

buyer beware: Landmark B.C. ruling will shake real-estate industry

DD

as Todd ([HTTP://VANCOUVERSUN.COM/AUTHOR/DOUGLASTODD2](http://VANCOUVERSUN.COM/AUTHOR/DOUGLASTODD2))

2017 | Last Updated: April 8, 2017 5:51 PM PDT



Supreme Court is a stark warning about the dangers of buying Canadian real estate from foreign owners. *GERRY*

KAHRMANN / PNG

A B.C. Supreme Court ruling will send shock waves through the arm of the Canadian real-estate market that is powered by foreign capital, say immigration lawyers.

The ruling targets a weakness in Canadian laws that often leads foreign owners of real estate in cities such as Metro Vancouver and Toronto to claim they are “residents of Canada for tax purposes” when they are not.

The landmark B.C. decision requires notary public Tony Liu to pay his client more than \$600,000 because Liu failed to adequately determine whether the Vancouver house his client was buying for \$5.5 million had been owned by a tax resident of Canada.

As a result, the Canada Revenue Agency did not get paid, at the time of the sale, the 25 per cent capital gains tax it charges non-resident sellers of Canadian property on any profit they make on the sale.

So the CRA later demanded the buyer pay the \$600,000 in tax. The buyer, in turn, sued Liu, arguing Liu failed to discover the seller was not a tax resident of Canada.

The CRA considers people who don't live in the country at least six months a year and don't pay income taxes here to be foreign property investors and speculators and thus subject to capital gains taxes.

TE: [How to ensure non-residents pay tax on Canadian real estate](http://vancouver.sun.com/business/real-estate/douglas-todd-how-to-ensure-non-residents-pay-tax-on-an-real-estate-profits)
(vancouver.sun.com/business/real-estate/douglas-todd-how-to-ensure-non-residents-pay-tax-on-an-real-estate-profits)

TED

as Todd: Time to the end honour system in B.C. property purchases
(vancouver.sun.com/opinion/columnists/douglas-todd-time-to-end-the-honour-system-in-b-c-property-purchases)

ands of Metro mansion owners avoiding taxes (<http://vancouver.sun.com/news/staff-thousands-of-metro-vancouver-mansion-owners-avoiding-taxes>)

as Todd: How much does the real estate industry influence B.C. politicians?
(vancouver.sun.com/opinion/columnists/douglas-todd-how-much-does-the-real-estate-industry-ce-b-c-politicians)

Canadian immigration lawyers said the CRA [tax-residency rule is often not enforced](http://vancouver.sun.com/opinion/columnists/douglas-todd-canadas-public-guardians-have-failed-verites)
(vancouver.sun.com/opinion/columnists/douglas-todd-canadas-public-guardians-have-failed-verites), even in overheated housing markets in Vancouver and Toronto that are in part
d by offshore money.

omplex ruling published this month [by B.C. Supreme Court Justice Kenneth Affleck](http://www.courts.gov.bc.ca/jdb-txt/sc/17/02/2017BCSC0226.htm)
(www.courts.gov.bc.ca/jdb-txt/sc/17/02/2017BCSC0226.htm) strikes to the heart of a gaping
Canadian tax, immigration and property-transfer law, say the immigration lawyers.



la Revenue Agency should
ct lifestyle audits on
y astronaut real estate
ors, says David
rance, an international
d immigration lawyer
in Toronto.
DOUT / PNG

The B.C. decision is a stark warning to real estate agents, notaries and lawyers who fail to ensure that sellers of properties are truly tax residents of Canada, said David Lesperance, a tax and immigration lawyer based in Toronto.

“This truly is a game changer,” said Vancouver immigration lawyer Richard Kurland.

“It’s a precedent. Real estate agents can now get a knock on the door from the taxman, asking for the (capital gains) taxes that should have been collected by Ottawa, because the agent failed to make adequate inquiries.”

Sam Hyman, a Vancouver immigration lawyer, said the judge’s decision alerts purchasers to “the dire consequences” of making offers on properties sold by people who may be trying to avoid capital gains tax by falsely declaring they are tax residents of Canada.

Many buyers and their agents, Hyman said, are not being diligent in making sure the seller is a physical or tax resident of Canada, while others are being “cavalier” or “engaging in wilful blindness” about it.

The immigration lawyers urged the B.C. government to [end the “honour system”](http://vancouver.sun.com/opinion/columnists/douglas-todd-time-to-end-the-honour-system-in-b-c-property-purchases)
(<http://vancouver.sun.com/opinion/columnists/douglas-todd-time-to-end-the-honour-system-in-b-c-property-purchases>) that leaves it largely up to sellers to state on real-estate-industry forms whether or not they are residents of Canada for tax purposes.

They said the honour-system loophole could be fixed through Ottawa and Victoria agreeing to the sharing of information among the CRA, the federal Immigration Department and the arm of the B.C. government responsible for property sales.

The [B.C. Liberals](http://vancouver.sun.com/opinion/columnists/douglas-todd-how-much-does-the-real-estate-industry-influence-b-c-politicians) (<http://vancouver.sun.com/opinion/columnists/douglas-todd-how-much-does-the-real-estate-industry-influence-b-c-politicians>), Kurland said, have stubbornly refused to solve the costly problem by reforming the government’s property-transfer forms to require sellers to answer whether they are “a tax resident of Canada.”

The B.C. government, which last summer brought in [a 15 per cent tax on foreign buyers](http://vancouver.sun.com/opinion/columnists/douglas-todd-how-would-vancouver-housing-bubble-burst-look-to-china)
(<http://vancouver.sun.com/opinion/columnists/douglas-todd-how-would-vancouver-housing-bubble-burst-look-to-china>) to cool Metro Vancouver’s globalized real estate market, recently began to ask property sellers and buyers to answer, “What is your citizenship?”

But citizenship is “as irrelevant as eye colour,” Kurland said.

sue that really matters to most Canadians and the CRA, he said, is tax residency, whether the buyer or seller pays their fair share of taxes in this country.

Lawyers say Canada is forgoing hundreds of millions of dollars in tax revenue by not enforcing the country's tax-residency rules, which are designed in theory to give long-term residents an advantage over foreign nationals.

Lawyers said they hope the federal government – which last week pledged to “target high-risk international tax and estate tax-avoidance cases” – will make it a priority for the CRA to [audit mansion owners](#)

[/vancouversun.com/news/staff-blogs/thousands-of-vancouver-mansion-owners-avoiding-taxes](#)) who pay little or no income taxes.

It would be relatively easy for the CRA, Lesperance said, to conduct “lifestyle audits” on wealthy international “astronauts,” also known as “ghosts,” who pay little or no income tax in Canada while financing family members to spend lavishly on expensive homes and cars in the country.

In these cases, Kurland said, dubious immigration professionals are advising clients they can have their cake and have it too.”

Property owners, for instance, are claiming to real estate officials that they are Canadian citizens, so they can avoid capital gains taxes while selling houses (and to ensure they qualify for permanent resident status).

Some of the same people, at the same time, are claiming to the CRA that they are not citizens under our tax law, so they don't have to declare their global income and property gains, and pay income taxes on them in Canada.

[@postmedia.com \(mailto:dtodd@postmedia.com\)](mailto:dtodd@postmedia.com)

by [Doug Todd](#) @DouglasTodd

[www.vancouversun.com/douglastodd \(http://www.vancouversun.com/douglastodd\)](http://www.vancouversun.com/douglastodd)

RELATED: [Canada's public guardians have failed Vancouver residents](#)

[/vancouversun.com/opinion/columnists/douglas-todd-canadas-public-guardians-have-failed-verites\)](#)

[arguing number renouncing Canadian immigrant status](#)

[/vancouversun.com/opinion/columnists/douglas-todd-the-narrow-view-from-the-migration-bubble\)](#)

[CLICK HERE \(mailto:vanweb@postmedia.com\)](mailto:vanweb@postmedia.com) to report a typo.

Is there more to this story? We'd like to hear from you about this or any other stories you think we should know about. Email [vantips@postmedia.com \(mailto:vantips@postmedia.com\)](mailto:vantips@postmedia.com).

[B.C. SUPREME COURT \(HTTP://VANCOUVERSUN.COM/TAG/B-C-SUPREME-COURT\)](http://vancouversun.com/tag/b-c-supreme-court)

[REAL ESTATE \(HTTP://VANCOUVERSUN.COM/TAG/REAL-ESTATE\)](http://vancouversun.com/tag/real-estate)

[STAFF BLOG: THE SEARCH \(HTTP://VANCOUVERSUN.COM/TAG/THE-SEARCH-BLOG\)](http://vancouversun.com/tag/the-search-blog)

[VANCOUVER \(HTTP://VANCOUVERSUN.COM/TAG/VANCOUVER\)](http://vancouversun.com/tag/vancouver)



Time for action: Canada is forgoing hundreds of millions of dollars in tax revenue by not fully enforcing the country's tax-residency rules.

Comments

We encourage all readers to share their views on our articles and blog posts. We are committed to maintaining a lively but civil forum for discussion, so we ask you to avoid personal attacks, and please keep your comments relevant and respectful. If you encounter a comment that is abusive, click the "X" in the upper right corner of the comment box to report spam or abuse. We are using Facebook commenting. Visit our FAQ page (<http://www.vancouversun.com/news/story.html?id=7195492>) for more information.

ment...

n · Cornell University

TO is up 25% since the new tax in BC.

1 · Mar 28, 2017 11:41pm · Edited

mber

Mar 27, 2017 11:27pm

· Case Manager, Special Care at It's a good job - trust me

ell time!

1 · Mar 27, 2017 8:34pm

ries

buying up Vancouver like it's going out of style... it's nuts. They don't live there and so many people need
they're driving up the cost of homes needlessly

1 · Mar 27, 2017 5:04pm

id Michael Lee · Works at Vancouver Coastal Health

couldn't afford what they are buying.

· Reply · 1 · Mar 29, 2017 12:31pm

t Morrow

ch is why the prices are where they are...

· Reply · Mar 30, 2017 9:08am

os-Driessen

on minimum income has to pay taxes, so should the speculators on their hundreds of thousands if not million

6 · Mar 27, 2017 1:54pm

[Load 10 more comments](#)

login