

# TALES FROM THE TRENCHES™

## BY BARRY C. MCGUIRE

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February, 2017

### CORPORATE MATTERS MATTER

Here at [RMLO Law LLP](#) in Edmonton, Alberta, we are the corporate registered office for many corporations. We get lots of letters addressed to those corporations because that's part of being registered office. Anyone who wants to send something official to a corporation can send it to the registered office. Those official notices are often notices of trouble!

A recent letter was no different. It was a scary letter!

A big, downtown law firm sent a notice that named two numbered corporations and demanded payment in full of a mortgage balance of about \$150,000. Further, they attached a Notice of Intention to Enforce Security. In that document they referred to one of the numbered corporations as an "insolvent person."

The first thing we did was search our records. That search showed that in 2008 one of the numbered corporations was struck from the Corporate Registry for failing to file the required annual corporate returns. The next thing we did was get a copy of title for the property named in the Notice of Intention to Enforce Security. Then, we dug out the minute book for the numbered corporation for which we are still registered office. The minute book told me who the principals of the corporation are, and then my memory bank kicks in.

I remember acting for the client in purchasing a 28-suite apartment building about 20 years ago. A review of the title confirms my recollection that the seller carried all of the financing. No other financing had been put on the property in the last 20 years. Our client got a great deal when he bought, and the building is probably conservatively valued today at about \$2.8 million.

So, about \$150,000 left on a vendor take-back mortgage on a property worth \$2.8 million, with the mortgage apparently in default and the titleholder insolvent! Not a pretty picture.

With that background, it was time to contact the client who was on vacation and took a few days to reply to email. Firstly, our client advised that the vendor take-back mortgage is not \$150,000, but somewhere around \$50,000. And, he was very sure that he had records including letters back and forth and cancelled cheques along with amortization schedules. This means he can prove what he paid over the years and what the actual balance should be.

On the issue of the struck corporation, our client says that he has been meaning to re-register the struck corporation, but just hasn't gotten around to it. He asks that the corporate department here at RMLO start the ball rolling to reinstate the struck corporation. We say we will, but in the back of my mind I have a nagging fear about the reinstatement. Struck in 2008 and now it's 2017, that's a long time! Can the corporation be reinstated?

On checking with RMLO's corporate department, they tell me that under Alberta's *Business Corporations Act* (BCA), **a corporation dissolved for more than 5 years cannot be revived for any reason** (see s.208

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(1.1) BCA). Under previous legislation, a corporation could apply to the courts for reinstatement but that right has been taken away.

Further, and even worse, s.229 (1) of the BCA says that all property of the struck corporation is now vested in the Crown. Our previous title search, however, showed that the property was still in the name of the struck corporation. That means, so far, the Crown (Provincial Government of Alberta), had not taken any steps to perfect their interest. That was at least minor good news. Still more research to do on this particular point and what it exactly means.

But wait, it gets worse! My first thought when I confirmed that the title-holding corporation had been struck from the corporate register is, what about tax? Our client bought 20 years ago and the property had at least quadrupled in value. The Canada Revenue Agency (CRA) always says taxes are payable when there is a disposition of the property.

What was the tax effect of the corporation being struck with ownership now potentially vested in the provincial Crown?

Back over to our corporate department, who took the problem to our tax consultants. Their first look at this mess is that the corporation being struck along with the provisions of the BCA leads to the CRA treating the situation as though the property was sold at fair market value. In this case that could result in a \$500,000 tax bill.

So here is the ugly picture. We have a corporation that, according to the legislation, no longer owns a property. The CRA treats the statutory non-ownership as a sale at fair market value. The corporation didn't get a dime out of the "sale." And, even worse, the corporation still has a big tax bill, along with interest for late payment and penalties. Not fair, but that's the way the legislation reads.

It's hard to believe that what seems to be a relatively innocuous and simple administrative mistake or error in judgment would have these disastrous consequences. At the moment our client remains in big trouble. Our expert tax consultants say there may be a way around the problem.

But, like all big tax problems, there is going to be a ton of research required on the accounting and legal side of all the issues. Then a legal opinion about a tax repair plan will be drafted.

At this moment, the plan is not drafted and the jury is still out on whether a plan can be drafted that has a decent chance of being accepted by the CRA. The tax repair plan will have to essentially reverse the effects of the corporation being struck and the relevant legislation referred to above. Folks, such a result is not guaranteed. And, as you probably figured out, this will not be cheap or easy for our client.

So those are the nuts and bolts of our client's dilemma all starting with a decision not to keep a corporation that owned valuable real estate in good standing at the corporate registry. Stay tuned.

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### LESSONS LEARNED:

1. You can't revive a corporation struck for five years or more.
2. Property owned by a struck corporation may pass to the Crown.
3. Even if the Crown takes a property, you might have a big tax bill.
4. Should I incorporate? It's a frequently asked question for serious real estate investors; in some cases, you can save a bundle on taxes. Should I un-incorporate is an even bigger, more complicated question. Always make sure to consult legal and accounting experts before moving ahead.
5. Corporate matters matter. Keep your corporations and corporate minute books up-to-date.

**FOR ALL YOUR ALBERTA REAL ESTATE LEGAL NEEDS,  
CONTACT BARRY MCGUIRE TODAY!  
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