

# Rectification, Amending Contracts, and Quebec Civil Law

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*Quebec (Agence du Revenu) v. Services Environnementaux AES*, [2013 SCC 64](#)

[Though a Quebec Civil Law decision, the comments of the SCC reach into the common law provinces. Tax statutes, therefore, come into play to determine tax liability after the application of other relevant Provincial and Federal laws. This case is interesting because it casts doubt on a number of conflicting decisions, particularly in the trust and estate tax area, where the application and effect of Provincial laws on tax liability were at issue.]

The shareholders of a corporation entered into an agreement to reorganize the capital of the corporation in a manner that would have no tax consequences. They made an error in calculating the promissory note that was issued, which was supposed to be equal to the ACB of the shares, such that tax consequences would have resulted. Rather than seeking to annul the contract, the parties agreed to correct the error by amending the contract that recorded their agreement, and then sought rectification by the courts.

The crown appeals from the Quebec Court of Appeal's decision that granted rectifications for both of the cases before the court on the basis of article 1425 of the CC (allows for correction of discrepancy between common intention and intentions as declared in the acts).

The SCC rejected the Government of Quebec's appeal.

The court started with the recognized premise that the nature of legal consequences of transactions to which tax law applies (after the fact) are determined by reference to the common and civil laws.

The Civil law of contracts allows parties to, as between themselves and through common agreement, to amend or alter contracts, thus parties are not prevented from acknowledging a common error and then setting out to correct it. The courts must correct the error, if the error is proven. Tax authorities cannot benefit from an error made by the parties to a contract after the error has been corrected by mutual consent.

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