

Last v The Queen, 2012 TCC 352

Can the TCC, on Appeal, alter the Character of the Amount?

Last v The Queen, [2012 TCC 352](#)

There were a number of issues that were mainly factual determination. The one relevant legal issue was whether the TCC can re-characterize the nature of the amount from capital income to business income?

[NOTE: in this case the taxpayer admitted that the income was from business]

The Court held that it would be improper for it to re-characterize the nature of the income, even if it were limited so that the total amount of tax payable does not increase, as this would have the effect of allowing the MNR to reassess beyond the re-assessment period by changing the basis of the assessment.

ANALYSIS