. De

tels extraits et les données téléchargées, imprimées ou stockées ne peuvent atteindre une quantité telle qu'ils ont une valeur commerciale indépendante et l'utilisation de ces données comme substitut à tout service (ou partie substantielle) fourni par Thomson Reuters, nos filiales ou nos fournisseurs tiers est interdite. Thomson Reuters et le fournisseur de contenu tiers, le cas échéant, doivent être cités et crédités en tant que source d'utilisation ou de distribution des données. Les avis de droits d'auteur doivent être conservés sur les documents transmis ou imprimés. L'accès à certaines données peut être restreint en fonction de la portée de votre licence.

(b) **Distribution supplémentaire.** Vous pouvez également distribuer nos données : (i) aux utilisateurs autorisés ; (ii) au gouvernement et aux autorités de réglementation, sur demande spécifique ; et (iii) à des tiers conseillers, dans la mesure nécessaire, pour vous conseiller et à condition qu'ils ne soient pas concurrents de Thomson Reuters. Les lois applicables dans votre juridiction peuvent autoriser des utilisations supplémentaires.

3. LOGICIEL INSTALLÉ

(a) **Licence.** Vous pouvez installer et utiliser notre logiciel et notre documentation uniquement à des fins professionnelles internes. Les licences logicielles comprennent les mises à jour (correctifs de bogues, correctifs, versions de maintenance) et ne comprennent pas les mises à niveau (nouvelles versions ou versions qui comprennent de nouvelles fonctionnalités ou des fonctionnalités supplémentaires) ou les API, sauf mention expresse dans le bon de commande. Votre bon de commande détaille les installations autorisées, les utilisateurs, les emplacements, l'environnement d'exploitation spécifié et d'autres autorisations. Vous pouvez utiliser notre logiciel en code exécutable uniquement. Vous pouvez faire des copies nécessaires de notre logiciel uniquement à des fins de sauvegarde et d'archivage.

(b) **Livraison.** Nous livrons notre logiciel en le rendant disponible pour le téléchargement. Lorsque vous téléchargez notre logiciel et notre documentation, le cas échéant, vous les acceptez conformément à l'Accord.

4. LOGICIEL HÉBERGÉ DE THOMSON REUTERS

(a) **Licence.** Vous pouvez utiliser notre logiciel hébergé uniquement à des fins commerciales internes.

(b) **Livraison.** Nous livrons notre logiciel hébergé en vous fournissant un accès en ligne. Lorsque vous accédez à notre logiciel hébergé, vous acceptez de l'utiliser conformément à l'Accord.

(c) **Contenu.** Notre logiciel hébergé est conçu pour protéger le contenu que vous téléchargez. Vous autorisez Thomson Reuters à utiliser, stocker et traiter votre contenu conformément à la loi applicable. L'accès et l'utilisation de votre contenu par Thomson Reuters, nos employés et nos sous-traitants seront dirigés par vous et limités dans la mesure nécessaire pour fournir le logiciel hébergé, y compris la formation, l'assistance à la recherche, le soutien technique et d'autres services. Nous pouvons supprimer ou désactiver votre contenu si requis par les lois applicables et, dans de tels cas, nous déploierons des efforts raisonnables pour vous en informer. Si votre contenu est perdu ou endommagé, nous vous aiderons à restaurer le contenu du logiciel hébergé à partir de votre dernière copie de sauvegarde disponible.

5. FRAIS

(a) **Paiement et taxes.** Vous devez payer vos frais dans les 30 jours suivant la date de facturation dans la devise indiquée sur votre bon de commande. Si vous êtes un abonné non gouvernemental et que vous ne payez pas les frais qui vous sont facturés, vous êtes responsable des frais de recouvrement, y compris des honoraires d'avocat. Vous devez également payer les taxes et les droits applicables, autres que les taxes sur les revenus, en plus du prix indiqué, sauf si vous fournissez une preuve valide que vous êtes exempté. Les litiges relatifs aux factures doivent être notifiés dans les 15 jours à compter de la date de la facture.

(b) **Modifications.** Sauf indication contraire mentionnée dans le bon de commande, nous pouvons modifier les frais de nos produits et services à compter du début de chaque période de renouvellement en vous informant au moins 30 jours à l'avance.

(c) **Utilisation excessive.** Vous devez payer des frais supplémentaires si vous dépassez la portée d'utilisation spécifiée dans votre bon de commande, selon les tarifs qui y sont spécifiés ou nos tarifs standard actuels, selon le montant le plus élevé. Nous pouvons modifier les frais si vous fusionnez, acquérez ou êtes acquis par une autre entité, entraînant un accès supplémentaire à nos produits, à nos services et à nos données.

6. VIE PRIVÉE

Chacun de nous, à tout moment, traitera, protégera et divulguera les informations nominatives reçues à la suite du présent Accord (« Informations nominatives ») conformément à la loi applicable, et déploiera des efforts raisonnables pour s'entraider dans le cadre de l'enquête et du traitement de toute réclamation, de toute allégation, de toute action, de toute poursuite, de tout litige concernant la destruction, la perte, la modification, la divulgation ou l'accès non autorisés ou illicites aux Informations nominatives. Vous reconnaissez et acceptez le transfert et le traitement des Informations nominatives dans les régions géographiques nécessaires afin que Thomson Reuters remplisse nos obligations. S'il y a lieu, des conditions supplémentaires peuvent s'appliquer à l'Accord, y compris les conditions du Règlement général sur la protection des données (2016/679) (RGPD) disponibles au www.tr.com/privacy-information.

7. CONFIDENTIALITÉ

Les renseignements confidentiels reçus des parties ne seront divulgués à personne, sauf dans la mesure requise par la loi ou dans le cadre de l'Accord. Si un tribunal ou un organisme gouvernemental ordonne à l'une ou l'autre des parties de divulguer les renseignements confidentiels de l'autre, celle-ci sera rapidement avisée afin qu'une ordonnance de protection appropriée ou un autre recours puisse être obtenu, à moins que le tribunal ou l'organisme gouvernemental n'interdise l'avis préalable. Cette section doit être disponible pendant trois (3) ans après la résiliation de l'Accord ou jusqu'à ce que les renseignements ne soient plus considérés comme confidentiels en vertu de la loi applicable, selon la première éventualité.

8. GARANTIES ET EXCLUSION

LES GARANTIES DE CETTE SECTION SONT EXCLUSIVES AUX ÉTATS-UNIS ET EXCLUENT TOUTES LES AUTRES GARANTIES, CONDITIONS OU CLAUSES (EXPRESSES OU IMPLICITES), Y COMPRIS LES GARANTIES DE PERFORMANCE, DE QUALITÉ MARCHANDE, DE NON-VIOLATION, D'ADÉQUATION ET D'ACTUALITÉ. PAR LE PRÉSENT ACCORD, AUCUNE PARTIE NE S'EST FIDÉ À LA DÉCLARATION, LA REPRÉSENTATION, LA GARANTIE OU L'ACCORD DE L'AUTRE PARTIE, SAUF CEUX QUI SONT EXPRESSÉMENT CONTENUS DANS LE PRÉSENT ACCORD.

(a) **EXCLUSION DES RESPONSABILITÉS. DANS TOUTE LA MESURE PERMISE PAR LES LOIS APPLICABLES, NOUS NE GARANTISSONS OU NE CONSTITUONS OU N'INCLUONS AUCUNE AUTRE CONDITION QUE LES PRODUITS OU SERVICES SERONT LIVRÉS EXEMPTS DE TOUTE INEXACTITUDE, DE TOUTE INTERRUPTION, DE TOUT RETARD, DE TOUTE OMISSION OU DE TOUTE ERREUR, OU QUE CEUX-CI SERONT CORRIGÉS. NOUS NE GARANTISSONS PAS LA VIE D'UNE URL OU D'UN SERVICE WEB TIERS.**

(b) **RENSEIGNEMENTS. NOS PRODUITS D'INFORMATION SONT FOURNIS « TELS QUELS » SANS AUCUNE GARANTIE, CONDITION OU CLAUSE D'AUCUNE SORTE.**

(c) **LOGICIEL. NOUS GARANTISSONS QUE NOS PRODUITS INFORMATIQUES SERONT CONFORMES À NOTRE DOCUMENTATION PENDANT 90 JOURS APRÈS LA LIVRAISON.**

(d) **EXCLUSION. VOUS ÊTES SEUL RESPONSABLE DE LA PRÉPARATION, DU CONTENU, DE L'EXACTITUDE ET DE L'EXAMEN DES DOCUMENTS, DES DONNÉES OU DES SORTIES PRÉPARÉS OU RÉSULTANT DE L'UTILISATION DE TOUT PRODUIT OU SERVICE, AINSI QUE DES DÉCISIONS OU DES ACTIONS PRISES EN FONCTION DES DONNÉES CONTENUES DANS OU GÉNÉRÉES PAR LES PRODUITS OU SERVICES. EN AUCUN CAS, NOUS OU NOS FOURNISSEURS TIERS NE POURRONS ÊTRE TENUS RESPONSABLES DES MONTANTS IMPOSÉS PAR TOUTE AUTORITÉ GOUVERNEMENTALE OU RÉGLEMENTAIRE.**

(e) **ABSENCE DE CONSEILS. NOUS N'OFFRONS PAS DE CONSEIL D'ORDRE FINANCIER, FISCAL, JURIDIQUE ET PROFESSIONNEL VOUS PERMETTANT D'ACCÉDER ET D'UTILISER NOS PRODUITS, NOS SERVICES ET NOS DONNÉES. VOS DÉCISIONS RELATIVES AUX PRODUITS OU SERVICES, OU À VOS INTERPRÉTATIONS DE NOS DONNÉES SONT DE VOTRE RESPONSABILITÉ.**

9. RESPONSABILITÉ

(a) **LIMITE. TOUTE RESPONSABILITÉ DES FOURNISSEURS OU DE SES TIERS, PENDANT TOUTE UNE ANNÉE CIVILE POUR LES DOMMAGES DÉCOULANT DE, OU RELIÉS À L'ACCORD, Y COMPRIS POUR NÉGLIGENCE, NE DÉPASSERA PAS LE MONTANT QUE VOUS AVEZ PAYÉ DANS LES 12 MOIS ANTÉRIEURS POUR LE PRODUIT OU SERVICE QUI EST LE SUJET DE LA RÉCLAMATION DE DOMMAGES. AUCUNE PARTIE NE SAURAIT ÊTRE TENUE RESPONSABLE DE DOMMAGES INDIRECTS, ACCIDENTELS, PUNITIFS, SPÉCIAUX OU CONSÉCUTIFS, OU DE PERTES DE DONNÉES ET DE BÉNÉFICES (DIRECTES OU INDIRECTES), MÊME SI CES DOMMAGES OU CES PERTES ONT ÉTÉ PRÉVUS OU PRÉVENUS.**

(b) **Responsabilité illimitée.** La Section 9 (a) ne limite pas la responsabilité de l'une ou l'autre partie pour (i) une fraude, une déclaration frauduleuse, une faute

intentionnelle ou un comportement qui démontre un mépris inconsidéré des droits d'autrui ; (ii) la négligence causant la mort ou des blessures personnelles ; ou (iii) une violation des droits de propriété intellectuelle. La Section 9 (a) ne limite pas votre responsabilité en ce qui concerne la Section 9 (d) ou pour les demandes de remboursement découlant de cette section ; ou de payer les frais sur le bon de commande et tous les montants pour l'utilisation des produits et services qui dépassent les autorisations d'utilisation et les restrictions qui vous sont accordées.

(c) **Propriété intellectuelle de tiers.** Si un tiers vous poursuit en prétendant que nos produits, nos services ou nos données, excluant toute partie de ceux-ci fournis par nos fournisseurs tiers, enfreignent leurs droits de propriété intellectuelle et que votre utilisation de ces produits, de ces services ou de ces données se conforme aux conditions générales mentionnées dans l'Accord, nous vous défendrons contre la réclamation et les dommages-intérêts que le tribunal accorde finalement contre vous ou qui sont compris dans un règlement approuvé par Thomson Reuters, à condition que la réclamation ne résulte pas de : (i) une combinaison de tout ou d'une partie de nos produits, de nos services ou de nos données avec des technologies, des produits, des services ou des données qui ne sont pas fournis par Thomson Reuters ; (ii) la modification de tout ou d'une partie de nos produits, de nos services ou de nos données autrement que par Thomson Reuters ou nos sous-traitants ; (iii) l'utilisation d'une version de nos produits, de nos services ou de nos données, après que nous vous ayons informé d'une obligation d'utiliser une version ultérieure ; ou (iv) votre violation de cet Accord. Par notre obligation dans cette Section 9 (c), vous êtes conditionné (A) d'aviser rapidement Thomson Reuters par écrit de la réclamation ; (B) de fournir les renseignements que nous demandons raisonnablement ; et (C) d'autoriser Thomson Reuters à contrôler la défense et le règlement.

(d) **Vos responsabilités.** Vous êtes responsable (i) de vous conformer à cet Accord ; (ii) d'utiliser correctement nos produits et services conformément à toutes les instructions d'utilisation ; (iii) de respecter les exigences techniques minimales recommandées ; (iv) des modifications que vous apportez à nos produits, à nos services ou à nos données ; (v) de votre combinaison de nos produits, de nos services ou d'autres biens avec tout autre matériel ; (vi) de mettre en place et de maintenir une protection adéquate et appropriée contre les virus ou les logiciels malveillants et des systèmes de sauvegarde et de récupération appropriés et adéquats ; (vii) d'installer les mises à jour ; (viii) des réclamations présentées par des tiers en utilisant ou en recevant le bénéfice de nos produits, de nos services ou de nos données par vous, sauf les réclamations couvertes par la Section 9 (c) ; et (ix) des réclamations résultant de votre violation de la loi ou de la violation de nos droits ou de ceux de tiers. Vous devez nous rembourser les pertes que nous subissons en raison de votre non-respect de ces responsabilités ou autrement en lien avec ces responsabilités. Nous ne serons pas responsables du non-fonctionnement de notre produit en raison de votre logiciel tiers, de votre dysfonctionnement matériel, de vos actions ou de votre inaction. Si nous apprenons que notre produit a mal fonctionné en raison de l'un de ces problèmes, nous nous réservons le droit de vous facturer notre travail d'enquête sur la défaillance. À votre demande, nous vous aiderons à résoudre le problème moyennant des frais à convenir.

10. DURÉE, RÉSILIATION

(a) **Durée.** Les conditions de renouvellement des produits et des services sont décrites dans votre bon de commande. Sauf indication contraire mentionnée dans le bon de commande, l'Accord sera automatiquement renouvelé annuellement, sauf si l'un d'entre nous donne un préavis écrit d'au moins 60 jours à l'autre partie avant la fin de la période en cours.

(b) **Suspension.** Nous pouvons, sur préavis, résilier, suspendre ou limiter votre utilisation de tout ou d'une partie de nos produits, de nos services ou d'autres biens si (i) vous êtes invité à le faire par un fournisseur tiers, un tribunal ou un organisme de réglementation ; (ii) vous devenez ou êtes raisonnablement susceptible de devenir insolvable ou affilié à l'un de nos concurrents ; ou (iii) s'il y a eu ou qu'il est raisonnablement probable qu'il y aura : une violation de la sécurité ; un manquement à vos obligations en vertu de l'Accord ou d'un autre accord entre nous ; une violation de notre Accord avec un fournisseur tiers ; ou une violation des droits de tiers ou des lois applicables. Notre avis précisera la cause de la résiliation, de la suspension ou de la limitation et, si la cause de la suspension ou de la limitation de la résiliation est raisonnablement susceptible d'être corrigée, nous vous informerons des mesures que vous devez prendre pour rétablir le produit ou le service. Si vous ne prenez pas les mesures ou si la cause ne peut être résolue dans les 30 jours, nous pouvons suspendre, limiter ou résilier l'Accord en totalité ou en partie. Les frais demeurent payables en totalité pendant les périodes de suspension ou de limitation découlant de votre action ou inaction.

(c) **Résiliation.** Nous pouvons résilier tout ou une partie de l'Accord en lien avec un produit ou un service en cours de suppression. Chacun de nous peut résilier l'Accord immédiatement après un avis écrit si l'autre commet un acte de violation substantielle et ne parvient pas à remédier à la violation matérielle dans les 30 jours suivant son avis. Tout défaut de paiement d'un montant lorsqu'il est dû selon le présent Accord constitue une violation substantielle à cet effet.

(d) **Effet de la résiliation.** Sauf dans la mesure où nous en avons convenu autrement, à la résiliation, tous vos droits d'utilisation se terminent immédiatement et chacun de nous doit désinstaller ou détruire toutes les propriétés de l'autre et, sur demande, le confirmer par écrit. La résiliation de l'Accord (i) ne vous décharge pas de votre obligation de payer à Thomson Reuters les montants que vous devez, y compris

la date de résiliation ; (ii) ne touche pas d'autres droits et obligations accumulés ; ou (iii) ne résilie pas les parties de l'Accord qui, par leur nature, devraient continuer.

(e) **Modifications.** Nous pouvons modifier les présentes conditions générales de temps à autre en vous informant par écrit au moins 30 jours à l'avance. Vous pouvez demander des négociations de bonne foi concernant les conditions modifiées. Si les parties ne parviennent pas à un accord mutuel sur les conditions modifiées dans les 30 jours, vous pouvez résilier l'accord immédiatement après l'avis écrit.

11. FORCE MAJEURE

Nous ne sommes pas responsables des dommages ou des manquements à nos obligations en vertu de l'Accord en raison de circonstances indépendantes de notre volonté. Si ces circonstances entraînent des défaillances matérielles dans les produits ou les services et se poursuivent pendant plus de 30 jours, l'un ou l'autre de nous peut résilier tout produit ou tout service concerné sur avis à l'autre.

12. DROITS DES TIERCES PARTIES

Nos sociétés affiliées et nos fournisseurs tiers bénéficient de nos droits et de nos recours en vertu de l'Accord. Aucun tiers ne dispose de droits ou de recours en vertu de l'Accord.

13. GÉNÉRAL

(a) **Affectation.** Vous ne pouvez pas affecter, déléguer ou transférer l'Accord (y compris vos droits ou vos recours) à quiconque sans notre consentement écrit préalable. Nous pouvons céder ou transférer l'Accord (y compris l'un de nos droits ou recours) en totalité ou en partie à une société affiliée ou à toute entité qui succède à la totalité ou à la quasi-totalité des actifs ou des activités associées à un ou plusieurs produits ou services, et nous vous informerons de toute affectation ou de tout transfert. Nous pouvons donner en sous-traitance l'un des services à notre seule discrétion. Toute affectation, toute délégation ou tout autre transfert en violation de la présente Section 13 (a) est nul.

(b) **Commentaires.** Vous accordez à Thomson Reuters un droit perpétuel, irrévocable, transférable et non exclusif d'utiliser tous les commentaires, toutes les suggestions, toutes les idées ou toutes les recommandations que vous fournissez relativement à l'un de nos produits ou services de quelque manière et à quelque fin que ce soit.

(c) **Conformité à l'Accord.** Nos représentants professionnels ou nous-mêmes pouvons examiner votre conformité à l'accord pendant toute la durée de l'Accord. Si l'examen révèle que vous avez dépassé l'utilisation autorisée permise par l'Accord, vous paierez tous les frais impayés ou sous-payés.

(d) **Droit applicable.** Sauf indication contraire mentionnée dans le bon de commande, l'Accord sera régi par les lois de la province de l'Ontario et les lois fédérales du Canada qui s'y appliquent, et chacun de nous se soumet irrévocablement à la compétence exclusive des tribunaux de la province de l'Ontario et tous les tribunaux compétents pour entendre les appels contre ceux-ci et régler tous les litiges ou réclamations découlant de ou relié à l'Accord.

(e) **Préséance.** L'ordre de préséance décroissant est le suivant : termes de licence tiers contenus dans la Section 1 (f) de ces conditions ; le bon de commande applicable ; et les autres dispositions de l'Accord.

(f) **Essais.** Tous les essais de nos produits et services sont soumis aux présentes conditions générales, sauf avis contraire de notre part. L'accès à nos produits et services pour les essais ne peut être utilisé qu'à des fins d'évaluation.

(g) **Soutien fourni.** Pour aider à résoudre les problèmes techniques liés aux services, Thomson Reuters peut fournir un accès téléphonique ou en ligne à son service d'assistance, ou fournir des outils d'auto-assistance. Des renseignements supplémentaires sur le soutien fourni par Thomson Reuters sont disponibles au <http://thomsonreuters.com/support-and-training> ou comme prévu par Thomson Reuters.