



## Chia-yi Chua

### Senior Counsel

Toronto

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t. +1 416-601-7715

#### Bar Admission

British Columbia 1997

Ontario 1995

#### Law School

Osgoode Hall Law School

#### Practices

Tax

Tax Disputes

#### US and International Markets

Singapore

China

Chia-yi Chua is Senior Counsel in the firm's National Tax Group. His practice focuses on complex tax litigation and tax disputes calling on imaginative and creative solutions.

Chia-yi has acted for corporate taxpayers in all of Canada's significant industries, including the financial services, telecommunications, resource, retail, hospitality and transportation sectors. He has represented these clients at every level of court including the Supreme Court of Canada.

**Chia-yi has been recognized for his market-leading practice having been ranked in the top-tiers of international directories.**

- Chia-yi is recognized by *Chambers Global: The World's Leading Lawyers for Business* as one of Canada's leading tax litigation lawyers, "praised for his skills in strategy and his ability to explain complex issues to clients" and clients say "he really understands and listens to what the client is saying and also provides...options on how to proceed";
- He has been consistently listed as a leading lawyer in *Chambers Canada* as one with a "stellar reputation in the tax litigation field in Canada";
- Legalese's Tax Directors Handbook has described him as a "dedicated and highly analytical lawyer";
- He has been BV® Distinguished™ Peer Review Rated by Lexis/Nexis *Martindale-Hubbell* for his legal skills and professional ethics;
- Chia-yi is recognized in the *Legal 500 Canada* guide and is consistently recognized in *Best Lawyers in Canada*, as one of Canada's leading tax lawyers;
- He is listed in *The Canadian Legal Lexpert Directory*, a guide to the leading law firms and practitioners in Canada, as a leading lawyer in the areas of corporate tax litigation and commodity tax/customs; and
- Finally, he is recognized as a leading lawyer in the current editions of the International Tax Review's *Tax Controversy Leaders* and *Indirect Tax Leaders* guides.

Chia-yi regularly addresses the Tax Executives Institute, Inc. to present on current tax litigation topics. He is a frequent speaker at conferences of auditors and appeals officers, and addresses Tax and Finance departments of top North American corporations.

Chia-yi earned his JD from Osgoode Hall Law School and was called to the Ontario and British Columbia bars in 1995 and 1997, respectively. He is also a key member of the firm's Asia Practice Group.

- In 2009, he was named as one of Canada's Top 25 immigrants, in the inaugural National Canadian Immigrant Magazine award.
- Currently serves as the Republic of Singapore's Honorary Consul-General in Toronto.

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## Chia-yi's notable cases include:

- *McNeely v. The Queen*, 2020 TCC 90, aff'd at 2021 FCA 218 – are D2L employees stock trust distributions caught by the ITA para. 6(1)(g) or the prescribed trust rules.
- *Fairmont Hotels Inc. v. Canada (Attorney General)*, 2014 ON SC 7302 (CanLII), aff'd at 2015 ONCA 441 (CANLII), rev'd at [2016] 2 SCR 720 – when is rectification of corporate resolutions appropriate?
- *Prévost Car Inc. v. Her Majesty the Queen* [2010] 2 F.C.R. 65, aff'g 2008 D.T.C. 3080 (T.C.C.) – Tax treaty meaning of “beneficial owner”
- *The TDL Group Co. v. Her Majesty the Queen* 2015 TCC 60 – interest deductibility in context of related party cross-border financing for Canadian business icon, Tim Horton's
- *Knights of Columbus v. Her Majesty the Queen*, (Court File #: 2007-2033(IT)G), May 9, 2007 (T.C.C.) – Motion to consolidate 2 tax appeals
- *Procter & Gamble Inc. v. Ontario*, [2007] O.J. No. 4441 (O.C.A.), aff'g [2006] O.J. No. 3467 (Ont. S.C.J.) – Rental of pallets by a manufacturer not subject to sales tax
- *Tele-Mobile Co. Partnership et al. v. Canada (Revenue Agency)*, 2010 FC 839, rev'd at 2011 F.C.A. 89 – prohibiting Ministerial action at pre-assessment stage
- *Club Intrawest v. Her Majesty the Queen* (Tax Court of Canada, 2016 TCC 149 and 2017 FCA 151) – important judicial guidance on the principles of agency law and its application of taxes
- *Nestle Canada Inc. v. Her Majesty the Queen*, 2017 TCC 33 – Promotional allowance
- *President's Choice Bank v. The Queen* – sales tax case dealing with brand loyalty program and tax treatment of credit card services. Virtual trial at the Tax Court, 2022 TCC 84
- *Vision TV: Canada's Faith Network et al*, (Court File #: CV-09-379352), July 21, 2009 (Ont. S.C.J.) – Declaration of Trustees and Trust
- *Toronto Blue Jays Baseball Club et al v. Ontario*, [2005] O.J. No. 485 (C.A.) rev'g (2004) 238 D.L.R. (4th) 536 (S.C.J.), leave to appeal to the S.C.C. dismissed [2005] S.C.C.A. No. 181 – Away venues are not “permanent establishment[s]” of Ontario professional sports team (payroll tax)
- *Knights of Columbus v. Her Majesty the Queen*, 2008 D.T.C. 3648 (T.C.C.) – Meaning of “permanent establishment” under the Canada – U.S. Tax Treaty
- *Procter & Gamble Inc. v. Ontario*, 2009 CanLII 9475 (Ont. S.C.J.), aff'd at 2010 ONCA 149
- *IBM Canada Ltd. v. Ontario*, [2007] O.J. No. 273 (Ont. S.C.J.) – Trial relating to the exclusion of expatriates' remuneration from a taxpayer's payroll tax base

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- *IBM Canada Ltd. v. Ontario*, [2006] O.J. No. 1624 (Ont. S.C.J.); and *Bell Canada v. Ontario*, [2006] O.J. No. 1522 (Ont. S.C.J.)– Conversion of Application to a Trial
- *Bell Canada v. Ontario*, [2006] O.J. No. 2399 (Ont. S.C.J.) – Onus of proof in a tax appeal
- *Bell Canada v. Ontario*, *IBM Canada Ltd. v. Ontario* and *Procter & Gamble Inc. v. Ontario* [2006] O.J. No. 1011 (Ont. Div. Ct.), aff'g (2005) 79 O.R. (3d) 143 (S.C.J.) – Effective use of court procedures on disputes involving questions of law
- *Bell Canada v. Ontario*, [2005] O.J. No. 4111 (Ont. S.C.J.); *Maple Leaf Sports & Entertainment Ltd. v. Ontario*, [2005] O.J. No. 4111 (Ont. S.C.J.); *Toronto Blue Jays Baseball Club v. Ontario*, [2005] O.J. No. 4111 (Ont. S.C.J.); *CIBC World Markets v. Ontario*, [2005] O.J. No. 4111 (Ont. S.C.J.) – Minister cannot assess taxpayers relying on purported contracts not sanctioned by the law (sales tax)
- *SRI Realty Inc. v. Scotts Restaurants Inc.*, Court File No. 02-CV-236071CMI, October 4, 2002 (S.C.J.) – Rectification under the Ontario Land Titles Act
- *Ontario Hydro v. Ontario*, (1999) 44 O.R. (3d) 1 (C.A.), leave to appeal to the S.C.C. dismissed [1999] S.C.C.A. No. 375 – Determining the scope of the Minister's power to determine "fair value" (sales tax)
- *Extendicare International v. Ontario*, (2000) 47 O.R. (3d) 1 (C.A.) – Lease termination payments not subject to retail sales tax
- *Progressive Packaging Ltd. v. Ontario*, [1999] O.J. No. 3613 (C.A.) aff'g [1998] O.J. No. 4798 (Ont. Ct. Gen. Div.) – Remuneration paid from or through an Ontario permanent establishment to non-Ontario employees subject to payroll tax
- *Teck Corporation v. Ontario*, (1999) 124 O.A.C. 58 – Inactive mine does not qualify as "existing mine for expansion exemption" (mining tax)
- *Toronto and Region Conservation Authority v. Ontario*, (1999) 9 M.P.L.R. (3d) 312 (Ont. S.C.J.) – Meaning of "local board" and scope of Ministerial discretion in paying rebates (sales tax)
- *Wildenburg Holdings v. Ontario*, 132 O.A.C. 216, aff'g (1998) 98 D.T.C. 6462 (Ont. Ct. Gen. Div.) – Debts held to be assumed by corporate partners (not partnership) hence ITA s.18(4) thin capitalization rules apply (corporations tax)
- *Upper Lakes Shipping v. Ontario*, (1998) 107 O.A.C. 155, leave to appeal to the S.C.C. dismissed [1998] S.C.C.A. No. 89 – Use of GAAP to interpret meaning of "earned capital or any other surplus" (capital tax)
- *E. Roth Construction Limited v. Ontario*, (1999) 99 D.T.C. 5791 (Ont. S.C.J.), aff'd (2001) O.A.C. 366 – Fees paid to Alberta management company with Ontario permanent establishment held not to be in respect of services "normally" performed by employees of the Alberta permanent establishment (capital tax)

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- *Glen Styres v. Ontario*, [1999] PTR 4131 (C.A.) rev'g [1998] O.J. No. 6382 (Ont. Ct. Gen. Div.) – Determining the true owner of seized tobacco products (tobacco tax)

## PUBLICATIONS

Chia-yi has either authored or co-authored the following:

- The Impact of Expanded CRA Audit Powers on TCC Appeals, Canadian Tax Focus, Volume 12, Number 3, August 2022
- Modern Tax Warfare: How to Fight the CRA, International Tax Review, March 1, 2012
- Risky Business – The CRA Audit Story, Tax Executive Institute Toronto Chapter's Inaugural Newsletter, Volume 1, Issue 1, September 2011
- The Risky Business of Canadian Tax Audits, International Tax Review, June 1, 2011
- Velcro: The Undaunted Crown, Canadian Tax Highlights, Vol. 19, No. 4, April 2011
- Enlightening Power: (Huppe v. The Queen), CCH Tax Topics, No. 2033, February 2011
- Trends In Sales Tax Litigation, Canadian Tax Foundation Conference Report, 2008
- I. Innes, C. Chua, R.B. Bissell, Federal Tax Practice (Toronto: CCH, 2007)
- Taxation of Private Corporations and Their Shareholders, Fourth Edition (2010), Bleiwas and Hutson (eds.)
- "Lipson v. R.: The Shuffle of Cheques, Decks and Equity", Tax Litigation Journal, Vol. XVI, No. 2, May 2009, p. 983
- "Wait, Don't Strike Those Assumptions!", (CCH Tax Topics, No. 1908, October 2, 2008)
- Limit the Uncertainty, CA Magazine, April 2006
- "Back to Reality: The Future of Binding Agreements in Canada" (2006), Vol. 41 (7) Tax Notes International 623
- Costing Nothing to Put a Twinkle in Someone's Eye – The Johnson & Johnson Decision, OBA Taxation Law Newsletter Volume 13, No. 4, May 2003
- Ontario Tax Cases – The Good, the Bad and the Ugly, Ontario Bar Association Tax Law Update, Vol. 12, No. 3, March 2002
- Collateral Damage – Attacking Ontario Tax Assessments, Tax Litigation Journal, Vol. X, No. 3, 2002, p. 634
- Little Label, Lumber Loosely Linked – Comment on the Canadian Forest Products case, B.C. Tax Reporter No. 418, April 2001
- Reborn Free: Tax Status After Amalgamation, Ontario Tax Reporter, No. 465, February 2001

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- Find Your Remedy Elsewhere! – Comment on the Waters case, B.C. Tax Reporter, No. 414, December 2000
- When Time Began – Comment on the Carlson case, Canadian Tax Highlights, Vol. 8, No. 11, November 2000
- The Exorbitant Price of Losing a Test Case: the QEW 427 Costs Award, Ontario Tax Reporter, No. 461, October 2000

## SPEAKING ENGAGEMENTS

Chia-yi has spoken alone or with others on the following:

- Tax Executives Institute Montreal Chapter, March 2021
- Tax and Law Groups of large Canadian public companies on market-place relevant topics and developments in Canadian tax
- The Anatomy of a Tax Dispute Tax Executives Institute - 50th Annual Canadian Conference, Ottawa, Ontario, May 3, 2015
- Rectification – Practical Issues: 63<sup>rd</sup> Annual Conference of the Canadian Tax Foundation, Montreal, Quebec, November 29, 2011
- Tax Executives Institute Tax Litigation Day, Toronto, Ontario, 2011 and 2014
- McCarthy Tétrault's Managing and Winning Tax Disputes Seminars (June 2011, October 2011 and March-April 2012)
- Treaty Shopping, Osgoode Hall Law School International Tax Seminar, Toronto, Ontario, March 31, 2011
- Practical Considerations on the Law of Privilege, Association of Corporate Counsel Calgary Chapter, Calgary, Alberta, May 13, 2015
- Trends in Sales Tax Litigation: 60<sup>th</sup> Annual Conference of the Canadian Tax Foundation, Calgary, Alberta, November 2008
- 2006 Canadian Tax Course, Tax Executives Institute, Toronto, Ontario, September 21, 2006
- Annual Ontario Day, Tax Executives Institute, Toronto, Ontario, 9 consecutive years (2000 – 2008)
- Provincial Payroll Taxes – Ignore Them At Your Own Peril, Tax Executives Institute – 35th Annual Canadian Conference, Hull, Québec, May 8, 2001
- When and How to Fix Mistakes, Tax Executives Institute – 39th Annual Canadian Conference, Gatineau, Québec, May 3, 2005
- Effectively Managing CRA Audits, Canadian Life and Health Insurance Association Inc., Ottawa, Ontario, May 16, 2012
- CRA Requirements: Can the Pendulum Swing Back In Favour of the Taxpayer, Canadian Life and Health Insurance Association Inc., Collingwood, Ontario, May 18, 2011

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- Notices of Objection: From Drafting to Resolution, Canadian Tax Foundation, Toronto, Ontario, April 3, 2012
- Mock Trial, Tax Executives Institute – 40th Annual Canadian Conference, Gatineau, Québec, May 9, 2006
- Recent Jurisprudence, Canadian Institute of Chartered Accountants – Annual Commodity Tax Symposium, Ottawa, Ontario (2004, 2011)
- Canadian Tax Foundation, Young Practitioners Seminar, Toronto, Ontario, October 31, 2006
- CCH Corporate Tax Update Webinar, Toronto, Ontario, December 11, 2007
- Income Taxes, CICA National Conference Toronto, Ontario, September 20, 2006
- Brain Drains and Gains: Cross-Border Relocation Law, Canadian Bar Association Ontario Chapter, Toronto, Ontario, June 15, 2001
- Effectively Managing a CRA Audit, Institute of Law Clerks of Ontario's 25<sup>th</sup> Conference, Niagara Falls, Ontario, May 28, 2015

## PROFESSIONAL AFFILIATIONS

- Member, Advocates' Society
- Member, Canadian Tax Foundation
- Member, Canadian Bar Association
- Member, Ontario Bar Association (Taxation Section)
- Speakers Bureau, Passages to Canada
- Member, Canadian Consular Corps of Toronto

## Awards & Rankings

### The Legal 500 - Canada

Leading Lawyer: Tax

### Best Lawyers in Canada

Leading lawyer in the area of Tax Law

### Tax Controversy Leaders

Leading Lawyer

### Indirect Tax Leaders

Leading Lawyer

### International Tax Review

Highly Regarded: Indirect Tax and Tax Controversy

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## Recent Insights

- **Introduction to Canada Tax System – Reasonability of Business Expenses**  
February 17, 2023
- **Introduction to Canada Tax System – Inventory and Capital Property**  
October 05, 2022
- **Introduction to Canada Tax System—Taxable Income or Loss**  
September 20, 2022
- **Introduction to Canada Tax System—Canadian Tax Regime**  
September 06, 2022

## Events

- **McCarthy Tétrault Tax Dispute National Tour – Winning Strategies from Audit to Trial**  
September 16, 2022
- **McCarthy Tétrault Tax Dispute National Tour – Winning Strategies from Audit to Trial**  
September 14, 2022