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## CASE SUMMARY: MANITOBA COURT OF QUEEN'S BENCH FINDS DECISION OF THE TAX APPEALS COMMISSION IS REASONABLE, DISMISSES APPLICATION OF THE CORPORATION SEEKING TO OVERTURN THE ASSESSMENT DECISION OF THE COMMISSION

The standard of review in matters relating to the *Retail Sales Tax Act* is not settled and therefore the *Dunsmuir* framework is used to assess the standard.

### **Administrative law – Decisions reviewed – Minister of Finance – Taxation; Judicial review – Appeals – Standard of review – Reasonableness**

[Larry Penner Enterprises Inc. v. Manitoba \(Deputy Minister of Finance\)](#), [2017] M.J. No. 223, 2017 MBQB 148, Manitoba Court of Queen's Bench, August 15, 2017, H. Rempel J.

The applicant, a company that sold petroleum products to retailers, entered into written agreements where the retailers would have use of the fuel tanks and purchase fuel exclusively from the applicant. In 2014, the respondent, the Minister of Finance, determined that the leasing agreements with respect to the fuel tanks were taxable transactions under the *Retail Sales Tax Act* (the "*Act*"). The Minister issued a notice of assessment, with interest and penalties in an amount over \$130,000.

The applicant appealed the decision of the Minister to the Tax Appeals Commission (the "Commission") arguing that the lease agreement did not attract tax under the *Act* and if it did, the *Indian Act* provided an exemption. On appeal, the Commission affirmed the Minister's assessment. The applicant brought an application for judicial review seeking an order overturning the finding on appeal and resulting penalties and interest.

The key issue on judicial review was the appropriate standard of review. The Court was asked to consider whether the decision of the Commission to affirm the imposition of taxes was reasonable. The applicant argued the standard of review was correctness while the Minister argued the appropriate standard of review was reasonableness.

The Court reviewed recent jurisprudence to determine whether the standard of review in matters relating to the *Act* was settled. The Court determined that the standard of review was not settled and therefore assessed the standard applying the *Dunsmuir* framework. The Court observed that the issues on appeal were of mixed facts and law and the interpretation of contracts in relation to the home statute signalled that the appropriate standard of review was reasonableness.

The Court observed that the Commission properly set out the relevant provisions of the *Act*, considered the law, and applied the law to the facts of the case. The Court held that the Commission's decision that the fuel tanks "were provided to the customer by the applicant to promote and encourage an exclusive business arrangement" was reasonable in the circumstances.

The Court held that the decision of the Commission was reasonable and dismissed the application for review.

This case was digested by [Jackson C. Doyle](#) and edited by [William S. Clark](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at [jdoyle@harpergrey.com](mailto:jdoyle@harpergrey.com) or [wclark@harpergrey.com](mailto:wclark@harpergrey.com) or review their biographies at <http://www.harpergrey.com>.