

SUPREME COURT OF NOVA SCOTIA
Citation: *HRM v. Rank Incorporated*, 2026 NSSC 217

Date: 20260703
Docket: Hfx. No. 525243
Registry: Halifax

Between:

Halifax Regional Municipality

Applicant

v.

Rank Incorporated

Respondent

DECISION

Judge:	The Honourable Justice John A. Keith
Heard:	January 6, 2026, in Halifax, Nova Scotia
Final Written Decision:	July 3, 2026
Counsel:	Martin Ward, K.C. and Edward Murphy, for the Applicant Robert Grant, K.C. and Sam Ward, for the Respondent

BY THE COURT:

INTRODUCTION AND BRIEF CONCLUSION

[1] The “Mic Mac Mall” is a large shopping centre located in Dartmouth Nova Scotia. Title to the Mic Mac Mall’s lands and buildings is held through 4239474 Canada Inc. (“**4239**”) as general partner for the Mic Mac Mall Limited Partnership.

[2] On September 1, 2021, the Respondent, Rank Incorporated (“**Rank**”) acquired all shares in the general partner 4239 and, as well, all units in the Mic Mac Mall Limited Partnership. The Applicant, Halifax Regional Municipality (“**HRM**”) alleges that the transaction:

1. Transferred any beneficial property interest (or title) in the Mic Mac Mall to Rank;
2. Transferred control over any legal property interest (or title) in the Mic Mac Mall to Rank.

[3] HRM concludes that:

1. The transaction constitutes a “deed” under the *Municipal Government Act*, SNS 1998, c. 18, as amended (the “**MGA**”) which, in turn, is incorporated into the *Halifax Regional Municipality Charter*, SNS

2008, c. 39 as amended (the “**HRM Charter**”) and the corresponding by-law; and

2. Rank is liable to pay the deed transfer tax associated with the transaction.

HRM seeks a declaration confirming that legal conclusion and financial liability.

[4] Rank denies that the transfers of shares and limited partnership units triggered a beneficial ownership on its part. It also argues that the legislative language authorizing a deed transfer tax does not capture transactions that do not directly affect the registered title to the property.

[5] For the reasons which follow and, in my view, the deed transfer tax provisions of the *MGA* do not authorize an inquiry into share transfers of companies that hold property in order to ascertain whether beneficial ownership has potentially been triggered. The language of the *MGA* itself does not support HRM’s position that a deed is any instrument the municipality deems to constitute a transfer of an interest in real property. HRM’s position, in effect, is that it can pierce the corporate veil in order to collect deed transfer tax from Rank. However, respectfully, nothing in the statute authorizes this, and there is no suggestion of fraud or wrongdoing here. On the partnership issue, it is a question of fact whether a limited partner has taken part

in management so as to lose the protection of limited liability. But even if this is established, it does not follow that property held in the name of the general partner has been transferred to the limited partner.

BRIEF BACKGROUND

[6] In 2004, Ivanhoe Cambridge II Inc. (“**Ivanhoe**”), an institutional pension fund manager, conveyed title in the Mic Mac Mall to 4239, making that numbered company the registered owner. Ivanhoe became the sole shareholder of the numbered company, and it also created a limited partnership called the Mic Mac Mall Limited Partnership. To comply with the technical requirement that every limited partnership have at least two partners, 0.01% of the partnership units were owned by the general partner, 4239. The remaining 99.99% of the limited partnership units were owned by Ivanhoe.

[7] In 2021, Rank acquired Ivanhoe’s shares in 4239 and also its units of Mic Mac Mall Limited Partnership. As a result, Rank effectively replaced Ivanhoe as the sole shareholder in 4239 and owner of 99.99% of the limited partner. The general partner 4239 (now owned by Rank) retained all the other 0.01% of the units.

[8] HRM demanded deed transfer tax on the basis that Rank now controlled 4239, which held title to the property.

[9] Rank refused to pay the tax, taking the position that “as the numbered company continued to be the registered owner of the property there had been no transfer of ownership...”¹

PART V OF THE *MGA* AND THE LEGISLATIVE FRAMEWORK

[10] Part V of the *MGA* governs registrations of deed transfers for tax purposes. Section 102(1) of the *MGA* authorizes municipalities to make by-laws imposing deed transfer taxes of no more than 1.5 percent “of the value of the property transferred”. Such a tax “applies to the sale price of every property that is transferred by deed” (section 102(2)).

[11] Under section 104 of the *MGA*, the tax “shall be paid by the grantee named in the deed within ten days of the transfer”. Moreover, the outstanding tax liability constitutes “a lien upon the property transferred” (section 108(1)). And proof by way of sworn affidavit that the tax has been paid, or is not payable, must be provided before the Registrar of Deeds accepts a deed for registration (section 101(1)). This affidavit must set out, *inter alia*, “the sale price of the property with full details of the consideration, including the amount of any lien or encumbrance subject to which the transfer was made” (section 101(2)(c)).

¹ HRM brief at para. 12.

[12] To help interpret these provisions, the following provisions from section 3 of the *MGA* (the definitions section) are germane:

1. The word “‘deed’ means an instrument by which land is conveyed, transferred, assigned or vested in a person, but does not include a will, mortgage, agreement of sale or lease for a term of less than twenty-one years” (section 3(t)); and
2. The word “‘registry’ means the office of the registrar of deeds for the registration district in which the land is situate and, in the case of an interest registered pursuant to the *Land Registration Act*, means the appropriate land registration office established pursuant to that Act” section 3(bh); [emphasis added]
3. As noted above, deed transfer tax “applies to the sale price of every property that is transferred by deed” (section 102(2)). The term “sale price” is defined as “the entire consideration for the sale of the property”, with several illustrative inclusions, including money consideration; the value of property given in exchange; outstanding obligations or accounts cancelled, assumed, or satisfied; and “taxes, liens, mortgages and encumbrances, including interest and expenses, assumed by the grantee” (section 3(bk)(i)-(iv)).

[13] The *MGA* does not provide a single definition of “property.”² However, the *Interpretation Act*, RSNS 1989, c. 235, provides that “‘land’, ‘lands’, ‘real estate’ and ‘real property’ include, respectively, lands, tenements, hereditaments and all rights thereto and interests therein” (section 7(1)(n)).

INTERPRETATION OF PART V OF THE *MGA*

INTERPRETING MUNICIPAL AND TAXATION STATUTES

² It does define, or incorporate definitions by reference, for various types of property, e.g. “commercial property” (section 3(l)), “conservation property” (section 3(na)), “farm property” (section 3(ae)), “forest property” (section 3(aj)), “residential property” (section 3(bi)), and “resource property” (section 3(bj)).

[14] The starting point in statutory interpretation is Driedger’s “modern principle”, by which “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.” (*Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 SCR 559, at para. 26 (“***Bell ExpressVu***”). At para. 28 of *Bell ExpressVu*, the Supreme Court of Canada added that: “[o]ther principles of interpretation -- such as the strict construction of penal statutes and the “*Charter* values” presumption -- only receive application where there is ambiguity as to the meaning of a provision.”

[15] Thus, in *Canada Trustco Mortgage Co v. Canada*, 2005 SCC 54 (“***Canada Trustco***”), in the course of dealing with certain provisions of the federal *Income Tax Act*, R.S.C. 1985, c. 1, the court restated the modern principle, and added at para. 10:

... When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

[Emphasis added]

[16] In *Canada Trustco*, the court acknowledged that taxpayers were entitled to minimize their tax payable, and that “the particularity and detail of many tax provisions have often led to an emphasis on textual interpretation. Where Parliament

has specified precisely what conditions must be satisfied to achieve a particular result, it is reasonable to assume that Parliament intended that taxpayers would rely on such provisions to achieve the result they prescribe.” (at para. 11)

[17] At paras. 12 – 23 of *Canada Trustco*, the Supreme Court confirms that the *Income Tax Act* should be interpreted primarily according to its explicit text to ensure consistency, predictability and fairness. Absent a specific statutory prohibition, the Court should not imply or impose exceptions to clear statutory language or invalidate transactions simply to achieve an outcome more favourable to the taxpayer. Put differently, the interpretative process is largely textual and based primarily on the statute’s express provisions. To conclude otherwise would create intolerable uncertainty.

[18] Similarly, in *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20 (“**Placer Dome**”), the Supreme Court of Canada confirmed at para. 21 that “... [t]axpayers 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”.

[19] Where there is ambiguity (i.e. “where the words of a statute give rise to more than one reasonable interpretation”), the ordinary meaning of the words “will play a

lesser role, and greater recourse to the context and purpose of the Act may be necessary...” (*Placer Dome* at para. 21, citing *Canada Trustco* at para. 10). The “residual presumption in favour of the taxpayer” applies only “in the exceptional case where application of the ordinary principles of interpretation does not resolve the issue...” (*Placer Dome* at para. 24).

[20] More recent authority from the Supreme Court of Canada has emphasized and reinforced that significance of the actual statutory language. “[T]he modern approach to statutory interpretation makes the text the ‘anchor of the interpretative exercise’, because the text specifies the means chosen by Parliament to achieve its purposes and attain its goals” (*R. v. Carignan*, 2025 SCC 43 at para. 58). In *Hunt v. Canada*, 2026 FCA 88 (“**Hunt**”), Stratas JA noted for the court that “the precise manner” in which the three elements of the Driedger approach “should be assessed and analyzed has varied somewhat, causing uncertainty - something especially bad in such a fundamental, frequently recurring and important area.” (at para. 10) Justice Stratas went on to summarize the state of the law on statutory construction based on recent Supreme Court of Canada authority (some citations omitted):

[11] Today, however, we have a great deal of stability. A recent series of consistent Supreme Court cases deserves the credit. In the process of analyzing text, context and purpose, the text is “the anchor of the interpretative exercise”: *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 at para. 24...). Many Supreme Court cases just before and just after *CISSS A* have faithfully followed

this methodology and are admirably consistent: see, e.g., *TELUS Communications Inc. v. Wellman*, 2019 SCC 19, [2019] 2 S.C.R. 144; *R. v. Rafilovich*, 2019 SCC 51, [2019] 3 S.C.R. 838; *MediaQMI Inc. v. Kamel*, 2021 SCC 23, [2021] 1 S.C.R. 899; *Piekut v. Canada (National Revenue)*, 2025 SCC 13; *R. v. Carignan*, 2025 SCC 43; *Kosicki v. Toronto (City)*, 2025 SCC 28; and many others.

...

[13] While the text is the anchor of the exercise, the context of the words in the legislation can shed light on the meaning of the text and sometimes can resolve ambiguities in the text. And the same is true for the legislative purpose. A court must consider the context and purpose of the provision “no matter how plain the disposition may seem upon initial reading”: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 at para. 47; *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140, at para. 48; *Williams v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 252, [2018] 4 F.C.R. 174 at para. 43. But where the language is clear and unambiguous and unaffected by considerations of context and purpose, it must be given its effect and the element of purpose “cannot be used to create an unexpressed exception to clear language” which was arguably the case in *Wilson*: see, e.g., *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20, [2006] 1 S.C.R. 715 at para. 23. And policy considerations “cannot be permitted to distort the actual words of the statute, read harmoniously with the scheme of the statute, its object, and the intention of the legislature, so as to make the provision say something it does not”: *TELUS Communications*, above at para. 79.

ANALYSIS

[21] In my view, the governing principles of construction in this case are relatively straightforward. The “modern principle” is always in the background, but the precise words of the statute, being precise and unequivocal, should be the dominant consideration.

[22] In this case, HRM does not allege ambiguity. Thus, HRM’s starting point is that the “legislation is clear ... that the tax applies to all transfers of land by ‘deed’ unless specifically exempted...” (HRM Reply Brief at para. 31). At para. 33 of its Reply Brief, HRM adds that unlike unspecified legislation in some unidentified

provinces, the *MGA* does not “limit” the application of deed transfer tax to beneficial transfers. However, respectfully, different statutory language in a different jurisdiction carries limited weight when interpreting the specific wording of the *MGA*.³

[23] In my view, the central issue in this case is whether the deed transfer tax provisions of the *MGA* allow HRM to demand that tax be paid on a transfer of corporate shares or partnership units where the corporation or partnership involved holds title to real property. For the reasons given below, I find that the *MGA*, properly interpreted, does not confer this taxing authority in the particular circumstances of this case.

SHARE TRANSFERS DO NOT TRIGGER THE DEED TRANSFER TAX PROVISIONS

[24] As mentioned, section 102(2) of the *MGA* provides that “[a] deed transfer tax applies to the sale price of every property that is transferred by deed.” A “deed” is “an instrument by which land is conveyed, transferred, assigned or vested in a

³ HRM reply brief at para 34. An example (not cited by the parties) would be the Ontario *Land Transfer Tax Act*, RSO 1990, c L.6, which imposes a tax on “[e]very person who immediately after the registration of a conveyance has a beneficial interest in the land that was acquired or increased as a result of a conveyance or as part of an arrangement relating to the conveyance ... unless the person has previously paid tax on the acquisition of or increase in beneficial interest”: s 2.2. The Prince Edward Island *Real Property Transfer Tax Act*, RSPEI 1988, c R-5.1 (not cited by parties), expressly contemplates imposition of the tax upon a change of control of a corporation in certain circumstances: ss 4.1(1) and (2).

person, but does not include a will, mortgage, agreement of sale or lease for a term of less than twenty-one years” (section 3(t)).

[25] Also as mentioned, the *MGA* does not define “property” for the purpose of the deed transfer tax provisions. The *Interpretation Act*, RSNS 1989, c. 235, defines “land”, “lands”, “real estate”, and “real property” to “include ... respectively, lands, tenements, hereditaments and all rights thereto and interests therein”: section 7(1).

[26] HRM submits that this definition from the *Interpretation Act* is broad enough to include beneficial ownership or a beneficial interest. While HRM provides no authority for this claim, the majority in *Rawluk v. Rawluk*, [1990] 1 SCR 70 held at para. 40 that a statutory definition of “property” as “any interest, present or future, vested or contingent, in real or personal property” was “wide enough to include not only legal but beneficial ownership.”

[27] Rank counters by pointing out that even if it did acquire a beneficial interest in the property as a result of the organization of its corporate and partnership structure, the deed transfer tax provisions do not apply, because there was no transfer of the property by deed as required by section 102(2).

[28] HRM responds that the instruments transferring ownership of the shares in the numbered company and the units of the limited partnership were in fact “deeds”,

because they allegedly transferred a beneficial interest, notwithstanding that there was no change of title. The definition of “deed”, HRM says, is “not limited to a conventional deed” but is “an inclusive or open definition incorporating any ‘instrument’ that conveys, transfers, assigns or vests any interest or right to ‘land’.”⁴ This, HRM claims, “shows a legislative intention to apply the tax to other present and future mechanisms for the transfer of ownership, whether legal or beneficial.”⁵

[29] HRM further argues that the exemption of certain instruments from the definition of “deed” implies an intention “to include other non-exempt instruments not requiring registration”, such as leases for more than 20 years, implicitly included as “deeds” by the express exclusion of deeds for less than 21 years.⁶ Similarly, the specific exemptions from deed transfer tax under s. 109 show an “intention to capture other transfers whether they are legal or beneficial.”⁷

[30] Pausing here, nothing in section 109 suggests any concern with transfer of beneficial interests; the section simply sets out situations where no tax is due despite property having been transferred by deed.

⁴ HRM brief at para. 39.

⁵ HRM brief at para. 39.

⁶ HRM brief at para. 40.

⁷ HRM brief at para. 41.

[31] In any event, HRM ultimately argues that, under the *MGA*, the definition of “deed” must be interpreted so expansively that anything not expressly excluded becomes a “deed” if HRM deems it to be one. Respectfully, I disagree. In my view, the statutory exemptions indicate a legislative intention to exempt instruments that are not registered deeds from the definition of deed. My reasons include the strict and mandatory registration requirements under the *MGA*; the form of deeds at law; and the express purpose of the *MGA*.

Registration

[32] Sections 101(2) and (3) provide that the grantee “shall file an affidavit” and that it “shall be filed within ten days of the transfer.” Where tax is levied, the affidavit is filed with the treasurer: s 101(8).

[33] In Ruth Sullivan, *The Construction of Statutes*, 7th edn (Toronto: LexisNexis, 2022), the author writes at Sections 4.05: “[a] person who ‘shall’ or ‘must’ do something has no discretion to decline.” Applied to the *MGA*, this means that the filing of the affidavit is an integral and mandatory part of the deed transfer tax scheme, notwithstanding that it only occurs after the tax is paid. However, registration of something is at least presumed, if not always mandatory. Section 101(8) states:

(8) Where the municipality levies a deed transfer tax, the affidavit shall be filed with the treasurer and where the municipality does not levy a deed transfer tax, the affidavit shall be filed in the registries for every registration district within which a part of the property is situate.

[34] Meanwhile, the affidavit and the treasurer's certificate issued under section 106 are prerequisites to registration. Under section 101(1), a deed may not be registered without proof of payment of deed transfer tax, or proof that no tax was payable.

[35] The upshot is that where no tax is payable, the grantee is required to file the affidavit in the registry; where tax has been paid, the *Act* presumes that the grantee will register the deed. This is a reasonable conclusion given that, under section 18 of the *Registry Act*, RSNS 1989, c. 392, registration is necessary to make the deed effective "as against any person claiming for valuable consideration and without notice under any subsequent instrument affecting the title to the same land".

[36] As such and contrary to HRM's theory that the legislature intended to also capture instruments not requiring registration, the legislative reality is that registration and its prerequisites are integral to the scheme of Part V.

Form of deed

[37] HRM correctly notes that deeds may take various forms. However, this does not mean the definition of a "deed" must therefore be seen as unbounded or

completely open-ended. As stated in CW MacIntosh, Diana Ginn, and Danielle MacLean, *Nova Scotia Real Property Practice Manual* (LexisNexis: looseleaf, April 2026) at Section 5.1, citing *Barron's Canadian Law Dictionary*, 6th edn (Hauppauge, NY: Barron's Educational Series, 2009), a deed is “an instrument in writing that conveys an interest in land from the grantor to the grantee.” This text goes on to confirm that most deeds follow the form set out in Schedule A of Part II of the *Conveyancing Act*, RSNS 1989, c. 97 (at Section 5.2).

[38] HRM has offered no authority for the proposition that any transaction changing corporate control of a property-owning entity (i.e. transactions which do not directly deal with the property itself but, instead, with the corporate owner) amounts to a deed under Part V of the *MGA*. Respectfully, the statutory language does not say so. In my view, the only reasonable implication of the relevant provisions is that a deed must expressly transfer property, for a sale price.

[39] The property is the subject of the deed. If the legislature intended to empower municipalities to impose deed transfer tax on non-property transactions that have incidental impacts on control of property, the legislation could have been drafted to reflect that. Part V does not authorize HRM to go behind transfers by deed to inquire into “true” or beneficial ownership. By contrast, it should be noted that the treasurer

may refuse an affidavit that does not set out the correct sale price, or from which the sale price cannot be determined (section 105(1)).

[40] Additionally, there are practical implications to HRM’s interpretation. The municipality would be empowered to pierce the corporate veil at its own discretion, with no express statutory authority. I return to this concern below. HRM also does not explain how the “sale price” of an interest in land will be calculated when the “transfer” is merely an incidental side-effect of a transfer of securities. The underlying uncertainties and unresolved economic consequences are significant and extend well beyond the reasonable limits of statutory construction.

Purpose of the legislation

[41] The purposes of the *MGA* are set out at ss. 2 and 9A:

Purpose of Act

2 The purpose of this Act is to

(a) give broad authority to councils, including broad authority to pass by-laws, and to respect their right to govern municipalities in whatever ways the councils consider appropriate within the jurisdiction given to them;

(b) enhance the ability of councils to respond to present and future issues in their municipalities; and

(c) recognize the purposes of a municipality set out in Section 9A.

...

Purposes of a municipality

9A The purposes of a municipality are to

(a) provide good government;

(b) provide services, facilities and other things that, in the opinion of the council, are necessary or desirable for all or part of the municipality; and

(c) develop and maintain safe and viable communities.

[42] Part V references no specific purpose for the deed transfer tax regime, but plainly it is targeted at providing municipal revenue. On the other hand, nothing in Part V suggests an intention to allow the municipality to go behind the deed and make determinations about the nature of title to particular property.

[43] To summarize: by the express language of the statute, the tax is assessed on the sale price of the property. It is payable by the grantee named in the deed. The grantee may not register the deed without proving that the tax was paid. There is no authority in the *MGA* for HRM to deem an instrument that does not transfer real property to be a deed in order to impose deed transfer tax. In my view, HRM's open-ended definition of "deed" is far too broad for the statutory language to bear; it essentially amounts to a discretion to declare anything to be a deed if HRM characterizes it as transferring an interest in land. Accordingly, in my view, there was no transfer by deed, and therefore no deed transfer tax is payable.

[44] This stand-alone conclusion is distinct and determinative of the issues. Given the parties' submissions and while not strictly necessary, I am compelled to comment that the same outcome would arise out of the following separate conclusions:

1. A controlling transfer of corporate shares does not result in a change in “beneficial ownership” of corporate property for the purposes of the levying a deed transfer tax under *MGA*.
2. A transfer of partnership units does not result in a limited partner taking beneficial ownership for the purpose of the levying a deed transfer tax under *MGA*.

Each is addressed separately below.

SHARE TRANSFERS DO NOT RESULT IN A CHANGE IN “BENEFICIAL OWNERSHIP” OF CORPORATE PROPERTY FOR THE PURPOSES OF THE *MGA*

[45] By way of summary, there are three related points:

1. Respectfully, HRM’s arguments seeking to treat the acquisition of shares as a transfer of “beneficial ownership” for deed transfer tax purposes extends distinguishable succession-duty jurisprudence beyond its statutory context and in a manner that conflicts with the express provisions of the *MGA*; they also contradict the fundamental principles of corporate personality and the orthodox rules around the rights of corporate shareholders. In doing so, HRM’s arguments also fail to fully recognize the distinction between “beneficial ownership” and “beneficial entitlement”- and the related principle that a company

is not the beneficial owner of the assets of its own subsidiary. The principles of corporate separateness do not collapse merely because a corporate entity acquires or maintains a controlling ownership interest;

2. Critically, absent explicit statutory language, courts cannot disregard firmly affixed legal principles regarding corporate separateness in an attempt to impose tax liability. Courts cannot pretend that corporations lose their separate legal identity absent express statutory language or extraordinary circumstances such as fraud or sham; and
3. To the extent there is jurisprudence on deed transfer tax in related-company transactions, it is distinguishable and of little assistance. Briefly, it does not turn on a change of corporate control or beneficial interests but, rather, whether “consideration” passed sufficient to trigger the obligation. Put differently, it merely confirms that tax liability depends on whether valuable consideration is given, and ultimately reinforces the fundamental distinction between share ownership and property ownership.

Caselaw under the *Succession Duties Act* 1972

[46] In *Cowan v. Nova Scotia (Minister of Finance)* (1978), 28 NSR (2d) 3, 1978 CarswellNS 105 (SCAD) (*sub nom MacKeen Estate v. Nova Scotia* but referred to

below as “**Cowan**”), after the enactment of the 1972 Nova Scotia *Succession Duties Act* a testator bequeathed securities in Alberta in trust to his executors, with the income to be distributed to an Alberta company whose shares were controlled by his wife. After her death, most of the assets were to be distributed to Alberta companies whose shares were owned by his daughters.⁸ After the testator’s death, the Minister assessed duty under the *Act* against the wife and daughters. The *Act* required a “successor” resident in the province to pay duty “on property of the deceased situate outside the province”, and deemed resident shareholders of non-resident corporations to be successors. The wife and daughters were residents of Nova Scotia.

[47] MacKeigan CJ, for the court, acknowledged at para. 11 that a taxpayer was entitled to arrange their affairs to minimize tax; and adopted the trial judge’s statement that the court could not “set aside *bona fide* transactions obviously designed for the avoidance of tax on the ground that they are artificial and designed to minimize or avoid payment of tax” in the absence of specific statutory authority. The trial judge had thus concluded that the only issue was “whether or not the taxpayer has successfully brought himself outside the ambit of the legislation” (at para. 11). The Chief Justice qualified this description of the issue, stating that “what

⁸ *Cowan* at paras. 1-4. With the exception of a daughter who lived outside Canada who received her share “without any corporate intervention, since she, as a non-resident, needed no shield from Nova Scotia taxation in respect of her succession to personal property situate in Alberta”: para. 1.

is to be determined is whether or not the statute has successfully brought the taxpayer within its ambit” (at para. 15). At para. 17, he concluded that the widow and daughters, not being shareholders of the subsidiary corporations (the respective parent corporations being the shareholders), “were thus not shareholders of non-resident corporations which ‘acquired’ property of the deceased” within the meaning of the *Act*.

[48] The next issue was whether the parent corporations were “beneficially entitled” to the property by virtue of their subsidiaries acquiring it. If so, the wife and daughters would be deemed “successors and as such dutiable in respect of the increased value of their shares” (at para. 18). The phrase “beneficially entitled” appeared in the definition of “successor” at section 1(ae) of the *Act*, and in the deeming provision of section 2(5), which state:

1 (ae) “successor” in relation to any property of the deceased includes any person who, at any time before or on or after the death of the deceased became or becomes beneficially entitled to any property of the deceased

(i) by virtue of, or conditionally or contingently on, the death of the deceased...

...

2 (5) Where a corporation which is not resident in the Province, other than a corporation without share capital, by reason of the death of a deceased acquires or becomes beneficially entitled to property of the deceased,

(a) the corporation shall be deemed not to be the successor of the property except to the extent that the value of the shares of the shareholders of the corporation is not increased in value by the corporation acquiring or becoming beneficially entitled to the property; and

(b) each of the shareholders of the corporation shall be deemed to be a successor of property of the deceased to the extent of the amount by which the value of his shares in the corporation is increased by the corporation acquiring or becoming beneficially entitled to the property.

[49] At para. 20 of the decision, MacKeigan, CJ agreed with the trial judge that the phrase “[w]here a corporation ... becomes beneficially entitled to property of the deceased” covered “the situation where the corporation is put in a position to ultimately exercise the rights of ownership over property of the deceased...” For example, the parent corporations could force a winding up and, in that case, any value in the net corporate assets would belong to the parent company (at para. 20). For the purposes of this decision, MacKeigan, CJ functionally equated the meaning of “beneficial entitlement” to “real or beneficial” ownership of property that was “in someone else’s name as nominal owner”. At paras. 21 - 22, he wrote:

I agree that being “entitled” to property means being able to “legally recover” it, that is, in the present context, to have the right and power, by lawful means, to fully enjoy the property. The adverb “beneficially” indicates that the person entitled to enjoyment of the property may not have full legal title.

In the modern sense of the phrase, a person is “beneficially entitled” to property if he is the real or beneficial owner of it, even though it is in someone else’s name as nominal owner. The nominal owner of the property, whether real property, choses in action or other personal property, has legal title to it. The real owner, the person “beneficially entitled” to it, can require the nominal owner to let him use or have possession of the property, or to give him the income from it, or otherwise to let him have the benefit and enjoyment of it. He usually can require the nominal owner to convert the property into another form or to transfer the legal title to some other nominal owner. Above all, he is able, unless restricted by the terms of a specific trust, to call on the nominal owner to convey the property to him and to transfer its legal title to him, the real owner. If he does so, he will then fully acquire the property by achieving full ownership and will cease to be merely beneficially entitled to it.

[50] MacKeigan, CJ concluded at para. 30 that upon the testator's death, each parent company became "the beneficial owner of the interest in his estate which was at that time acquired by its respective subsidiary, the nominal owner of that interest. Each parent company thus became 'beneficially entitled' to that interest." This logic was reinforced by the combined operation of statutory language in sections 1(ae) and 2(5) of *Succession Duties Act*, whereby the non-resident parent corporations became beneficially entitled to the property as a result of the bequests to their subsidiaries, whose sole common shareholders were residents of Nova Scotia and deemed successors to the property of the deceased "to the extent of the amount by which the value of their shares are increased by the parent corporations having become beneficially entitled to the property" (at paras. 31 – 34).

[51] In *Covert et al v. Minister of Finance of Nova Scotia*, [1980] 2 SCR 774 ("**Covert**"), the majority, per Martland J, rejected the appellants' argument that beneficial entitlement under the *Succession Duties Act* required a legal or equitable right enforceable in court. The majority held that despite the corporate structuring, the parent company had a beneficial entitlement to the residue of the estate. At pp. 795 – 796, Martland, J. wrote:

... The fact that it was not made a beneficiary under the will does not preclude this finding in view of the fact that it had complete and absolute control of the named beneficiary, the subsidiary company, and had the legal capacity to compel that

company to turn over to it the share of the estate bequeathed to it. This conclusion is fortified by the fact that it was the obvious purpose of the scheme adopted by the testator that the subsidiary company should turn over to the parent company the residue of the estate so that it could, in turn, divide the residue among its shareholders, *i.e.*, the twelve grandchildren of the deceased...

Both companies were incorporated on the same day in the same office by the same lawyers. Neither the parent company nor the subsidiary company engaged in any business activity between their dates of incorporation and the date of Mr. Jodrey's death. Neither of them had any creditors. Both of them had the same directors. Both had the same officers.

This is eminently a case in which the Court should examine the realities of the situation and conclude that the subsidiary company was bound hand and foot to the parent company and had to do whatever its parent said. It was a mere conduit pipe linking the parent company to the estate.

[Emphasis added]

[52] As such, the parent company was beneficially entitled to the residue of the estate by virtue of the corporate scheme that “clothed it with total control over the named beneficiary, the subsidiary company, and has enabled it legally to compel the subsidiary company to turn over the residue of the estate to it” (at p. 796).

[53] In *Covert*, Martland, J immediately emphasized that this conclusion did not affect the law respecting shareholders' relationship to corporate assets. At p. 797:

This conclusion does not involve any conflict with the principle stated in cases such as *Macaura v. Northern Assurance Company, Limited and others*, that a corporate shareholder does not have a right to the corporate assets of a corporation. The point in issue in this appeal is that by virtue of its total control over the subsidiary company, the parent company is in a legal position to compel it to deal with its assets in the manner dictated by the parent company.

[Emphasis added]

[54] The majority in *Covert* noted the distinction from *Rodwell Securities Ltd v. Inland Revenue Commissioners*, [1968] 1 All ER 257, between “beneficially

entitled” and “beneficial ownership.” At p. 790, the Court confirmed that in *Rodwell Securities* a “wholly-owned subsidiary of a parent company conveyed land to ... a wholly-owned subsidiary of another wholly-owned subsidiary of the parent company...” The issue was whether the taxpayer could claim a statutory exemption from stamp duty in respect of an instrument conveying “a beneficial interest in property from one company with limited liability to another such company...” where one of the companies owned at least 90 percent of the other, or where a third company owned at least 90 percent of each of them. As such, the express statutory conditions were not met. The court in *Rodwell Securities* had confirmed that “[a]ccording to the legal meaning of the words, a company is not the beneficial owner of the assets of its own subsidiary. The legal meaning of the words takes account of the company structure and the fact that each company is a separate legal person...” (at p. 260 and cited in *Covert* at p. 791).

[55] In short, the decisions in *Cowan* and *Covert* are distinguishable in that they arose in the context of a distinct and separate statutory context. Their discussion around “beneficial interest” and “beneficial ownership” must be approached from that perspective. Of equal importance, neither decision permanently altered the bedrock principle of law that corporations, though intangible, are distinct legal persons that “have rights and obligations, can contract, commit torts, and even

commit crimes” (*Budd v. Gentra*, [1998] O.J. No. 3109 (QL), 43 BLR (2d) 27 (Ont. C.A.) at para. 25). This principle of separate legal personality, firmly rooted in the seminal decision of *Salomon v. Salomon & Co.*, [1897] A.C. 22 (H.L.), serves key economic and legal functions, including facilitating capital formation, limiting shareholder liability, ensuring corporate continuity, and promoting market liquidity (Ruth I. Wahl & Maurice Coombs, *Halsbury’s Laws of Canada – Business Corporations* (2022 Reissue) at Section HBC-47 ff.).

[56] Martland, J expressly confirmed in *Covert* that the decision did not conflict with the principle that a corporate shareholder does not have a right to the corporate assets of a corporation. Indeed, *Covert* has been cited for that very principle. In *Prévost Car Inc v. R.*, 2008 TCC 231, 2008 CarswellNat 1114, the court referred to *Covert*, in respect of beneficial ownership of dividends:

100 In my view the “beneficial owner” of dividends is the person who receives the dividends for his or her own use and enjoyment and assumes the risk and control of the dividend he or she received. The person who is beneficial owner of the dividend is the person who enjoys and assumes all the attributes of ownership. In short the dividend is for the owner's own benefit and this person is not accountable to anyone for how he or she deals with the dividend income. When the Supreme Court in *Jodrey [Covert]* stated that the “beneficial owner” is one who can “ultimately” exercise the rights of ownership in the property, I am confident that the Court did not mean, in using the word “ultimately”, to strip away the corporate veil so that the shareholders of a corporation are the beneficial owners of its assets, including income earned by the corporation...

[Emphasis added]

[57] I note that HRM cites *Atco Ltd. v. Calgary Power Ltd.*, [1982] 2 SCR 557 (“**Atco**”), and *Pecore v Pecore*, [2007] 1 SCR 795 (“**Pecore**”), for the propositions that a parent company that controls a subsidiary may be beneficially entitled to a subsidiary’s assets for the purpose of a taxing statute, and that equity recognizes a distinction between legal and beneficial ownership. In *Atco*, the issue was whether the appellant was a “a person owning, operating, managing or controlling a public utility and whose business and operations are subject to the legislative authority of the Province” so as to be an “owner of a public utility” under the *Alberta Public Utilities Board Act*. (at para. 6)

[58] However, *Atco* did not address the issue of whether a purchaser of shares in a corporation, or units of a limited partnership, acquires a beneficial interest in the assets of the corporation or partnership. *Atco* turned on express statutory references to ownership and control of the relevant assets.

[59] *Pecore* recognized the distinction between legal and beneficial ownership in the context of the presumptions of resulting trust and advancement, and the nature of survivorship, where a father gratuitously placed assets in joint accounts with a daughter. But, as with *Atco*, it had nothing to say about corporate or partnership arrangements.

[60] This leads into the next point regarding the circumstances when the law will depart from bedrock principle that a company is a separate legal entity.

Piercing the corporate veil

[61] Given its foundational status, courts are reluctant to pierce the corporate veil, maintaining the corporation's distinct existence absent exceptional circumstances (*Interlen v. 4325842 Nova Scotia Limited*, 2023 NSSC 337 at para. 83, citing *Yaiguaje v. Chevron Corporation*, 2018 ONCA 472 at para. 70, leave to appeal refused [2018] S.C.C.A. No. 255).

[62] In *B.G. Preeco (Pacific Coast) Ltd. v. Bon Street Holdings Ltd.*, 60 DLR (4th) 30, 1989 CarswellBC 104 (BC CA), *Covert* was cited for the proposition that “company law does not protect principals of a company who acted fraudulently or dishonestly, and that in such cases, the corporate veil should be lifted to fix liability on the principals” (at para. 31). The court held that there “are cases in which the law will fix liability on the principals but they do not support the broad proposition put forward... A number of cases, including *Covert*..., relied on by the plaintiff, turn on particular legislation and do not assist this argument” (at paras. 33 – 34).

[63] These comments expose a key weakness in HRM's line of reasoning. The court's power to pierce the corporate veil is neither inherent nor unlimited.

Beveridge, J (as he then was) put it this way in *Hill v. Bridgemohan*, 2008 NSSC 219, 2008 CarswellNS 363:

[100] Professor Welling in *Corporate Law in Canada: The Governing Principles*, 3rd ed. contends that the courts, in light of the clear wording of Canadian statutes should acknowledge that they have no inherent power to pretend that a corporation does not exist... McGuinness in *The Law and Practice of Canadian Business Corporations* writes that the courts are generally unwilling to pierce the corporate veil and will normally only do so when required by statute or where extraordinary circumstances exist...

[101] A somewhat similar argument was raised by the plaintiff in *Meditrust (supra)*. Laskin J.A. wrote:

[31] In rare cases, a court may disregard separate corporate entities for the benefit of innocent third parties. The court may "pierce the corporate veil" when the corporate structure has been used by the corporation's principals as a sham or to perpetrate a fraud...

[64] In *Globex Foreign Exchange Corporation v. Launt*, 2011 NSCA 67, 2011 CarswellNS 494 ("**Globex**"), Farrar, JA, for the majority, noted that the corporate veil may be pierced where a corporation is a mere agent or puppet of a shareholder. At para. 22, Farrar JA further pointed out that in *White v E.B.F. Manufacturing Ltd.*, 2005 NSCA 167 ("**White**"), Saunders, JA had cited the following remarks of Wilson, J in *Kosmopoulos Constitution Insurance Co. of Canada*, [1987] 1 SCR 2:

As a general rule a corporation is a legal entity distinct from its shareholders: *Salomon v. Salomon & Co.*, [1897] A.C. 22 (H.L.). The law on when a court may disregard this principle by "lifting the corporate veil" and regarding the company as a mere "agent" or "puppet" of its controlling shareholder or parent corporation follows no consistent principle. The best that can be said is that the "separate entities" principle is not enforced when it would yield a result "too flagrantly opposed to justice, convenience or the interests of the Revenue": L.C.B. Gower, *Modern Company Law* (4th ed. 1979) at p. 112.

[Emphasis in original]

[65] In *White*, Saunders, JA considered the view that the corporate veil should only be lifted “in the most serious of cases where fraud, or deceit, or use of a corporation for an improper purpose is both pleaded and proved” to be a “far too restrictive approach, implying that only the most egregious or criminally unlawful circumstance will entitle a court to lift the corporate veil. I do not understand that to be the law” (at para. 49). He continued:

[51] In *Le Car GmbH v. Dusty Roads Holdings Ltd.*, [2004] N.S.J. No. 140, 2004 CarswellNS 138 (S.C.), Murphy, J. accurately identified three situations where courts have lifted the corporate veil:

(a) where failure to do so would be unfair and lead to a result "flagrantly opposed to justice";

(b) where representations are made or activities undertaken for a fraudulent or other objectionable, illegal or improper purpose to facilitate doing something that would be illegal or improper for an individual to do personally; and

(c) where the corporation is merely acting as the controlling shareholder's agent. [Emphasis by Saunders JA]

[52] Courts will often pierce the corporate veil where the company is an agent or the mere alter-ego of the controlling shareholder or parent company. There was certainly evidence before McDougall, J. to support a conclusion that FENCE was merely the alter-ego of Bryson and EBF. In *Aluminum Co. of Canada v. Toronto (City)*, [1944] S.C.R. 267, 1944 CarswellOnt 71 (S.C.C.), at paras. 15-16, Rand, J., referred to the Court's earlier decision in the case of *Toronto v. Famous Players Canadian Corp.*, [1936] 2 D.L.R. 129 as having:

15 ... settled that the business of one company can embrace the apparent or nominal business of another company where the conditions are such that it can be said that the second company is in fact the puppet of the first; when the directing mind and will of the former reaches into and through the corporate façade of the latter and becomes, itself, the manifesting agency.

...

16 The question, then, in each case, apart from formal agency which is not present here, is whether or not the parent company is in fact in such an intimate and immediate domination of the motions of the subordinate

company that it can be said that the latter has, in the true sense of the expression, no independent functioning of its own.

[66] *Cowan* and *Covert* confirm the principles that legal and beneficial ownership are distinct, and that a finding that a person has beneficial ownership of an asset amounts to finding that that person is the “real” owner. This distinction may be relevant in applying a statutory scheme that concerns itself with “real” ownership of assets for taxation purposes, as the succession duty legislation did. The *MGA* contains no language to this effect, even implicitly. Even adopting a more expansive view of the power to pierce the corporate veil, respectfully, there is no foundation in language of the *MGA* which authorizes HRM to collect deed transfer tax from someone other than the grantee named in the deed. There is certainly no evidence or suggestion that the corporate structure through which ownership of the Mic Mac Mall is pierced as a sham or is somehow being exploited to perpetuate a fraud.

Related Party Jurisprudence and Consideration Sufficient to Trigger Deed Transfer Tax

[67] Several cases have considered the circumstances in which deed transfer tax was due in the case of transfers of property between related companies. However, again, they are distinguishable and do not assist HRM in this case.

[68] In *Eastern Management Ltd. v. Halifax (City)* (1970), 1 NSR (2d) 986, 1970 CarswellNS 91; aff’d 1970 CarswellNS 130 (AD) (“*Eastern Management*”), the

plaintiff company was one of two shareholders in a third company, Dawn, which was being dissolved. Before dissolution, Dawn transferred a property to the plaintiff, which assumed outstanding mortgages on the property. The issue was whether deed transfer tax was payable. The plaintiff company submitted that there was no true sale, in that no consideration passed. Cowan, CJTD held that consideration had been given: first, the plaintiff, as a shareholder, had given up its right on winding-up to receive a *pro rata* share of the net assets; and second, the plaintiff undertook to, and in fact did, assume the outstanding mortgages on the property. Deed transfer tax was payable. The Court of Appeal specifically affirmed this reasoning.

[69] Notably, Cowan, CJTD did not find that the plaintiff's interest in the property was a "beneficial" one. And he did not hold that the fact that the transfer was from a company to a shareholder who would have an interest in the property upon the dissolution of the company lessened the fact that there was, in fact, a transfer.

[70] In *Markborough Properties Limited v. Dartmouth (City)* (1989), 94 NSR (2d) 438, 1989 CarswellNS 89 (SCTD) ("*Markborough Properties*"), the plaintiff sought a declaration that it was not liable to pay deed transfer tax in respect of a conveyance to it of property (the same property with which the current matter is concerned) owned by a wholly-owned subsidiary on its dissolution. The plaintiff argued that the

arrangement did not constitute a sale and no consideration was exchanged. The court identified a set of principles drawn from the caselaw, including the following:

19 The following legal principles emerge from these cases:

1. Under the by-law, deed transfer tax is payable on transfers of real property.
2. For a transfer to be taxable, it must be pursuant to a sale; that is, for valuable consideration.

...

5. A transfer of real property by a company to one of its shareholders as a preliminary step to surrendering its certificate of incorporation under Section 123 of the Companies Act is taxable if the grantee gave valuable consideration for the transfer; such as (i) the giving up of the shareholders' right to a share of all the assets on a winding-up; and (ii) by the shareholders effectively assuming the mortgage outstanding on the real property transferred...

[Emphasis in original]

[71] Hallett, J (as he then was) defined the issue as whether the grantee gave consideration for the transfer; in other words: was there a sale? He found that there was not. The plaintiff's assumption of liabilities under the asset transfer agreement imposed no new enforceable obligations upon it. Pursuant to the doctrine of privity of contract, the creditors of the subsidiary, not being parties to the agreement, had no enforceable rights against the plaintiff if the subsidiary's liabilities were not paid. On that basis, *Eastern Management* was distinguishable. (at paras. 25 – 28) The transfer of the property to the plaintiff did not involve consideration. Therefore, there was no sale and no tax due. (at paras. 32 – 33)

[72] Both *Eastern Management* and *Markborough Properties* turned on the issue of consideration as the basis for imposing deed transfer tax, not on the plaintiff companies' interest in the subsidiary companies' assets. I recognize that the Court in *Markborough Properties* describes the plaintiff in passing as the "beneficial owner". I do not view this passing comment as supporting a broader principle of general application that a sole shareholder is the beneficial owner of the company's assets. Nor does it suggest that a transfer of shares results in a transfer of beneficial ownership of the corporation's assets. At best, it may be *obiter*.

[73] Additionally, *Markborough Properties* was decided in the context of a dissolution pursuant to the *Companies Act* – not deed transfer tax under the *MGA*. The distinction is germane. At para. 27 of *Schmidt v. Balcom*, 2016 BCSC 2438, the court cited *Blackwell v. Stewart*, 2015 BCSC 1716, for the proposition that:

...the fact that a shareholder is entitled to a proportionate share of the assets of a corporation on winding up, does not mean that the shareholder has a claim against the underlying assets of the corporation *in specie*, nor a proprietary claim to the land owned by the corporation prior to winding up. Rather, the proportionate share of the assets to which a shareholder is entitled on winding up, means a proportionate share of the value of the assets.

[74] The underlying principle that an equity interest in a company does not equate with an interest in company property is also summarized in *Hollaus v. Moria*, 2019 BCSC 104, where the court said at paras. 68 - 69:

... In sum, the only equivalency between a share certificate and a deed of title lies in the documentary evidence of title that the thing describes; that is, the deed of title describes an interest in real property and the parties' share certificate describes an interest in the company...

Additionally, a shareholder of a company has no direct interest in the land which is owned by that company... This is so even if that shareholder effectively controls the company...

[Emphasis added]

[75] Similarly, “[t]he rights and liabilities of the corporation are not the rights and liabilities of the shareholders...” (David S. Morritt, Sonia L. Bjorkquist, and Allen Coleman, *The Oppression Remedy* (Toronto: Thomson Reuters, 2020)(looseleaf updated July 2025) at Sections 1:3).

[76] Respectfully, *Cowan* and *Covert* establish only that legal and beneficial ownership may diverge for the purposes of a specific statute (the 1972 *Succession Duties Act*) expressly targeting “real” ownership, particularly where control permits effective enjoyment of property. They do not support the proposition that purchasing shares transfers a beneficial interest in corporate assets, nor do they authorize ignoring corporate personality outside such statutory schemes. HRM’s arguments ultimately founder on the specific language of the *MGA* and the fact that there is no basis upon which the corporate veil might be pierced.

OWNERSHIP OF LIMITED PARTNERSHIP UNITS DOES NOT RESULT IN BENEFICIAL OWNERSHIP OF PARTNERSHIP PROPERTY

[77] The *Limited Partnerships Act*, RSNS 1989, c. 259, defines “partnership property” as “property and rights and interests in property originally brought into the partnership stock, or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes of and in the course of partnership business”: s. 2(d). Sections 8(2) and (3) addresses holding of property:

Interest of limited partner is personal property

(2) A limited partners interest in the limited partnership is personal property.

General partner is registered owner of real property

(3) Only the general partners shall be shown at the registry of deeds as owners of any interest of the limited partnership in real property.

[78] The Mic Mac Mall Limited Partnership is constituted under the Nova Scotia counterpart to Ontario’s *Limited Partnerships Act*, RSO 1990, c. L.16. Section 7(2) of the Ontario act is substantively identical to section 8(2) of the Nova Scotia statute. However, there is no Ontario equivalent to section 8(3) in the Nova Scotia statute.

[79] In this case, the numbered company 4239 holds title to the property as general partner of the limited partnership. Very briefly, the jurisprudence on limited partnerships repeatedly holds that limited partnerships are not legal entities capable of holding property. Rather, title vests in and is exercised through the general partner. Limited partners, as passive investors, hold no proprietary or beneficial interest in partnership assets. Their entitlement as limited partners is bounded by their contribution which, in turn, informs their share of profits. Accordingly,

transfers of limited partnership units do not affect transfers of interests of the underlying real property assets. That property remains legally and equitably vested in the general partner. The general partner retains exclusive control, management, and liability vis-à-vis third parties.

[80] It is true that limited partners risk losing limited liability if they participate in control of the business. That is an intensely factual inquiry which is not determined solely on the basis of a controlling interest in the general partner. I do not have sufficient evidence before to make that determination.

[81] Even if I did and the limited partner loses its statutory protection, the law does not automatically reallocate ownership of partnership property to the limited partner in such a way as to trigger an obligation to pay deed transfer tax. It exposes the limited partner to liability akin to a general partner. But it does not constitute a deemed transfer of underlying real property to the limited partner in a manner that suddenly generates liability for deed transfer tax.

[82] A more expansive review of the jurisprudence follow.

[83] In *Schmidt v. Balcom*, 2016 BCSC 2438, the Court held that because the limited partner does not hold any interest in partnership property, beneficial or

otherwise, a transfer of limited partnership units does not result in a transfer of beneficial interest in land.

[84] In that case, the defendant, Madden Holdings, was the general partner of Asher Place Limited Partnership and was the registered owner of the property. Two of the plaintiffs were shareholders of Madden, and one was a limited partner of Asher Place. Based on statutory language equivalent to section 8(2), the court rejected the claim that the plaintiffs, as shareholders of Madden, or as limited partners in the partnership, held a proprietary interest in the underlying assets of the partnership. (at para. 44)

[85] In *Kucor Construction & Developments & Associates v. Canada Life Assurance Co.* (1997), 32 OR (3d) 548, 1997 CarswellOnt 554 (Ont Ct Gen Div) referred to below as “**Kucor**”, the court dismissed a limited partnership’s application for a declaration of its right to redeem a mortgage it had purportedly granted. The application judge said at para. 17:

In a limited partnership, the legal title is held by the general partner for the benefit of all of the partners. None of these factors, in my view, constitutes a partnership a legal entity or person having a separate existence recognized in law and accordingly being capable of holding title to property and mortgaging or creating security on such property. I find, therefore, that the limited partnership is incapable of holding title to the mortgaged property and accordingly the deed from [the general partner] to the limited partnership must be regarded as a nullity and the title to the real property remains with [the general partner] which holds the property for the benefit of all of the partners in the limited partnership....

[Emphasis added]

[86] Dismissing the appeal, at 167 DLR (4th) 272, 1998 CarswellOnt 4423 (CA), Borins, JA, for the court, cited with approval the following passage from *Re Lehndorff General Partner Ltd* (1993), 17 CBR (3d) 24, 1993 CarswellOnt 183 (Ct J), where Farley, J explained “the features of a limited partnership and how its business is conducted”:

A limited partnership is a creation of statute, consisting of one or more general partners and one or more limited partners. The limited partnership is an investment vehicle for passive investment by limited partners. It in essence combines the flow through concept of tax depreciation or credits available to "ordinary" partners under general partnership law with limited liability available to shareholders under corporate law...

A general partner has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership. In particular a general partner is fully liable to each creditor of the business of the limited partnership. The general partner has sole control over the property and business of the limited partnership... Limited partners have no liability to the creditors of the limited partnership's business; the limited partners' financial exposure is limited to their contribution. The limited partners do not have any "independent" ownership rights in the property of the limited partnership. The entitlement of the limited partners is limited to their contribution plus any profits thereon, after satisfaction of claims of the creditors...

...

It appears to me that the operations of a limited partnership in the ordinary course are that the limited partners take a completely passive role (they must or they will otherwise lose their limited liability protection which would have been their sole reason for choosing a limited partnership vehicle as opposed to an "ordinary" partnership vehicle)... The limited partners leave the running of the business to the general partner and in that respect the care, custody and the maintenance of the property, assets and undertaking of the limited partnership in which the limited partners and the general partner hold an interest. The ownership of this limited partnership property, assets and undertaking is an undivided interest which cannot be segregated for the purpose of legal process...

[At paras. 38 – 40, emphasis added]

[87] Borins, JA noted at para. 33 of *Kucor* that “if its management and control are the exclusive responsibility of the general partner, who derives its powers from the *Limited Partnerships Act*, it is through the general partner that a limited partnership acquires and conveys title to real property...”

[88] In *Hudson’s Bay Company v. OMERS Realty Corporation*, 2015 ONSC 4671, 2015 CarswellOnt 11740, the applicant company, HBC, and applicant limited partnership (by its general partner) HBC LP, were tenants in several malls owned by the respondents. HBC and an investment trust, RioCan, entered a joint venture by which various assets, including the mall leases, would be transferred to the joint venture, which would be structured as a first limited partnership with HBC and RioCan as the limited partners. The general partner would be a company jointly controlled by the two limited partners. The assets of the joint venture, excluding the leases, would be transferred to the general partner. A second limited partnership, holding the leases, would have HBC as the general partner and the first limited partnership as the limited partner. The leases would be assigned to HBC in its capacity as general partner, and the leased premises sublet to HBC.

[89] The company sought the respondent landlords’ consent to assign and sublease the mall leases, which was denied. The applicants sought a declaration that consent was not required by the Ontario *Commercial Tenancies Act*, as restrictions on

transfer in the leases included an exception for assignments to affiliates of the tenant. The respondents argued that the affiliate exception did not apply because, while the company would hold legal title to the leases as the general partner of the second limited partnership, it would be holding the leases for the benefit of the second limited partnership, which was not an affiliate of an existing tenant. (at paras. 14 – 16)

[90] The application judge rejected the landlords' position, "based on the unique legal nature of the limited partnership structure and the role played by the general partner." (at para. 17) Given that the leases would be assigned to HBC as the general partner, and that HBC would be solely responsible for the operations of the second limited partnership, HBC was the assignee of the leases.

[91] In affirming this decision, at 2016 ONCA 113, 2016 CarswellOnt 1753, the Ontario Court of Appeal rejected the appellants' claim that the assignments gave the limited partnership beneficial and effective ownership of the leases. The court said:

[14] We do not accept [the appellants' representative] Oxford's characterization of the effect of the assignments. This is not a case, as Oxford suggested, of HBC holding bare title or being a mere nominee for the true beneficial owner. Furthermore, contrary to Oxford's formulation of the first issue, the application judge did not hold that "an assignment to a limited partnership through its general partner was an assignment to an affiliate". Rather, she concluded that the proposed assignments of the Leases would be to the general partner and not to the limited partnership. As such, what Oxford characterizes as the "beneficial" or "effective" ownership of the Leases cannot direct the analysis.

[Emphasis added]

[92] The Court of Appeal confirmed that a “limited partnership is not a legal entity. It is required by law to have a general partner through which it normally acts... A limited partnership cannot hold title to real property. It can hold title to real property only through its general partner.” (at para. 17) The court summarized the governing principles drawn by the application judge, as derived from *Lehndorff* and *Kucor*:

[19] First, any property in which a limited partnership has an interest can be held only by the general partner. In the case of a lease, there can be no assignment of the lease to the limited partnership - it must be assigned to the general partner.

[20] Second, it is not simply a matter of the general partner acquiring legal title to the property. The general partner has control over the property and is solely responsible for the operations of the limited partnership. The limited partner, as a passive investor, is restricted from taking part in the control or management of the business. To do otherwise would jeopardise its limited partner status.

[21] Third, from the perspective of the other contracting party, the general partner is solely liable for all payments under the contract and performance of all obligations thereunder. The limited partners have no such liability....

[Emphasis added]

[93] Accordingly, the company, as the general partner, was the assignee. The affiliate exception therefore applied and consent was not required.

[94] In *Harrison Hydro Project Inc. v. British Columbia (Environmental Appeal Board)*, 2018 BCCA 44 (“**Harrison Hydro**”), the appellants were a general partner of five limited partnerships and the limited partnerships, each of which owned a power plant. The general partner held the leases on the Crown lands on which the plants were located. The limited partners held the water licenses. The general partner

had a trust agreement with each limited partner by which it held title to the limited partnership's property as a "bare trustee for the sole use, benefit and advantage of the Limited Partnership..." (at para. 9)

[95] The Environmental Appeal Board confirmed a comptroller's order that the five power plants should be treated as a single entity in calculating water rentals payable to the province. The Ministry accordingly designated the general partner as the licensee under the water licenses. This resulted in higher water rental rates than if the plants were treated as separate projects. The chambers judge dismissed the appellants' petition for judicial review.

[96] On appeal, Tysoe, JA, for the majority, reviewed the law governing limited partnerships, including the British Columbia legislation and acknowledged the Ontario decisions in *Lehndorff*, *Kucor Construction*, and *Hudson's Bay* as leading cases. It summarized the controlling principles as follows:

[55] Several propositions come from these authorities. First, a limited partnership is not a legal entity. Second, a limited partnership acts through its general partner (subject to the hypothetical possibility that a limited partner could act contrary to the typical provisions of a limited partnership agreement and become involved in the management of the limited partnership, in which case he or she would lose the protection of limited liability and become the equivalent of a general partner). Third, a general partner has exclusive control of the management of the business of the limited partnership and its property. Fourth, the property of the limited partnership can be held only by the general partner.

[Emphasis added]

[97] The majority held that the Board's interpretation of the British Columbia *Water Act* was not unreasonable. Tysoe, JA wrote at para. 62:

... Based on *Kucor*, the trust agreements executed by the General Partner in respect of the property of each of the Limited Partnerships must be taken to be nothing more than a statement that the General Partner was holding the property for the benefit of the Limited Partnership. The trust agreements cannot be effective to vest the beneficial interest in each property in the respective Limited Partnership because the Limited Partnership is not a legal entity....

[Emphasis added]

[98] In *Scala Development Consultant Ltd. v. Spirit Bay Developments Limited Partnership*, 2024 BCSC 1755, 2024 CarswellBC 2812, a developer, Spirit Bay, retained the plaintiff company to build houses on First Nation reserve land, then failed to pay. Spirit Bay, a limited partnership, operated under long-term leases from the First Nation, and sold subleases to the public. The First Nation, owned over half of the limited partnership units in Spirit Bay, and owned, directly or indirectly, all other partners, including the two corporate general partners. The plaintiff obtained an arbitration award and requested appointment of a receiver to collect. The issue was whether appointment of a receiver was barred by anti-property-seizure provisions of the *Indian Act*. The First Nation, and the general partners argued that, as a limited partner, the First Nation, had an interest in Spirit Bay's assets as personal property, including the headleases and subleases.

[99] Fleming, J rejected the general partners' argument that a limited partner had an interest in limited partnership property, confirming the well-established principles that general partners controlled partnership property and the partnership's business, and that "limited partners are essentially passive investors, with liability limited to the extent of their contribution..." (at para. 226) At para. 228, Fleming, J further confirmed that subsection 55(2) of the BC *Partnership Act* – identical to s. 8(2) of the Nova Scotia *Limited Partnership Act* – did not create an interest in the property of the limited partnership, but described a limited partner's interest in the limited partnership itself as personal property. Thus the leaseholds, which were owned by the general partners, would be subject to the receivership order, and the *Indian Act* prohibition on seizure of First Nation, personal property was not engaged. See para. 241.

[100] In *Lam v. WS Scott Station Development Limited Partnership*, 2025 BCSC 149, 2025 CarswellBC 242, the plaintiffs were limited partners in the defendant land development partnership. They alleged that, instead of receiving returns on capital from the sale of a development, the proceeds were improperly diverted to entities related to the limited partnership. They caused certificates of pending litigation to be placed on land owned by the Defendants' limited partnership. The defendants applied to strike out the certificates on the ground, *inter alia*, that the plaintiffs had

no proprietary interest in the partnership property. The court confirmed the law, as set out in *Schmidt*, to the effect that a “limited partner does not have a claim to an interest in land in the real property which formed part of the partnership property” and that a limited partner’s interest in the partnership is personal property. (at para. 25) At para. 61, the Court concluded that this was grounds to cancel the certificates of pending litigation.

[101] Based on the principles governing the property of limited partnership – particularly the vesting of control and ownership in the general partner, and the passive role of limited partners – Rank did not acquire an equitable interest in the property by the securities transfer; rather, both legal and equitable title remained with the general partner, 4239.

[102] As Farley, J remarked at para. 20 of *Lehndorff*, “the operations of a limited partnership in the ordinary course are that the limited partners take a completely passive role (they must or they will otherwise lose their limited liability protection which would have been their sole reason for choosing a limited partnership vehicle as opposed to an ‘ordinary’ partnership vehicle).” This conclusion tracks with section 17 of Nova Scotia’s *Limited Partnership Act*, which provides that a limited partner “does not become liable as a general partner unless, in addition to exercising

his rights and powers as a limited partner, he takes part in the control of the business.”

[103] Maurice Coombs, *Halsbury’s Laws of Canada - Partnerships* (2021 Reissue) (LexisNexis: online) comments on the meaning of “control” in this context at Section HPJ-73:

The term “control” is not defined in the legislation and there are no decisions that assist in identifying the point at which it might be reasonable to conclude that a limited partner has taken part in the control of the business. However, what is clear, and what has been consistently found by the courts in jurisdictions with similar legislation, is that the issue of whether a limited partner has engaged in control of the business so as to attract liability is a question of fact to be decided on a case-by-case basis.

[104] Addressing statutory language identical to section 17 in *Haughton Graphic Ltd v. Zivot* (1986), 33 BLR 125, [1986] OJ No 288 (Ont Sup Ct – High Ct J), the court said at para. 28:

On that state of facts, and in view of the overwhelming evidence that both defendants took part in the control of the limited partnership, I come back to s. 63 of the Alberta Partnership Act...

Although elaborate arguments were made as to the meaning of the section, I take a simpler view of it. If a limited partner takes part in the control of the business, he becomes liable under the statute as a general partner, i.e. unlimited liability to the extent of his assets. That is what happened in this case, and it is, effectively speaking, the end of the matter.

[Emphasis added]

[105] In a brief affirming decision at 38 BLR xxxiii (note), [1988] OJ No 2957 (Ont CA), the Ontario Court of Appeal said, “there was evidence on the basis of which

the trial judge could properly find that the defendants as limited partners took part in the control of the business ... within s. 63 ... and therefore become liable as general partners.” This accords with authorities such as the British Columbia Court of Appeal’s decision in *Harrison Hydro*, where the court referred to the “hypothetical possibility that a limited partner could act contrary to the typical provisions of a limited partnership agreement and become involved in the management of the limited partnership, in which case he or she would lose the protection of limited liability and become the equivalent of a general partner” (at para. 55).

[106] HRM challenges these conclusions on the basis that they are premised on the “ordinary course” of limited partnership operations, where the limited partners take a completely passive role. However, the equation changes where limited partners become actively engaged. (HRM Reply Brief at paras. 9 – 12)

[107] As the caselaw indicates, this is a question of fact to be determined on a case-by-case basis. However, even if Rank loses its limited partner protection, HRM’s position rests on assumptions about the effect of the loss of a limited partner’s limited liability protection. HRM assumes, in effect, that the limited partner in those circumstances becomes “owner” of assets vested in the general partner for any and all purposes. The cases state clearly that a limited partner in these circumstances

loses the protection of limited liability, but they do not suggest, for instance, that all of the property vested in the existing general partner (and registered owner of the property) becomes vested in the limited partner. In the case of deed transfer tax, even if Rank were to lose its protection as a limited partner, I am unable to conclude that the transfer of limited partnership units is deemed to have occurred under the *MGA* for the purposes of levying a deed transfer tax. The statutory wording does not support such a leap of logic.

CONCLUSION

[108] The application is dismissed.

[109] If the parties cannot agree on costs, I will accept brief written submissions within 30 days from the release of this decision.

Keith, J.