
INTERNATIONAL TAX
CASE SUMMARY

CANADA vs THOMPSON

JUNE 2016

ACADEMY OF TAX LAW

PUBLISHING SERVICES

This Publication is copyrighted under the Berne Convention.

No reproduction or use of this material is allowed without prior permission

Copyright©, 2024 - Academy of Tax Law (Division of International Institute for Tax And Finance)

First Edition Published on 30 October 2024

Published by Academy Of Tax Law

CONTACT US

www.academyoftaxlaw.com | info@academyoftaxlaw.com

HEAD OF ACADEMICS



Welcome to the Academy of Tax Law's case and judgment summaries. These documents have been carefully curated to support professionals, students, and researchers navigating the complex landscape of international tax and transfer pricing. At the Academy, we understand that tax law is ever-evolving, with key rulings continuously shaping its practice.

Each summary you'll find here is designed to provide not just the facts, but the context and implications of pivotal legal decisions. These case summaries are created to serve as a valuable resource for legal teams, multinationals, revenue authorities, and academics, offering insights that go beyond the surface. Our goal is to ensure you remain informed and prepared, whether you are dealing with tax planning, dispute resolution, or risk management.

We believe that knowledge is the foundation of sound decision-making, and with these resources, we hope to empower you in your professional journey. As you delve into the analysis, remember that staying ahead in tax law requires not just understanding the rules but how to apply them in a dynamic, global environment.

Thank you for choosing the Academy of Tax Law as your partner in this ongoing learning experience.

Sincerely,
Dr. Daniel N Erasmus

PART 1

SUMMARY

JUDGEMENT SUMMARY

CASE OVERVIEW

Court:	Supreme Court of Canada
Case No:	35590
Applicant:	Minister of National Revenue
Defendant:	Duncan Thompson
Judgment Date:	June 3, 2016
Full Judgment:	https://academyoftaxlaw.com/document/canada-vs-thompson-judgment/
View Online:	https://academyoftaxlaw.com/canada-v-thompson-solicitor-client-privilege-tax/

JUDGMENT SUMMARY

In *Canada (National Revenue) v. Thompson*, the Supreme Court of Canada evaluated the boundary between solicitor-client privilege and the statutory obligations imposed on lawyers under the Income Tax Act (ITA). The case arose when the Canada Revenue Agency (CRA) demanded that Duncan Thompson, a lawyer, disclose information related to his client accounts for tax auditing purposes. The CRA issued the demand based on provisions within the ITA that grant the agency the power to access relevant documentation to verify tax compliance. Thompson complied partially, but he withheld client-specific information, invoking solicitor-client privilege to protect client identities and related details in his accounting records.

The Minister of National Revenue sought a court order compelling Thompson to provide the client information. This demand led to a significant dispute over the extent of solicitor-client privilege, with Thompson arguing that the privilege applied not only to client communications but also to client

names and financial records associated with his legal practice. He further claimed that the CRA's request amounted to an unreasonable search and seizure under section 8 of the Canadian Charter of Rights and Freedoms.

The Federal Court initially ruled in favour of the CRA, requiring Thompson to disclose the requested records. However, the Federal Court of Appeal acknowledged that client identities within certain documents could be protected by privilege, sending the case back to the Federal Court to ascertain which client names, if any, were privileged. The Supreme Court ultimately upheld the CRA's authority under the ITA, determining that client identities did not generally fall under solicitor-client privilege in this context. The court asserted that while solicitor-client privilege is fundamental, it can be limited by clear legislative intent, as expressed in the ITA's provisions. The decision reinforces the scope of solicitor-client privilege in Canada, affirming it as a key element of the justice system, but one that can be circumscribed in specific, legislatively defined instances.

KEY POINTS OF THE JUDGMENT

BACKGROUND

The conflict arose from the CRA's application of its powers under the ITA, which requires individuals, including lawyers, to disclose specific records for tax assessment and enforcement. Duncan Thompson, a lawyer in Alberta, was the subject of such an enforcement action. The CRA requested access to Thompson's client accounts, including names and financial balances, to verify compliance with tax regulations. Thompson argued that solicitor-client privilege protected his client information and resisted disclosing further details, especially the identities of his clients.

The CRA took the matter to the Federal Court, seeking an order to compel Thompson to disclose his complete client list and associated financial information. This demand was issued

under section 231.7 of the ITA, which grants the CRA broad powers to collect information for tax purposes. Thompson contested the CRA's request, claiming that complying would breach his obligation to maintain client confidentiality. He also invoked section 8 of the Canadian Charter of Rights and Freedoms, arguing that the CRA's requirement amounted to an unreasonable search and seizure.

The dispute centred on whether the CRA's statutory powers could override solicitor-client privilege, particularly when the requested information involved a lawyer's accounting records. The case thus addressed a critical question in Canadian tax law: whether legal privilege could shield certain financial records from disclosure to tax authorities under the ITA.

KEY POINTS

OF THE JUDGMENT

CORE DISPUTE

The primary legal issue was whether solicitor-client privilege could protect a lawyer's accounting records, specifically the names and details of clients in those records, from CRA disclosure requirements under the ITA. Thompson argued that privilege extends beyond direct client communications to include all aspects of the client-lawyer relationship, covering financial documents related to client matters. He maintained that releasing client names and related financial data would infringe upon his duty of confidentiality and violate clients' rights to privileged communication.

The CRA, on the other hand, argued that section 232(1) of the ITA expressly excludes lawyer accounting records from the scope

of solicitor-client privilege, implying that such records must be made available for tax enforcement purposes. The agency asserted that legislative provisions allow it to access client details as part of its tax assessment role, even if they involve sensitive information from a law practice.

The court was thus required to determine whether the CRA's demand for records complied with the ITA while respecting the constitutional protections afforded by solicitor-client privilege. This required an analysis of the statute's wording and the legal precedents regarding privilege, particularly whether it extends to client names and other accounting entries within a lawyer's practice.

KEY POINTS

OF THE JUDGMENT

COURT FINDINGS

The Supreme Court's analysis hinged on the interpretation of solicitor-client privilege within the ITA and the extent to which legislative provisions could limit this privilege. The Court acknowledged solicitor-client privilege as a principle of fundamental justice but noted that its application is not absolute and may be curtailed by clear legislative intent. The Court examined section 232(1) of the ITA, which specifies that "accounting records of a lawyer" are not considered privileged. The provision's clarity led the Court to conclude that Parliament intended to exclude lawyer accounting records from the protections normally afforded by solicitor-client privilege.

The Court highlighted the CRA's statutory mandate, which allows it to access relevant taxpayer information for audit and enforcement, confirming that accounting details, including client names, were

essential for the CRA's purpose of verifying tax obligations. While solicitor-client privilege generally applies to communications between a lawyer and client, the Court found that, in this instance, the legislated exception in the ITA was valid and constitutional, given that it targeted only specific non-communicative data. The Court rejected Thompson's broader claim that disclosing client names would compromise client confidentiality, ruling that statutory language takes precedence when clearly outlined.

Ultimately, the Court held that the CRA's request for Thompson's client names did not violate the Charter's protection against unreasonable search and seizure. The ruling underscored the Court's position that legislative clarity could define the boundaries of solicitor-client privilege in a manner consistent with tax enforcement goals.

KEY POINTS

OF THE JUDGMENT

OUTCOME

The Supreme Court's final ruling sided with the Minister of National Revenue, affirming the CRA's authority to request client records for tax enforcement under the ITA. The judgment allowed the CRA to access Thompson's client identities and financial records within the specific statutory framework, emphasizing that solicitor-client privilege could be limited where Parliament has unambiguously delineated such boundaries.

This outcome established a precedent for the interpretation of solicitor-client privilege within the context of tax law enforcement. The decision underscored the Supreme Court's commitment to upholding legislative intent when statutory language is clear, especially

concerning regulatory and compliance objectives. The Court balanced the need to protect privilege with the CRA's mandate to ensure tax compliance, finding that privilege did not apply to general accounting records held by lawyers.

Although the Court acknowledged the importance of client confidentiality, it ruled that the ITA's provisions effectively limit privilege's scope in cases involving purely administrative data, such as client names and balances. The CRA was thus entitled to request this information without breaching constitutional protections or infringing upon the fundamental principles of privilege.

PART 2

SIGNIFICANCE

MAJOR ISSUES

AREAS OF CONTENTION

The case raised critical issues regarding solicitor-client privilege, tax compliance, and the extent of CRA's powers under the ITA. The key points of contention were:

The Boundaries of Solicitor-Client Privilege:

Thompson's argument hinged on whether privilege extended beyond direct communications to include related administrative records like accounting entries. This challenged the traditional understanding of privilege and tested its boundaries within regulatory contexts.

CRA's Statutory Authority:

The CRA's right to access taxpayer information is extensive, but this case questioned whether it could override privilege protections explicitly without infringing upon constitutional rights.

Client Confidentiality vs. Legislative Clarity:

While client confidentiality is fundamental, the Court found that the ITA's explicit exclusion of lawyer accounting records justified CRA's demands. This set a precedent for interpreting privilege exceptions when articulated within a statute.

The Court's decision, though pragmatic for CRA's tax enforcement, underscored the fine line between upholding privilege and permitting legislative exceptions in clearly defined scenarios.

EXPECTED OR CONTROVERSIAL?

The decision in *Canada v. Thompson* was viewed as controversial due to its implications for solicitor-client privilege. Legal professionals raised concerns that it might erode privilege by setting a precedent for its limitation in tax contexts, potentially opening the door for broader interpretations of privilege exceptions in future cases. The Court's decision, while grounded in statutory interpretation, sparked debate on how far solicitor-client privilege should extend when balanced against regulatory requirements.

Some legal experts considered the ruling

predictable, given the ITA's explicit exclusion of lawyer accounting records. However, the judgment's ramifications were significant, as it marked one of the rare instances where privilege was limited for tax enforcement. Critics argued that the decision risked undermining client trust in legal professionals, as it allows certain confidential client data to be disclosed under specified legislative frameworks. Conversely, proponents saw it as a necessary step to enhance tax transparency and compliance, affirming that privilege should not be absolute where clear legislative intent exists.

SIGNIFICANCE FOR MULTINATIONALS

The decision in *Canada v. Thompson* has far-reaching implications for multinationals (MNEs) operating in Canada and similar jurisdictions. One of the key takeaways for MNEs is the recognition that statutory tax enforcement powers can, under specific legislative provisions, override confidentiality norms traditionally covered by solicitor-client privilege. For MNEs, this means that legal, tax, and compliance departments must be increasingly cautious when handling sensitive financial and client-related information, especially during audits and investigations where privilege protections may not fully apply.

This case underscores the need for MNEs to reassess the scope of their protected information, particularly in light of tax authorities' growing ability to access accounting records within the ambit of statutory exceptions. Since MNEs often engage with various legal and tax advisors to navigate complex international tax obligations, they may find it prudent to clarify which data falls

under privilege and which may be accessible to revenue authorities. For multinationals, the ruling emphasizes the importance of maintaining robust internal record-keeping practices that align with local tax laws, as any misstep in tax reporting could potentially trigger tax enforcement actions and expose sensitive data.

Moreover, the decision serves as a reminder that tax authorities globally are likely to adopt similar interpretations of privilege boundaries, especially in jurisdictions with strict tax compliance regulations. MNEs should ensure that legal counsel is fully integrated into their tax compliance framework to provide guidance on the limits of privilege and to mitigate exposure risks related to cross-border transactions. This case reinforces the need for MNEs to work closely with legal and tax professionals to safeguard client and financial data while adhering to tax regulations in a manner that anticipates and responds to regulatory scrutiny.

SIGNIFICANCE

FOR REVENUE SERVICES

For revenue services, Canada v. Thompson strengthens the enforcement framework, granting tax authorities more leverage in accessing information critical to accurate tax assessments. This decision provides a judicial endorsement for revenue agencies like the CRA to use statutory language defining privilege boundaries to obtain lawyer accounting records, which are often essential in confirming compliance with tax obligations. The Supreme Court's interpretation that solicitor-client privilege can be limited by clear statutory provisions reinforces the revenue services' mandate to audit and enforce tax compliance rigorously, even in cases involving privileged professions.

This ruling is particularly valuable for tax authorities in contexts where they encounter legal resistance to compliance demands based on privilege. The Court's stance on statutory clarity paves the way for tax authorities to implement similar legislative frameworks, potentially in collaboration with policymakers, to refine privilege exceptions

that balance the protection of professional confidences with enforcement objectives. For example, revenue services in jurisdictions with high legal professional privilege standards may advocate for clearer statutory language to streamline access to accounting records without compromising the integrity of solicitor-client communications directly.

Moreover, the decision aligns with international movements toward greater transparency and rigorous reporting in tax administration. Tax authorities can leverage this precedent to bolster cross-border collaboration, particularly in jurisdictions seeking to combat tax evasion and enhance compliance. By clarifying that solicitor-client privilege has limits, the Court has provided revenue services with a powerful tool to address potential tax risks effectively while respecting the core aspects of privilege. This approach also underscores the importance of statutory precision in crafting legislation that balances privacy rights with the state's interest in accurate tax reporting.

RELEVANT CASES

F SCS VS LUXEMBOURG

In F SCS v Luxembourg, the Court of Justice of the European Union addressed confidentiality within tax reporting, similar to Case C-694/20. Both cases balance transparency with fundamental rights, particularly legal privilege. In F SCS, the court reinforced the importance of protecting privileged information in tax disclosures, echoing C-694/20's stance that legal privilege remains essential despite reporting requirements.

<https://academyoftaxlaw.com/f-scs-ordre-des-avocats-vs-luxembourg-lawyer-client-confidentiality-tax-law/>

GLENCORE VS AUSTRALIA

The High Court of Australia ruled that documents leaked to the public, even if previously protected by privilege, could be used in tax investigations. Glencore had argued that privilege should prevent the Australian Taxation Office (ATO) from using the leaked documents, but the court disagreed, stating that privilege does not extend to restraining the use of already-public documents.

<https://academyoftaxlaw.com/transfer-pricing-dispute-glencore-taxation/>

ORDE VAN VLAAMSE BALIES VS BELGIUM

In Orde van Vlaamse Balies and Others, the Court of Justice of the European Union (CJEU) considered whether mandatory disclosure requirements under Directive 2011/16/EU, as amended by Directive 2018/822 (DAC6), violated lawyer-client confidentiality. The directive required intermediaries, including lawyers, to report potentially aggressive cross-border tax arrangements. The Court ruled that imposing such disclosure requirements on lawyers conflicts with Article 7 of the Charter of Fundamental Rights, which protects lawyer-client confidentiality. The decision reinforced that Member States must limit such disclosures to avoid breaching fundamental rights.

<https://academyoftaxlaw.com/legal-professional-privilege-cross-border-tax/>

PART 3

PREVENTION

Engaging with tax lawyers is crucial for multinational enterprises (MNEs) to navigate the complex landscape of international tax compliance and minimize exposure to risks. Tax laws and regulations vary significantly across jurisdictions, and tax authorities are increasingly collaborating globally to enforce compliance. Tax lawyers provide MNEs with strategic guidance tailored to specific jurisdictions, ensuring that transactions and tax structures align with both local and international tax laws.

One of the primary advantages of consulting tax lawyers is their expertise in safeguarding sensitive information under legal professional privilege, especially in cross-border contexts. This confidentiality is essential for MNEs, as it allows open communication with legal counsel, protecting strategic tax planning discussions from disclosure to tax authorities. Tax lawyers are also well-versed in complex anti-avoidance laws, transfer pricing

regulations, and disclosure obligations, which vary across jurisdictions but significantly impact MNEs.

Moreover, tax lawyers play a vital role in risk management, advising MNEs on compliance strategies and helping establish robust tax governance frameworks. With proactive legal advice, MNEs can adopt preventative measures—such as setting up a tax steering committee or implementing a tax risk management process—that help in identifying, managing, and mitigating tax risks before they escalate into costly disputes or reputational issues.

In an environment where global tax regulations are continually evolving, engaging tax lawyers allows MNEs to stay compliant and responsive to regulatory changes, reducing potential risks while upholding best practices in tax transparency and governance.

PREVENTATIVE

MEASURES TO AVOID SIMILAR CASES

TAX RISK MANAGEMENT PROCESS

- Implementing a comprehensive tax risk management process is essential to identify, assess, and mitigate tax risks associated with cross-border transactions. This process should involve:
- Regular reviews of intra-group transactions to ensure they have genuine economic substance.
 - Proactive engagement with tax authorities to seek clarity on the application of anti-abuse rules.
 - Thorough documentation of the business rationale for each transaction to support

DOWNLOAD FREE BOOK

TAX INTELLIGENCE: THE 7 HABITUAL TAX MISTAKES MADE BY COMPANIES

Tax Intelligence: The 7 Habitual Tax Mistakes Made by Companies” by Dr. Daniel N. Erasmus is a must-read for businesses seeking to navigate the intricate world of tax compliance and risk management. By highlighting common pitfalls and offering strategic solutions, Erasmus equips companies with the knowledge to improve their tax practices and secure financial stability.

<https://support.academyoftaxlaw.com/product/tax-intelligence-by-prof-dr-daniel-n-erasmus/>

PREVENTATIVE

MEASURES TO AVOID SIMILAR CASES

TAX STEERING COMMITTEE

- Establishing a tax steering committee can help ensure that tax policies are aligned with the broader business strategy and that transactions are vetted for both commercial and tax implications. A tax steering committee can:
- Review all significant cross-border transactions before they are executed.
 - Ensure that tax decisions are made in the context of overall business objectives, not solely for tax savings.
 - Monitor changes in international tax laws to ensure ongoing compliance and avoid disputes like the X BV case.

DOWNLOAD FREE E-BOOK

DRIVING TAX COMPLIANCE: THE ESSENTIAL ROLE OF THE TAX STEERING COMMITTEE

The eBook “Driving Tax Compliance: The Essential Role of a Tax Steering Committee” by Prof. Dr. Daniel N. Erasmus, Renier van Rensburg, and Gilbert Ferreira, emphasizes the critical importance of establishing a Tax Steering Committee (TSC) within multinational corporations to ensure tax compliance and manage tax-related risks effectively.

<https://support.academyoftaxlaw.com/product/essential-role-of-the-tax-steering-committee/>

INTERNATIONAL TAX
CASE SUMMARY

ACADEMY OF TAX LAW

Copyright © 2024/2025

International Institute for Tax and Finance Ltd (I/I/T/F) Academy of Tax Law

This publication was accurate at time of publishing.
It may be necessary for reasons beyond the control of the organisers to alter the content.