



Tax

CRA argument in case would have changed tax filing for PCs

By AdvocateDaily.com Staff



Had the Tax Court of Canada accepted the Canada Revenue Agency's (CRA) arguments in a recent case involving s.160 of the *Income Tax Act*, it would have turned the manner in which legal professional corporations and their owners file “upside down,” Toronto tax litigator [Adrienne Woodyard](#) tells [Law Times](#).

[The case](#) was an appeal of a \$2.1 million CRA assessment issued against a law firm under s. 160 (1) of the *Income Tax Act*. The section comes into play when taxpayers transfer property to spouses, minors or other non-arm's length people for less than fair market value. In this case, the CRA argued that one of the lawyers had transferred to the firm property in the form of a “right to invoice for legal services” for little to no consideration because the lawyer took no salary or dividends from the corporation for most of the years 2007-2010, reports *Law Times*.

Woodyard, a partner with [DLA Piper \(Canada\) LLP](#) who represented the appellant in this matter, tells *Law Times* that if the CRA's position had been upheld, it would mean “that a lawyer practising through a professional corporation must recognize the disposition of property — i.e., his or her ‘right to invoice’ to the corporation — every time the corporation issues an invoice for the lawyer's services.”

This case, she adds, was unlike many others involving s. 160, which typically see an otherwise non-taxable gift made to a family member.

In this matter, Woodyard tells *Law Times*, both the professional corporation and other lawyers in the firm were subject to tax on the profits derived from the legal services performed.



Indeed, the Tax Court of Canada ruled that the CRA's claim must fail because the right to invoice falls outside the definition of "property" under s. 160.

"The Respondent is trying to take something that is clearly the provision of a service and make it a transfer of property," says the Tax Court of Canada decision, which found the lawyer to be a volunteer or employee of the firm.

"If an employee negotiates a poor contract, the potential salary that he or she leaves on the table is not 'property' that he or she has transferred to his or her employer. It is simply a lost opportunity," says the decision.