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## Ian Crosbie Reacts to Federal Court of Appeal Decision in *Lawyer's Daily*

In a recent [article](#) (available to subscribers) published in *The Lawyer's Daily*, Davies partner [Ian Crosbie](#) commented on the decision of the Federal Court of Appeal (FCA) in *Canada v. Oxford Properties Group Inc.*

The case centred on a number of transactions undertaken by Oxford Properties that were reassessed pursuant to the General Anti-Avoidance Rule (GAAR) under section 245 of the *Income Tax Act*. The transactions involved rolling three real estate properties through a tiered partnership structure, increasing the adjusted cost base of the partnership interests and selling these interests to tax-exempt entities without tax being paid on the latent recapture and accrued gains in the property held by the partnerships. The FCA reversed the Tax Court of Canada's findings that the transactions did not amount to abusive tax avoidance and referred the reassessment back to the Minister for reconsideration.

"The case involves a transaction where properties were being sold in a corporate transaction. In advance of the sale of the company, the real property it owned was transferred to partnerships and then the company was sold," Ian explained. "It's wound up in what's called a 'bump' that is applied to increase the tax cost of the partnership interests to fair value."

Ian believes the decision will create unpredictability in a number of ways. The first is that the judgment didn't provide a reasoned explanation for the purpose of the various statutory provisions. A second source of confusion is that the Court found that three different rules were abused but didn't explain which components of the three abuses were necessary to trigger application of the GAAR. Finally, Ian believes the decision will create issues for mergers and acquisitions as it's ambiguous about what can and can't be done under the bump provision. "After this transaction was done they changed the laws, so it's not as if people are going to try and do this exact transaction anymore. But I see it creating uncertainty with respect to potentially a wide range of other transactions," he said.