Spring 2006

UBC | FACULTY OF LAW

UBC Tax

Welcome to UBC Tax. In an effort to keep the community better informed about developments in the tax area at UBC Law, we will be releasing this newsletter semi-annually. In each issue, we expect to disseminate information on research developments and teaching news at UBC Law, in addition to highlighting significant tax developments.

In this issue of UBC Tax, among other highlights, we profile one of UBC's long-standing tax teachers, Tony Sheppard, provide an update on curricular reforms at UBC's faculty of law, and highlight some of the work of UBC's graduate students in tax.

Curricular Reform at UBC Law

UBC Law has been actively revising its curricular offerings over the past six months. Of note, there have been significant reforms both to UBC's first year program, and to our upper year offerings in the business law area.

Curricular Reform Strengthening the First Year Program & Supplementing the Upper Year Program

On October 27, 2005, UBC Law passed a resolution at Faculty Council in favour of a restructured curriculum, with a particular focus on reforming first year. These curricular changes have been endorsed by UBC's Senate. The changes enhance the pedagogical strength of UBC's LL.B. program, and provide students with a solid foundation not only in the traditional first year courses, but also in international law and statutory interpretation.

Our new first year curriculum will now be delivered primarily in classes of 40. This significantly reduced class size will afford students the opportunity to do significant writing through all of their first year courses, and will increase faculty-student contact in first year.

The course offerings in first year have also been revisited. First year courses will include the traditional offerings in criminal law, contract law, property law, and tort law. Legal institutions will be replaced with constitutional law in first year, which will support upper year course selections that draw on principles from constitutional law. In addition, two new courses have been added to the first year curriculum. Students will spend one term studying transnational law—a course designed as an introduction to public and private international law and conflicts. They will spend the second term in the regulatory state—a course designed as an introduction to statutory interpretation.

These courses will be supplemented with two bridge weeks. The first bridge week will introduce legal ethics and professionalism. The second bridge week will provide students with an introduction to a range of theoretical and critical perspectives on the law.

In the upper year program, we have introduced a "foundations" program that provides students with guidance about nine courses that the faculty has identified as important for a well-rounded legal education. We have also added additional legal research and writing requirements.

Business Law Concentration Offered in the Upper Year Program

UBC Law has adopted a concentration in business law in the upper years, and Senate will consider the concentration in April. The business law concentration should signal that students have completed legal studies that have provided them with a solid theoretical, doctrinal, and practical education in business law.

In order to qualify for the concentration, students must complete nine of their upper year course offerings in the business law area (approximately 50% of total upper year requirements). The required courses include:

- six courses in at least three of the foundational business law course categories: business organization law (courses include corporations, corporations II, and close corporations), business finance law (courses include corporate finance, secured transactions, and insolvency law), business transaction law (courses include international business transactions, corporate transactions, taxation II, and commercial transactions), and business policy law (courses include securities regulation, competition law, topics in corporate law, and economic analysis of law);
- two courses out of one of the specialized upper year streams (one of the upper year streams is tax law); and
- the capstone course.

The capstone course is designed as the culminating educational experience for business law students at UBC. It is intended to be integrative and interdisciplinary, and to incorporate theoretical and practical elements of business law. The course will be focused on a current transaction or transactions. By examining a "real" deal, students will be expected to draw connections between the substantive law they have learned about advanced business organizations, finance, business law policy, business law ethics, taxation, trusts, international trade, intellectual property, environmental issues, labour relations, land use, and dispute resolution.

The capstone course will also require that students make clear connections between business law and ethics issues, develop rudimentary drafting skills, and enhance their legal research and oral advocacy skills.

We are very excited about the direction of UBC Law's LL.B. curricular reform and look forward to continuing to provide UBC's students with an excellent theoretical and practical legal education.

TEACHING TAX: An Interview With Tony Sheppard

Since 1969, Tony Sheppard has been teaching UBC Law students the finer points of tax law. Although you would have to show up to his class to hear about his personal trials and tribulations with the Canada Revenue Agency, this Killam Award winning professor candidly spoke to us about his career at UBC Law School.

What area of law were you practicing in before you decided to teach? What made you decide to become a professor?

I articled in 1968-69 with a law firm that carried on a general practice, focusing on civil litigation. At the time, I thought to give law teaching a try, intending to return to practice after a couple of years, but I found that I enjoyed teaching so much that I stayed on.

Have you always taught tax? What made you chose tax over other topics?

I started teaching Tax right from the beginning of my career in 1969. In 1967-68, I had studied the British tax system in my LL.M. program. Before that, Emeritus Professor Jim MacIntyre had taught me Taxation in the UBC LL.B. program. Family members encouraged me to "get into the tax field." Collegial colleagues have sustained my enthusiasm for the subject. As a teaching and research subject, Taxation might occasionally fade from students' favour, but a federal election raises its profile among students.

What do you think is the most important tax case ever decided? Why?

I would pick one or more of the classic cases on the general interpretation of taxation statutes, such as the *Duke of Westminster, Stubart,* or *Johns- Manville*. They are cases setting out the general approach of the courts to interpreting taxation statutes. Against this judicial background, the legislators draft the legislation, with all its verbosity and complexity. The classic cases explicitly respect the interests of taxpayers.

What do you think is the most poorly decided tax case? Why?

I would pick the *Bronfman* case as a decision exemplifying the perils of reasoning from unfounded assumptions, and yielding to the temptation of dealing with a complex area in sweeping ill-considered dicta.

Have any of your students gone on to make a mark in the legal profession? Any student you are particularly proud of?

Lots of them. So many that I couldn't begin to list them all. Both LL.B. and graduate students. Their accomplishments are entirely to their credit, not mine. Some have taken up academic positions as full-time or adjunct teachers of taxation at UBC and other law schools. I'm also mindful of capable graduates whose promise was sadly unfulfilled because of personal misfortune.

What is the most memorable question you have ever been asked by a student?

"What are we going to cover for the rest of the term?" At the time, back in the '70's, I was teaching Estate Planning when part-way through the spring term, the Provincial Budget announced repeal of the *Successions Duty Act*, just as I was about to start teaching it. The announcement eliminated the last half of the syllabus, though it was better to know in advance the topic would be obsolete, rather than to find it out later. To fill the impending void with a topic of more value, I recall we went into more detail on the income tax consequences of death and gifts. Drastic and unexpected change in the law is a peril of a statutory and volatile field such as taxation.

What is the most important tax development since you've been teaching?

For my teaching, I would have to say Tax Reform in 1972, and its aftermath. The introduction of capital gains tax in 1972 has been a continuing interest over the years. I've contributed the chapter on capital gains to every edition of an enduring national casebook on taxation: *Materials on Canadian Income Tax* (13th ed.) (Toronto: Thomson-Carswell, 2005).

Interviewer: Helene Wheeler, Law III

Graduate Student Profiles

UBC Law has a vibrant community of outstanding graduate students, a number of whom focus their studies in tax law. This issue of UBC Tax focuses on four graduate students who are either currently enrolled in UBC's graduate program or who have recently completed their graduate studies here.

SORAYA M. JAMAL

I recently completed my Master of Laws at the University of British Columbia, with a focus in tax law. Having gained exposure to the taxation of corporations, shareholders, individuals, trusts and estates while at law school, my avid interest in the realm of tax law led me to explore the tax treatment accorded to financial arrangements surrounding marital dissolution in UBC's graduate program. My thesis, entitled "Closing the Gap between Tax Law and Family Law on Marital Breakup", contains in-depth analysis, both on practical and policy levels, about the disparate treatment of divorce under the tax legislation as compared with the family law system. Through this analysis, I identify weaknesses in the income tax system and provide recommendations for reform. While pursuing my graduate studies, I have presented at conferences on both national and international levels. My thesis has been nominated for a Canadian Tax Foundation prize.

BONNIE JIN

I am international student at UBC. When I finished my LL.B. in China, I came to UBC to commence my LL.M. studies in August 2005. My major area of research is the income taxation law of corporations both in China and in Canada. In particular, I am doing some research on the tax policy underlying the taxation of "foreign investment enterprises" (FIEs). The proposed FIE legislation in Canada will have a significant effect on foreign investment, and I am hoping to determine what that effect might be expected to be.

MICHAEL TAYLOR

My thesis provides an examination of tax avoidance from a legal and policy perspective. Specifically, I review various ways of understanding tax avoidance in terms of tax policy considerations, as well as the detrimental effects of tax avoidance from a tax policy perspective. I also review various ways of controlling tax avoidance, with a special focus on the status of Canadian common law and the general anti-avoidance rule in light of the Supreme Court of Canada's 2005 decisions in *Canada Trustco* and *Mathew*. Finally, I suggest alternative ways to apply the general anti-avoidance rule to combat tax avoidance in light of how I define tax avoidance from a tax policy perspective.

KIM WALLIS

I was inspired to investigate the link between economic performance and tax policy by the BC Liberals' election victory in 2001. I wanted to know: Are our tax-cutting cousins to the south right in their belief that a strong economy requires lower taxes for the wealthy, or do the northern European countries, with their emphasis on higher taxes, superb public services, and an egalitarian social structure have the right idea?

As with so many things in life, it turns out that the devil is in the details. The relationship between tax policy, economic performance and inequality is not a straight positive or negative one. Rather, the relationship very much depends who is taxed, how they are taxed, and what the resulting revenue is spent on. It is possible to have both low taxes and poor public services ... similarly, one can have higher taxes and still enjoy strong economic performance. What is more difficult to achieve is lower taxes and an equal society: studies have consistently shown that inequality, at least in the economic sense, is strongly correlated with lower taxes.

My muse has been interrupted temporarily in the form of the birth of my first child, Natasha, but I am hoping to finish my LL.M. Thesis this Spring.

If you are interested in pursuing graduate studies at UBC's Faculty of Law, please contact Ms. Joanne Chung, Administrator, Graduate Program in Law (Tel: (604) 822-9449, email: graduates@law.ubc.ca).

Sample Faculty Publications

UBC's faculty is committed to publishing leading research on a wide range of disciplinary and interdisciplinary areas, and UBC's tax faculty is no exception. The publications listed below provide a snapshot of some of the research work being produced by UBC's tax faculty.

KIM BROOKS

- *Taxation of Corporate Reorganization* (Toronto: Federated Press, loose-leaf).
- "The Allocation of Profits Between Related Entities and Shareholder Remedies: An Analysis of Ford Motor Co. v. OMERS" (2005) 36:2 Ottawa L. Rev. 127-167 (with Anita Anand).

TONY SHEPPARD

- "Capital Gains" in Edgar and Sandler, eds., *Materials on Canadian Income Tax* (13th ed.) (Toronto: Thomson-Carswell, 2005).
- "Mandatory Retirement If Necessary, But Not Necessarily Mandatory Retirement" (work in progress, presented at numerous faculty and external seminars).

CLAIRE YOUNG

- "Taxing Times at the Supreme Court of Canada: The Contributions of Justice L'Heureux-Dubé to a Better Understanding of the Application of the Charter to the Income Tax System" in Sheehy, ed., *Adding Feminism to Law: The Contributions of Justice Claire L'Heureux-Dubé* (Irwin Law, Toronto, 2004) 229-245.
- "What's Sex Got to Do With It?: Tax and the 'Family'" (2006) *Australian Tax Teachers Journal* (forthcoming).

Supreme Court of Canada Watch

The excitement that greeted the Supreme Court of Canada release of its first decisions on the general anti-avoidance rule on October 19, 2005, *Canada Trustco Mortgage Co. v. Canada* and *Mathew v. Canada*, may be matched by the release of the two judgments currently on reserve at that court. *Inco Ltd. v. Canada* and *Imperial Oil Ltd. v. Canada* were both heard on February 7, 2006 in front of Chief Justice McLachlin and Binnie, LeBel, Deschamps, Fish, Abella and Charron JJ.

Also noteworthy, the Supreme Court of Canada granted leave to appeal in *3464920 Canada Inc. v. Strother*, [2003] 3 C.T.C. 168 (B.C.C.A).

Congratulations to Justice Rothstein!

Congratulations to Justice Rothstein who has been officially appointed to the Supreme Court of Canada! Justice Rothstein wrote a number of key tax decisions at the Federal Court of Appeal, including (in reverse chronological order): *Hayes v. Canada*, [2005] 3 C.T.C. 241, *Canutilities Holdings Ltd. v. Canada*, 2004 D.T.C. 6475, *Mathew v. Canada*, [2004] 1 C.T.C. 115, *Gifford v. Canada*, [2002] 4 C.T.C. 64, *Jabin Investments Ltd. v. Canada*, 2003 D.T.C. 5027, *OSFC Holdings Ltd. v. Canada*, [2001] 4 C.T.C. 82, *TransCanada Pipelines Ltd. v. Canada*, [2002] 1 C.T.C. 43, *Backman v. Canada*, [1999] 4 C.T.C. 177, and *Singleton v. Canada*, [1999] 3 C.T.C. 450. He is renown for his hard-working nature as well as his prolificacy. He will undoubtedly make his tax mark in future Supreme Court of Canada decisions.

Farris, Vaughan, Willis & Murphy LLP Support Research at UBC Law

Thanks to Farris, Vaughan, Willis & Murphy LLP for their generous support of UBC Law and UBC Tax. The Farris Fund Award, in memory of C. Francis (Frank) Murphy, QC, assists with UBC Faculty research. Last year's grant was awarded to a tax project undertaken by Professor Kim Brooks on the taxation of cross-border business transactions.

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For more information about UBC's tax law program, to provide feedback or input on this newsletter, or to discuss ways your firm may get involved in UBC Tax, please contact Kim Brooks.