

Submission Made to the Alberta Government Proposing Amendments to the Judicature Act to Improve the Ability to Correct Bona Fide Mistakes

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The Supreme Court of Canada's 2016 and 2022 decisions in the [Fairmont Hotels](#) and [Collins Family Trust](#) cases respectively have substantially reduced the availability to residents of all provinces – except Québec – of the equitable remedies of rectification and rescission to correct a tax-related mistake in completing a transaction or nullify the transaction entirely. As many readers will know, rectification and rescission are court-ordered remedies available when a justice of a provincial superior court is satisfied by evidence that a mistake has been made in implementing the intention of contracting parties. The equitable remedy of rectification enables the court to order that the mistake be corrected, whereas rescission enables the court to order that the transaction be unwound – all with effect against the entire world, including taxing authorities.

Members of our Firm's tax law and accounting practices too often are retained by Alberta-resident individuals and private corporations facing adverse tax consequences of a *bona fide* mistake that had been made inadvertently by either them or their other professional advisors engaged to assist them in completing a particular transaction, such as a freeze of their shares of a business corporation, a merger, the purchase or sale of a business or some other type of reorganization. Taking steps to resolve these kinds of innocent mistakes can last years, require substantial expenditure, be emotionally draining and involve substantial risk – all in an effort to seek damages or other remedies through court proceedings to compensate the individual or corporation for the mistake made by a party to the transaction or its professional advisors. Often these kinds of mistakes lead to costly, unintended income tax consequences to the individuals and corporations impacted by them. Until fairly recently, the ability to minimize the impact of the adverse tax consequences of such a mistake was available to Alberta-resident individuals and private corporations through seeking to have the transactions either rectified or nullified by order of a justice of the Court of Queen's Bench of Alberta (with most provinces having similar ability).

As a result of the above-referenced decisions of the Supreme Court of Canada, however, the availability of rectification and rescission to address tax-related mistakes has been substantially reduced – excessively so, in our view.

Further, an inappropriate disparity now exists between the continuing availability to Québec residents of remedies to correct tax-related errors and the lack of availability of similar remedies to residents of all the other provinces of Canada, including Albertans.

Consequently, Moodys Tax / Moodys Private Client has sent a submission to The Honourable Tyler Shandro, Alberta's Minister of Justice and Solicitor General and Deputy House Leader, seeking amendments to the *Judicature Act* (Alberta) in order to restore for Albertans, the same access to those equitable remedies that they enjoyed before the above-referenced decisions of the Supreme Court of Canada. That submission is accessible [here](#).