

Tax Litigation

Tax legislation is becoming increasingly complex and tax audits are becoming more aggressive. It is important to entrust your tax dispute to someone with a track record of successfully resolving tax disputes. That is why when clients have tax disputes, they look to our responsive, innovative and experienced Tax Litigation Group to represent them. We represent a broad range of clients, including large companies, financial and public institutions, small businesses and individuals.

The Tax Litigation Group at Aird & Berlis has a wealth of experience in handling disputes relating to income tax, GST/HST, customs, and provincial income and indirect taxes. Our members include highly-regarded tax practitioners, former clerks of the Tax Court of Canada and the Federal Court, former Department of Justice tax litigators and CPAs working collaboratively to assist clients through audits, administrative objections and, where necessary, court appeals.

When litigation cannot be avoided, our litigation specialists bring their vast advocacy experience and passion to the representation of clients before the Tax Court, Federal Court, Federal Court of Appeal, Supreme Court of Canada, Canadian International Trade Tribunal and provincial courts.

Our numerous courtroom successes and track record in resolving clients' tax disputes without the need to resort to the courts are a testament to our wide-ranging tax planning experience and significant technical expertise. Our ability to resolve tax disputes early is enhanced by the fact that each and every member of our Tax Litigation Group is a full-time tax lawyer with an extensive practice in dealing with the Canada Revenue Agency, the Canada Border Services Agency and the provincial tax authorities.

We understand the impact of tax disputes on you and your business and are committed to providing innovative, strategic and cost-efficient solutions to successfully resolving your matters.

We advise and represent clients in all types of tax disputes including:

- > Corporate tax
- > Personal tax
- > International tax
- > GST/HST
- > Provincial taxes
- > Canada Pension Plan and Employment Insurance matters
- > Requirements issued by the Canada Revenue Agency
- > Excise taxes
- > Access to Information requests
- > Collection matters
- > Voluntary disclosures
- > Design and implementation of corporate policies to protect privilege
- > Transfer pricing and competent authority

Representative Matters

Representative matters our lawyers have acted on include:

- Successfully represented the Appellant in *Medallion Corporation v. The Queen* before the Tax Court of Canada (2018 TCC 157), arguing that Medallion Corporation was engaged in a joint venture with certain leasehold building owners and had not supplied property management services to those leasehold building owners
- Successfully represented the Appellant in *Triple M Metal LP v. The Queen* in an appeal before the Tax Court of Canada (2016 TCC 293) relating to an Ontario GST/HST reassessment
- Successfully represented the Appellant in *Presidential MSH Corporation v. The Queen* before the Tax Court of Canada (2015 TCC 61) in arguing that the RDTOH balance should not be reduced for dividend refunds claimed but not received, given the meaning of “dividend refund” in paragraph 129(1)(a) of the *Income Tax Act*
- Successfully represented the Appellant in *Velcro Canada Inc. v. The Queen* before the Tax Court of Canada (2012 TCC 57) on the meaning of “beneficial owner” under the Canada-Netherlands Income Tax Convention. In the subsequent costs decision (2012 TCC 273), successfully acquired above-tariff costs, leading to a decision which has been cited with approval on numerous occasions due to clarity and succinctness of representation on appeal
- Successfully represented the Appellant in *Bozzer v. Canada* before the Federal Court of Appeal (2011 FCA 186) in relation to the proper determination of the ten-year period that allows the Minister to waive or cancel any portion of interest or penalties owing under the *Income Tax Act*
- Successfully represented the Appellant in *Heritage Education Funds Inc. v. The Queen* before the Tax Court of Canada (2010 TCC 161) in determining that certain enrolment fees were not required to be included in computing income
- Successfully represented the Appellant in *Mediclean Incorporated v. M.N.R.* before the Tax Court of Canada (2009 TCC 340), overturning a CRA assessment for EI and CPP when the Court found workers to be independent contractors and not employees
- Successfully represented the Appellant in *Costco Wholesale Canada Ltd. v. The Queen* before the Tax Court of Canada ([2009] G.S.T.C. 38), on reference back to the Tax Court of Canada ([2010] G.S.T.C. 173), and finally as Respondent at the Federal Court of Appeal (2012 FCA 160) in determining that payments received were not consideration for a taxable supply, but rather were a reduction or partial refund of a fee payable for an exempt supply
- Successfully represented the Appellant in *Collins & Aikman Products Co. v. The Queen* before the Tax Court of Canada (2009 TCC 299), and as Respondent at the Federal Court of Appeal (2010 FCA 251), which determined that surplus stripping is not inherently a “misuse or abuse” of the *Income Tax Act* for the purpose of the general anti-avoidance rule
- Successfully represented a group of investors before the Tax Court of Canada (2008 TCC 274) and the Federal Court of Appeal (2009 FCA 113) in *R. v. Landrus*, which considered the applicability of the general anti-avoidance rule to a transaction which resulted in the claiming of terminal losses
- Successfully represented the Appellant in *City Water International Inc. v. Canada* before the Tax Court of Canada (2005 CarswellNat 3122) and Federal Court of Appeal (2006 FCA 350) in respect of whether installers and maintenance repair workers were independent contractors or employees
- Successfully represented the Applicant in *Karia v. Canada (Minister of National Revenue)* before the Federal Court (2005 FC 639) in seeking to set aside the decision of the Canada Revenue Agency respecting whether the Applicant had any knowledge of an audit or investigation that might prevent access to the Voluntary Disclosures Program
- Successfully represented the Appellant in *Lenester Sales Ltd. v. The Queen* before the Tax Court of Canada (2003 TCC 531), and as Respondent at the Federal Court of Appeal (2004 FCA 217) related to the associated corporation rules and the availability of the small business deduction
- Successfully represented the Applicant in *Capital Vision Inc. v. Minister of National Revenue* before the Federal Court ([2003] 2 C.T.C. 42) in seeking to quash certain “requirements to for information” on the basis that they were invalid and unlawful

- > Representing numerous clients in respect of the Canada Revenue Agency's "Related Party Audit Program" initiative to audit every group of individuals, corporations or other associated entities with net worth in excess of \$50 Million, including issues around foreign compliance and penalty assessments relating to same
- > Representing a confidential client regarding assessments dealing with cross-border and Tax Treaty issues
- > Representing multinationals in respect of Canada-U.S. transfer pricing methodology and competent authority agreements
- > Advocating for various individuals in relation to income tax and GST/HST assessments regarding home sales
- > Representing numerous clients in respect of assessments altering valuation of fixed value preferred shares
- > Representing trusts with respect to provincial residency based on mind, management and control
- > Representing numerous clients with respect to commerciality in relation to private aircraft
- > Representing clients under audit in respect of reasonableness of management fees
- > Successfully overturned/settled GST assessments against non-resident GST registrants because of issues relating to audit methodologies, and assessments of GST/HST input tax credit allocation methodology for financial institutions
- > Advocating for various clients in relation to director's liability for GST and payroll taxes, as well as tracing assessments involving non-arm's-length transfers of property
- > Extensive experiences in making voluntary disclosures with the CRA and Ministry of Finance relating to income tax, foreign reporting, GST/HST and land transfer tax

Contacts



Neil Bass
Partner
T 416.865.3071
nbass@airdberlis.com



Louise R. Summerhill
Partner
T 416.865.3416
lsummerhill@airdberlis.com

Group Members

Neil Bass
Partner
T 416.865.3071
nbass@airdberlis.com

Monica Carinci
Associate
T 416.865.4715
mcarinci@airdberlis.com

Stephanie D'Amico
Associate
T 416.865.3060
sdamico@airdberlis.com

Angelo Gentile
Partner
T 416.865.4145
agentile@airdberlis.com

Josh Kumar
Associate
T 416.865.3968
jkumar@airdberlis.com

David Malach
Partner
T 416.865.7702
dmalach@airdberlis.com

Clifford Rand
Partner
T 647.426.2289
crand@airdberlis.com

Louise R. Summerhill
Partner
T 416.865.3416
lsummerhill@airdberlis.com

Jesse L. Waslowski
Associate
T 416.865.7771
jwaslowski@airdberlis.com