

Estate Beneficiaries Beware the Long Arm of Tax Collectors

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In the federal tax system, where a taxpayer has an outstanding tax debt in respect of which the Canada Revenue Agency ("CRA") is permitted to commence collection actions, one of the steps that the CRA may take is to have a certificate registered in Federal Court (see for example, under subsection 233(3) of the *Income Tax Act (Canada)* or subsection 316(2) of the *Excise Tax Act (Canada)*). A certificate so registered has the same status as a judgment of the Federal Court and all proceedings may be taken to enforce the certificate as if it were a judgment.

One such enforcement proceeding is the ability to register a charge or lien upon property or an interest in property held by the taxpayer.

In the decision of the Federal Court in *McDonald (Re)*, 2010 FC 340, 2010 DTC 5131, the bird in the bush turned out to be just as exposed to the taxman as the bird in the hand.

Mr. McDonald, the taxpayer, was a beneficiary of his father's estate. His father's will provided for a gift of certain real property to be made to Mr. McDonald and his sisters. When the case was heard, none of the real property had actually been distributed out of the estate to the beneficiaries. Nevertheless, the CRA had registered an interim charge against the real property which was made absolute by the Federal Court in this proceeding. The court found that the Federal Court Rules permit a charge to be registered against any interest in real property and "an interest in land is an interest in land, even if it is a beneficial and contingent interest in land" (*supra* at paragraph 10).

The fact that estate assets may be encumbered by charges or liens in favour of the CRA because one or more beneficiaries have tax arrears is a contingency that needs to be considered not only by estate trustees but by individuals in formulating their estate plans.

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