# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Chuang v. British Columbia,* 2026 BCCA 10

Date: 20260114
Docket: CA50254

Between:

**Li-Yuan Chuang and Chia-Wen Hsia**

Appellants
(Petitioners)

And

**His Majesty the King in Right of the Province of British Columbia**

Respondent
(Respondent)

Before: The Honourable Madam Justice Fenlon
The Honourable Justice Fleming
The Honourable Justice MacNaughton

On appeal from: An order of the Supreme Court of British Columbia, dated October 23, 2024 (*Chuang v. British Columbia,* 2024 BCSC 2422, Vancouver Docket S201298).

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|---|---|
| Counsel for the Appellants: | M. Morinaga |
| Counsel for the Respondent: | S.M.L. Kirkpatrick<br>S.A.E. Kay |
| Place and Date of Hearing: | Vancouver, British Columbia<br>September 18, 2025 |
| Place and Date of Judgment: | Vancouver, British Columbia<br>January 14, 2026 |

**Written Reasons by:**
The Honourable Justice Fleming

**Concurred in by:**
The Honourable Madam Justice Fenlon
The Honourable Justice MacNaughton

***Summary:***

*The appellants, a Canadian citizen and a foreign national, purchased a property and respectively registered 95% and 5% interests on title. They paid additional transfer tax ("ATT") under the Property Transfer Tax Act based on 5% of the property's fair market value. They challenge a chambers judge's decision requiring them to instead pay ATT on the fair market value of the whole property. Held: Appeal dismissed. ATT is payable on the whole transaction when any transferee is a foreign entity, a taxable trustee or both. In this case, the Canadian citizen held some portion of her 95% interest on a resulting trust for the foreign national, which the appellants do not challenge on appeal. Consequently, as taxable trustee, the Canadian citizen as transferee is a taxable trustee and ATT is payable on her entire registered interest in addition to the 5% interest registered by the foreign national.*



**Reasons for Judgment of the Honourable Justice Fleming:**

## Introduction

[1] Under the *Property Transfer Tax Act*, R.S.B.C. 1996, c. 378 [*PTTA*], additional transfer tax ("ATT"), often called the foreign buyer's tax, is applied when residential property in specified areas of BC is transferred to a foreign entity (foreign national or a foreign corporation), a taxable trustee or both: s. 2.02(2). If each transferee falls into one or both categories, ATT is determined based on the fair market value of the whole property: s. 2.02(5)(a).

[2] The appellants, Chia-Wen Hsia, a Canadian citizen, and Li-Yuan Chuang, a foreign national, bought a residential property in a specified area (the "Property"). Mr. Chuang contributed 40% of the purchase price but registered a 5% interest on title. Ms. Hsia registered the remaining 95% interest. They paid ATT based on 5% of the declared fair market value of the Property.

[3] The registration was audited. The administrator found, and the Minister of Finance affirmed, that Ms. Hsia was a taxable trustee as defined in s. 2.01 of the *PTTA*. As a result and by operation of s. 2.02(5)(a), ATT was payable on the fair market value of the whole property. Related to the taxable trustee finding, the Minister concluded that Ms. Hsia held some portion of her 95% interest on a resulting trust for Mr. Chuang.

[4] Ms. Hsia and Mr. Chuang's statutory appeal of the Minister's decision was dismissed by the Supreme Court in oral reasons for judgment indexed at 2024 BCSC 2422.

[5] On this appeal, the appellants say that the *PPTA* provision should be interpreted as not intended to apply ATT to Canadians.

[6] They argue that, properly interpreted, s. 1(3) of the *PTTA* determines the application of ATT. Situated outside the ATT provisions, s. 1(3) of the *PTTA* reads: "for the purpose of calculating tax under the *PTTA*, a person registered as the owner of land is deemed to be the legal and beneficial owner of a fee simple interest, even if that person holds the land in trust". On the appellants' analysis, s. 1(3) renders the finding that Ms. Hsia is a taxable trustee irrelevant. As a Canadian, her registered 95% interest is not subject to ATT, thus limiting ATT to the fair market value of Mr. Chuang's 5% interest.

[7] In the alternative, the appellants argue that s. 2.02(5) should be interpreted so that paragraph (b), not (a), governs in determining what ATT applies to in this case. Under s. 2.02(5)(b), ATT is payable on the proportionate shares of the property's fair market value held by taxable trustee and foreign entity transferees. The appellants contend this amounts to 40% of the market value of the Property, based on Mr. Chuang's 5% interest and their assertion or assumption that Ms. Hsia holds a 35% interest in trust for him.

[8] For the reasons that follow, I would dismiss the appeal.

## Statutory Scheme

[9] The *PTTA* is provincial tax legislation that imposes tax on transfers of real property in BC. The ATT regime is found at ss. 2.01–2.04 of the *PTTA* and in some provisions of the *Property Transfer Tax Regulation*, B.C. Reg. 74/88.

[10] Under s. 2 of the *PTTA*, the transferee to a taxable transaction is required to pay general property transfer tax ("PTT"), unless eligible for an exemption, when

they apply to register the transaction at a land title office. A “taxable transaction” includes the purported transfer of an estate in fee simple: s. 1.

[11] ATT is an additional registration tax. The circumstances in which ATT applies are identified in s. 2.02(2):

> (2) Subsection (3) applies to a taxable transaction if
>
> (a) the subject matter of the taxable transaction includes residential property located, in whole or in part, within a specified area, and
>
> (b) any transferee is a foreign entity or taxable trustee, or both.

[12] The requirement to pay ATT is imposed by s. 2.02(3):

> (3) On application at a land title office for registration of a taxable transaction to which this subsection applies, the transferee must
>
> (a) pay tax to the government, in accordance with subsection (4), by the means, at the time and in the manner required by the administrator, …

[13] Thus, it is the “transferee” who is required to pay both PTT and ATT. In s. 1, “transferee” is defined as “a person to whom land is transferred under a taxable transaction”.

[14] Section 2.01 defines terms specific to the ATT, including “foreign entity” “foreign corporation” and “taxable trustee”. A “foreign entity” is a foreign national or a foreign corporation, which includes a corporation incorporated in Canada that is directly or indirectly controlled by a foreign entity. A “foreign national” is a person who is not a Canadian citizen, permanent resident, or stateless person. A “taxable trustee” means a trustee of a trust in respect of which:

> (a) any trustee is a foreign entity, or
>
> (b) no trustee is a foreign entity but, immediately after the registration of the taxable transaction, a beneficiary of the trust who is a foreign entity holds a beneficial interest in the residential property to which that taxable transaction relates;

[15] In determining the taxable amount to which ATT will be applied, s. 2.02(5) reads:

> (a) in the case of a taxable transaction in respect of which each transferee is a foreign entity or taxable trustee, or both, the taxable transaction's fair market value;
>
> (b) in any other case, the total of all amounts, each of which is one of the following:
>
> (i) in the case of a transferee who is a foreign entity and is not a taxable trustee, the transferee's proportionate share of the taxable transaction's fair market value;
>
> (ii) in the case of a transferee who is a taxable trustee, the transferee's proportionate share of the taxable transaction's fair market value.



## Background

[16] The relevant facts are not in dispute.

[17] In 2014, the appellants, who were engaged to be married, purchased the Property under a pre-sale contract.

[18] The ATT provisions came into effect on August 2, 2016.

[19] On March 28, 2017, the appellants completed the purchase of the Property and registered their respective 95% and 5% interests on title, along with declaring and paying ATT on 5% of the declared fair market value of the Property.

[20] The appellants married in December 2017.

[21] Around this time, the registration was audited. The appellants did not explain the percentages of their registered interests in the Property but the auditor determined that, immediately following the registration of the Property, Mr. Chuang held a greater beneficial interest than the 5% declared on the property transfer tax return. Concluding Ms. Hsia was a taxable trustee, the auditor assessed ATT on the fair market value of the whole Property, using the assessed rather than the declared value.

[22] In their appeal to the Minister, the appellants asserted that, in anticipation of their marriage, Mr. Chuang gifted his interest in the Property, or some portion of it, to Ms. Hsia. The Minister was provided with a solemn declaration that Ms. Hsia made in June 2018. Ms. Hsia indicated she and Mr. Chuang had not decided what interests they would hold in the Property when they entered the pre-sale contract in 2014. In March 2017, Ms. Hsia's mother paid 60% and Mr. Chuang paid 40% of the purchase price. Addressing the discrepancy between Mr. Chuang's registered 5% interest and his contribution of 40%, Ms. Hsia said: "[Mr. Chuang] registered a 5% interest in the property as a token of his interest because it is customary in Chinese culture to pay for 'bride price' as in the husband buying a house for the wife. In my husband's case he is not rich so he could only pay for part of the purchase price."

[23] The Minister concluded the evidence was insufficient to rebut the presumption that a resulting trust is intended when property is transferred gratuitously and affirmed that Ms. Hsia was a taxable trustee under the ATT provisions. The Minister also affirmed ATT was payable on the whole transaction, although based on the declared, not the assessed fair market value.

**Petition Proceeding**

[24] In their petition to the Supreme Court, the appellants maintained that Mr. Chuang gifted some portion of the Property to Ms. Hsia and advanced several statutory interpretation arguments.

[25] Under s. 21 of the *PTTA*, an appeal to the Supreme Court is a new hearing not limited to the evidence and issues before the Minister.

[26] There was no direct evidence from either appellant before the chambers judge. Instead, the petition was supported by an affidavit from a legal assistant.

[27] The only evidence relevant to the resulting trust found by the Minister was Ms. Hsia's solemn declaration, which was adduced as an enclosure in a letter attached as an exhibit to the legal assistant's affidavit.

[28] The chambers judge found the content of the solemn declaration inadmissible as "triple" hearsay. In any event, after discussing the applicable legal principles, she also found that the solemn declaration would be insufficient to rebut the presumption that a resulting trust, not a gift, is intended when property is transferred gratuitously.

[29] Given that Mr. Chuang paid 40% of the purchase price, the chambers judge explained that, by operation of law, Ms. Hsia held a substantial portion of her registered 95% interest in trust for him. The chambers judge declined to make a specific finding as to the extent of the interest held in trust, satisfied such a finding was not required by the *PTTA*. Instead, she upheld the Minister's finding that Ms. Hsia was a taxable trustee because she held *some portion* of the Property in trust for a foreign entity immediately after the transaction was registered.

[30] After reciting the modern principle of statutory interpretation and its application to tax statutes, the chambers judge also rejected the appellants' argument that s. 1(3) made the existence of a resulting trust "irrelevant" for the purpose of calculating ATT. Noting this approach would render the ATT provisions "essentially meaningless", and therefore result in an absurdity, the chambers judge invoked the presumption that a legislature does not legislate in vain or intend absurd results.

[31] The chambers judge also found the appellants' argument inconsistent with the purpose of the legislation and s. 1(3) in particular, adopting the Province's written submissions on this point (at para. 95):

> (a) "Section 1(3) was modified to provide clarity regarding the calculation of tax concerning the registered owner of property if a taxable transaction occurs", and that "it does not purport to determine whether tax is payable in the first place";
>
> (b) the purpose of s. 1(3) was to "remove a tax avoidance opportunity", by requiring "both the legal and beneficial ownership of the property to be taken into account when calculating the tax payable on [fee] simple transfers"; and
>
> (c) the amendments were designed to "prevent the erosion of the tax base" and to ensure that "the separate beneficial ownership of property cannot affect the tax payable when transferring registered ownership of land held in trust."

[32] Interpretating s. 2.02(5) harmoniously with the rest of the *PTTA*, she concluded its specificity means it prevails over s. 1(3).

[33] The chambers judge also rejected the appellants' further argument that the taxable amount of the Property must be determined pursuant to paragraph (b) of s. 2.02(5), finding it contrary to the plain language of the provision that states (b) only applies when (a) does not.

**This Appeal**

[34] Before us, the appellants do not challenge the resulting trust or taxable trustee findings, but they advance many of the same interpretation arguments, which raise two key issues.

[35] First, in support of their alternative position that ATT is payable on 40% of the transaction, the appellants argue the chambers judge erred in her approach to interpreting the words "taxable trustee" and "proportionate share" in s. 2.02(5) of the *PTTA*. They contend that applying ATT to a Canadian citizen holding a legal and beneficial interest in their own capacity, as distinct from in their capacity as trustee, is contrary to the purpose or intent of the provisions.

[36] Second, based on their primary position that no ATT is payable on Ms. Hsia's 95% registered interest, the appellants argue the chambers judge erred by failing to interpret s. 1(3) of the *PTTA* as negating any trust found pursuant to the ATT provisions.

[37] I identify the issues in this order simply because aspects of the alternative issue and my analysis of it inform my analysis of the primary issue.

[38] There is no dispute that statutory interpretation issues raise questions of law, reviewable on the correctness standard, which means this Court considers the legislation without deferring to the analysis of the chambers judge. Instead, we are free to adopt persuasive reasoning from her decision and to consider the

interpretation of the *PTTA* “with fresh eyes”: *1164708 B.C. Ltd. v. British Columbia*, 2025 BCCA 76 at para. 19 [*116*].

## Analysis

### Statutory Interpretation

[39] As the chambers judge recognized, tax statutes are subject to the same principles of statutory interpretation as other statutes: see *RC Limited Partner Inc. v. British Columbia*, 2024 BCCA 86 at para. 35; *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54; and *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20.

[40] The guiding principle, the modern rule of statutory interpretation, is well settled. The words of an Act must be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme and object of the Act and the intention of Parliament: *Rizzo v. Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837.

[41] In applying the modern rule to tax statutes however, a greater emphasis is placed on the text: *Canada Trustco Mortgage* (para. 10); *Placer Dome*. In *Placer Dome*, the Court explained:

> [21] … [B]ecause of the degree of precision and detail characteristic of many tax provisions, a greater emphasis has often been placed on textual interpretation where taxation statutes are concerned. … Taxpayers are entitled to rely on the clear meaning of taxation provisions in structuring their affairs, where the words of a statute are precise and unequivocal, those words will play a dominant role in the interpretive process.
>
> [22] On the other hand, where the words of a statute give rise to more than one reasonable interpretation, the ordinary meaning of words will play a lesser role, and greater recourse to the context and purpose of the Act may be necessary ...
>
> [23] The interpretive approach is thus informed by the level of precision and clarity with which a taxing provision is drafted. Where such a provision admits of no ambiguity in its meaning or in its application to the facts, it must simply be applied. Reference to the purpose of the provision “cannot be used to create an unexpressed exception to clear language”: see P. W. Hogg, J. E. Magee and J. Li, *Principles of Canadian Income Tax Law* (5th ed. 2005), at p. 569; Shell Canada Ltd. v. Canada, [1999] 3 S.C.R. 622. …

[42] After *Placer Dome*, in *Imperial Oil Ltd. v. Canada; Inco Ltd. v. Canada*, 2006 SCC 46, the Court confirmed this approach to interpreting tax statutes:

> [26] Despite this endorsement of the modern approach, the particular nature of tax statutes and the peculiarities of their often complex structures explain a continuing emphasis on the need to carefully consider the actual words of the *ITA*, so that taxpayers can safely rely on them when conducting business and arranging their tax affairs. Broad considerations of statutory purpose should not be allowed to displace the specific language used by Parliament ...

**Issue 1: Section 2.02(5): Taxable Trustees and the Taxable Amount of ATT**

[43] Despite the interpretive principles, the appellants rely heavily if not primarily on what they say are the purposes of the ATT provisions, to which I now turn.

[44] Recently, in *116*, this Court discussed the overarching purpose of the ATT provisions :

> [24] … [I]t is clear that the high-level purpose of the legislation is to cool off the residential housing markets in areas of the province where they are considered to be overheated. The legislation attempts to do that by making it significantly more expensive for foreign investors to purchase such housing stock.

[45] *116* dealt with the application of ATT to a corporate entity. Justice Groberman rejected the suggestion that the ATT provisions were not intended to discourage the purchase of real estate by Canadians: “The express purpose of the legislation is to reduce pressure on the local housing market by discouraging foreign investment. It is not at all clear that investment by foreign corporations, even if controlled by Canadian citizens or permanent residents, falls outside of this purpose … I see nothing in the statutory purpose that precludes applying the ATT to such corporations”: at para. 27.

[46] The dominant purpose of the ATT provisions was also identified in *Li v. British Columbia*, 2021 BCCA 256. In dismissing a constitutional challenge to the ATT provisions, Justice Fisher concluded the provisions were enacted to address the

housing affordability problem by discouraging foreign nationals from purchasing residential property in specified areas, thereby reducing demand: at paras. 44–45.

[47] The appellants say the purpose of the ATT provisions is not only to discourage foreign ownership but ultimately to make housing more affordable for Canadians. They suggest that *Li* implicitly recognized the "housing affordability problem" as a problem for Canadians only. They also say this distinction can be drawn based on the "dichotomy between Canadians and foreign nationals" in the ATT provisions. It follows, the appellants argue, and without addressing *116*, that applying ATT to Canadian property owners is contrary to the dominant purpose.

[48] The appellants' understanding of the purpose or intent of the ATT provisions anchors their approach to interpreting s. 2.02(5). They say, for example, that interpreting "taxable trustee" in paragraph (a) without recognizing a Canadian owner in her own capacity defeats the intention of the legislation. Similarly, they say references to the "proportionate share" of a taxable transaction in paragraph (b) demonstrate the intent to differentiate between foreign-owned and Canadian-owned shares of property. From there, the appellants leap to the conclusion that Canadian owners were intended to be exempt from the application of ATT altogether.

[49] That view of the purpose also drives their text and context-based interpretation. The appellants argue s. 2.02(5) as a whole should be interpreted as only applying ATT to the proportionate share of the property that is under foreign ownership (whether owned by a foreign registrant or by a taxable trustee for a foreign registrant). The appellants reach this conclusion by characterizing s. 2.02(5)(b) as "clarifying" the meaning of "taxable trustee" in paragraph (a). The words "taxable trustee", they say, must be interpreted consistently with "proportionate share" under paragraph (b).

[50] They ultimately assert that "taxable trustee" and "proportionate share" must be interpreted to acknowledge that a transferee could be wearing two hats—one as a trustee and another in their own capacity, when property is jointly owned.

[51] Consequently, the appellants contend the taxable transaction here involved three not two transferees: "(1) a foreign national (5%): Mr. Chuang as legal and beneficial owner; (2) a taxable trustee (35%): Ms. Hsia in her capacity as trustee; and (3) a Canadian (60%): Ms. Hsia in her personal capacity, a Canadian with a 60% interest. On this conception, Ms. Hsia is not a taxable trustee with respect to her own 60% share of the Property, which means each transferee is not "a foreign entity or taxable trustee, or both", and the taxable amount to which ATT will be applied falls to be determined under paragraph s. 2.02(5)(b) instead of paragraph s. 2.02(5)(a).

[52] According to the appellants it follows that the chambers judge erred in interpreting s. 2.02(5) by failing to engage in a purposive interpretation of paragraph (b) and interpreting "taxable trustee" in paragraph (a) as Ms. Hsia "in all her capacities". Instead, she was bound to recognize the distinction between Ms. Hsia's 35% holding as "taxable trustee", and her 60% holding as legal and beneficial owner in her own capacity.

[53] But the appellants' assumption that Ms. Hsia holds a 35% interest as taxable trustee is not accompanied by an allegation the chambers judge erred in declining to make a specific finding about the extent to which Ms. Hsia's registered interest was held in trust, or in interpreting the PTTA as not requiring such a finding.

[54] On the broader issue, I disagree with the appellants' interpretation, the interpretative error they do assert, and their underlying view that ATT is not intended to apply to Canadian property owners.

[55] I start by observing that the language of the ATT provisions, including s. 2.02(5), is clear and precise. This indicates that the words should play a significant role in the interpretive process and recourse to the statutory purpose is less necessary. Nonetheless, I also intend to deal with the purpose of the ATT provisions.

[56] Instead of focusing on the actual words in s. 2.02(5), the appellants' interpretation proceeds from, and overemphasizes, a misconceived purpose: that the ATT provisions are not intended to apply to Canadians. The appellants then confine their analysis to particular and incomplete phrases in the ATT provisions.

[57] I agree with the Province—it is plain from the language and scheme of the ATT provisions that the legislature expressly contemplates a Canadian transferee being liable for ATT, as a taxable trustee. Instead of avoiding the taxation of Canadians who purchase property with a foreign entity by excluding a trustee who is not a foreign entity from liability, the definition of "taxable trustee" captures both a foreign entity and a Canadian entity holding some interest in property in trust for a foreign entity.

[58] Consistent with the recognized purpose of the ATT provisions—discouraging foreign investment in residential properties to address housing affordability—the taxable trustee provisions with them target foreign beneficial interests and interests reflected on registered title. As the Province highlights, the use of trusts as tax planning or tax avoidance tools is well recognized. The taxable trustee provisions recognize that to achieve the aim of the ATT, the scheme needs to prevent tax avoidance by foreign investors who own beneficial interests held indirectly by others. This approach is also consistent with the ATT provisions more broadly, drafted as they are to capture the multiple ways that foreign investment may be reflected in the various ways residential property can be held. The definitions of "foreign entity" and "foreign corporation" as well as "taxable trustee" encompass foreign investment that is individual or corporate, direct or indirect, and legal or beneficial.

[59] Missing from the appellants' interpretation is any acknowledgment of the significance of the role of "transferee" in applying the PTT and the ATT and imposing liability.

[60] I see nothing in the ATT provisions to suggest a new transferee is created by the fact that one person may be a taxable trustee that also holds their own legal and beneficial interest in a property.

[61] Both PTT and ATT are payable by the transferee(s). Defined to include the person to whom property is transferred, it is well established that a transferee is the person (entity) that legal title is transferred to under the taxable transaction (regardless of whether another person (entity) has beneficial ownership): *PTTA* s. 1; *British Columbia v. 1084204 B.C. Ltd.*, 2025 BCCA 110) at para. 46 [*108*].

[62] Section 2.02(2)(b) tells us that ATT applies whenever any *transferee* is a taxable trustee or a foreign entity, or both.

[63] Once ATT is found to apply, s. 2.02(5) tells us the taxable amount ATT must be applied to:

> (a) in the case of a taxable transaction in respect of which each transferee is a foreign entity or taxable trustee, or both, the taxable transaction's fair market value;
>
> (b) in any other case, the total of all amounts, each of which is one of the following:
>
> (i) in the case of a transferee who is a foreign entity and is not a taxable trustee, the transferee's proportionate share of the taxable transaction's fair market value;
>
> (ii) in the case of a transferee who is a taxable trustee, the transferee's proportionate share of the taxable transaction's fair market value.
>
> [Emphasis added.]

[64] Instead of "taxable trustee" and "proportionate share" standing alone in s. 2.02(5), as the appellants' interpretation indicates, it is a taxable trustee as transferee and the transferee's proportionate share that must be considered in their textual and schematic context.

[65] The Province makes the point that s. 2.02(5) captures two main scenarios: (a) where all the transferees to a taxable transaction are a foreign entity, a taxable trustee or both, and (b) where at least one transferee is a Canadian entity who is not a taxable trustee. The words "each transferee" and "or both" in paragraph (a) and "in any other case" in paragraph (b) signal that paragraph (a) applies whenever every transferee to a transaction is "implicated" in foreign ownership because they are foreign entities, holding property in trust for foreign entities, or holding an interest in

both capacities. While paragraph (a) (and s. 2.02(2)(b)) contemplates a transferee being a taxable trustee and a foreign entity, holding in two capacities does not affect the taxable amount, which is plainly the taxable transaction's fair market value.

[66] The Province also argues the intent for ATT to apply to the whole of the taxable trustee's registered interest is clear from s. 2.02(6), which determines the taxable amount under paragraph (b) of s. 2.02(5):

> (6) For the purposes of calculating the taxable amount under subsection 5(b) …
>
> (a) if, immediately after the registration of the taxable transaction, a foreign entity holds an interest in the residential property as a taxable trustee and in a capacity other than as a taxable trustee, the foreign entity is deemed to be
>
> (i) a transferee under subsection (5)(b)(i) in respect of the interest held in the capacity other than as a taxable trustee, and
>
> (ii) a separate transferee under subsection (5)(b)(ii) in respect of the interest held as a taxable trustee, and
>
> (b) if there is more than one taxable trustee of a trust, including any taxable trustee who is deemed under paragraph (a) (ii) to be a separate transferee, all of the trustees of the trust are deemed to be a single transferee.
>
> [Emphasis added.]

[67] Appreciating that s. 2.02(6) is a deeming provision that applies to foreign entities, I agree that it supports the interpretation that a transferee who is a taxable trustee and holds their own interest in a property is one transferee under s. 2.02(5)(a). If a trust finding created a new transferee, it would be unnecessary for s. 2.02(6) to deem a new transferee when a foreign entity is a taxable trustee.

[68] Further, the ATT provisions do not contemplate a transferee who is not a foreign entity being anything other than a taxable trustee or an owner in their personal capacity.

[69] Continuing to focus on the text, an interpretation that imposes ATT on a taxable trustee's registered interest also accords with the absence of any requirement in the ATT provisions for a specific determination of the foreign entity's beneficial interest. In other words, once a person is found to be a taxable trustee,

there is no requirement to determine what portion is held in trust for the foreign entity.

[70] I appreciate the appellants view imposing ATT on Ms. Hsia's 95% interest, as well as Mr. Chuang's 5% interest, as profoundly unfair. However, had they registered their interests on title in accordance with their respective contributions, ATT would only have been payable on 40% instead of 100% of the market value of the Property.

[71] As the Province argues, interpreting the ATT as applying to a taxable trustee's registered interest, which is plain from the land title registration, achieves fairness for the taxpayer by providing clarity and consistency. In contrast, uncertainty, inefficiency and the potential for inconsistency would result if ATT could only be levied on the portion of the taxable trustee's interest held in trust for a foreign beneficiary, because the beneficiary's interest would have to be determined in each case based on additional information provided by the taxpayer.

[72] For all of these reasons, I conclude the chambers judge did not err in her interpretation of the ATT provisions. I agree with her that s. 2.02(5)(a) applies in this case and ATT is therefore payable on the whole of the taxable transaction. I would not accede to this ground of appeal.

**Issue 2: Effect of s. 1(3) on a Taxable Trustee Finding**

[73] The appellants contend that Ms. Hsia's registered 95% interest is not subject to ATT, when s. 1(3) of the *PTTA* is correctly interpreted. Again, s. 1(3) provides:

> (3) For the purpose of calculating tax payable under this Act, a person registered in the land title office as the owner of land … is deemed to be the legal and beneficial owner of a fee simple interest in the land, even if the person holds the land in trust.

[74] The appellants identify the phrase "even if the person holds the land in trust" as a caveat that distinguishes s. 1(3) from the presumption in s. 23(2) of the *Land Title Act*, R.S.B.C. 1996, c. 250—registered title is conclusive evidence of a fee simple estate. Based on this caveat, they say s. 1(3) establishes a property transfer

tax regime pursuant to which registered interest conclusively determines legal and beneficial interest for the purpose of calculating ATT, thereby ruling out the effect of any trust. Here, the appellants say, s. 1(3) negates or renders irrelevant the findings that Ms. Hsia is a taxable trustee and that s. 2.02(5)(a) applies. ATT is therefore not payable on the fair market value of the whole Property. Instead, Ms. Hsia is deemed to be the legal and beneficial owner of her 95% registered interest and, pursuant to s. 2.02(5)(b)(i), only Mr. Chuang's 5% registered interest is subject to ATT.

[75] Calling this a "literal" interpretation of s. 1(3), the appellants submit the ATT provisions should only prevail over s. 1(3) when their application would discourage foreign ownership. But they also assert there is no circumstance in which a Canadian owner holding a beneficial interest in their own capacity should be denied the effect of s. 1(3), suggesting the provision is intended to benefit the taxpayer.

[76] In support of their assertion, the appellants argue that nothing in the *PTTA* indicates that s. 1(3) is an anti-avoidance rule or that its deeming provision was intended to operate to expand the tax base. However, the reality is s. 1(3) was enacted to both "remove a tax avoidance opportunity" and protect "an important revenue source": "Bill 4, Property Purchase Tax Amendment Act", 2nd reading, British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 34-5, Vol. 22, No. 6 (11 June 1991) at 12653 (Hon. J. Jansen).

[77] The tax avoidance opportunity referred to in Hansard was identified in *Shon Yee Benevolent Assn. of Canada v. British Columbia* (1991), 55 B.C.L.R. (2d) 371, (*sub nom. R. v. Shon Yee Benevolent Association of Canada*) 1991 CanLII 2291 (S.C.) [*Shon Yee*] and *British Columbia v. Simkin* (1995), 3 B.C.L.R. (3d) 222, 1995 CanLII 248 (C.A.).

[78] In *Shon Yee*, the issue was whether PTT was payable on the transfer of legal title from a trustee back to the beneficial owner. The taxpayer argued the transfer was not a "taxable transaction" under the *Property Purchase Tax Act*, S.B.C. 1987, c. 15, because the trustee did not own the land in fee simple, at common law. Justice Huddart, as she then was, accepted this premise but found the transfer of

legal title was subject to PTT. Also finding the “fair market value” of the property had to be calculated subject to the trust, she concluded the tax should be assessed as zero, given that immediately prior to the transfer, the trustee was a bare trustee with no interest in the property other than the obligation to reconvey it to the beneficiary.

[79] In *Simkin*, again the issue was whether PTT was payable on the transfer of bare legal title from a trustee to a beneficiary. Applying the reasoning in *Shon Yee*, this Court concluded that the transfer was a taxable transaction, but the tax payable was zero.

[80] Enacted in response to *Shon Yee* (and *Simkin*), s. 1(3) makes it clear that when a transferee holds legal title but less than a full beneficial interest, or just legal title as a trustee, tax will be calculated as though they hold the full beneficial and legal interest.

[81] At the same time as s. 1 was amended to add s. 1(3), “free of any trust” was added to the definition of “fair market value” in s. 1, as an “additional measure to prevent the erosion of the tax base” that “ensures that the separate beneficial ownership of property cannot affect the tax payable when transferring registered ownership of land held in trust”: “Bill 4, Property Purchase Tax Amendment Act”, 2nd reading, British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 34–5, Vol. 22, No. 6 (14 June 1991) at 12737 (Hon. J. Jansen).

[82] The amended definition of fair market value operates to ensure the property is valued based on the amount that would have been paid without the trust, meaning by a purchaser acquiring the beneficial and legal interest.

[83] The Province takes the position that the ATT provisions contain all that is necessary to determine when ATT applies and how it will be calculated. Recourse to s. 1(3), outside the ATT regime, is not needed to determine the taxable amount.

[84] I would be inclined to agree, except that the ATT provisions do make this express, despite being enacted much later. I will therefore assume that the ATT provisions are to be read alongside s. 1(3).

[85] I share the Province's other view that s. 1(3) should not be interpreted as "deeming away" findings of a trust or a taxable trustee, as the appellants suggest. This interpretation, as the chambers judge observed, renders the language and scheme of the taxable trustee provisions meaningless (and superfluous). ATT would only apply when a transferee is a foreign entity and would only be payable on their proportionate share, unless every transferee to a transaction was a foreign entity. Instead of meeting the purpose of the ATT provisions—to reduce pressure on housing markets or address the affordability of housing—by targeting foreign investment, the purpose would be thwarted with respect to foreign investment not reflected in the registered legal title, and with that the prevention of tax avoidance perpetuated through trust vehicles.

[86] As with the ATT provisions, I find the language of s. 1(3) clear, which again points to the importance of a textual interpretation.

[87] In contrast to ss. 2 and 2.02, s. 1(3) does not purport to determine whether tax is payable in the first place.

[88] Instead, s. 1(3) expressly states that it applies for the "purpose of calculating tax payable". Read together with ss. 2 and 2.02, this indicates, as the Province suggests, that s. 1(3) applies after tax is first determined to be payable under either or both of those provisions. The Province also emphasizes that s. 1(3) is a deeming provision, located in a definition and interpretation section of the *PTTA*. It is not a charging provision, as the appellants' interpretation seems to suggest. Further, rather than ignoring a trust, a taxable trustee, or a foreign beneficial interest, s. 1(3) acknowledges property may be held in trust, by deeming the registered owner of an interest in land to be the legal and beneficial owner, even if they hold the beneficial interest in trust.

[89] I agree with the Province that s. 1(3) is properly interpreted as applying after ATT is found payable and the taxable amount determined under s. 2.02(5)(a). Its effect is quite the opposite of what the appellants say it is: s. 1(3) supports or

confirms the amount on which ATT is levied—in the case of a taxable trustee, the fair market value of their registered interest.

[90] On this approach, meaning is given to Ms. Hsia as taxable trustee transferee. Because the only other transferee is a foreign national, s. 2.02(5)(a) applies and ATT is determined based on the fair market value of the whole transaction. The subsequent application of s. 1(3) does not change this outcome. Instead, as the Province states, s.1(3) “unites the legal and beneficial ownership for the purpose of calculating tax” and confirms that ATT is payable on the fair market value of the whole Property, based on Ms. Hsia’s 95% registered interest and Mr. Chuang’s 5% interest.

[91] Along with correctly interpreting the text of s. 1(3) and the taxable trustee provisions, and the scheme of the ATT provisions, this interpretation accords with the purposes of s. 1(3) and the amended definition of fair market value. As discussed in Hansard, like the ATT provisions enacted much later, these provisions were introduced to prevent tax avoidance and the erosion of the tax base.

[92] While the chambers judge’s interpretation included s. 2.02(5)(a) prevailing over s. 1(3), the result of her analysis is the same. ATT is payable here on the whole of the appellants’ registered interests in the Property.

[93] I would not accede to this ground of appeal.

## Disposition

[94] For the reasons given, I would dismiss the appeal.

"The Honourable Justice Fleming"

I AGREE:

"The Honourable Madam Justice Fenlon"

I AGREE:

"The Honourable Justice MacNaughton"