

# Another CDA rectification case dismissed

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In *Keystone Enterprises Real Estate Ltd et al. v. Canada* 2025 SKKB 183, yet another request to rectify an incorrectly calculated CDA and excessive capital dividend was dismissed.

In this case when calculating the CDA, a prior capital dividend payment made to a former shareholder was missed resulting in an excessive election of \$537,001. The accounting advisor took the rap and admitted their error.

The Court relied on the Supreme Court of Canada decision in *Fairmont* and the Ontario Court of Appeal decision in *Pyxis* ([Rectification not available for excessive capital dividend – Tompkins Insurance](#)) to not allow a modification to the Directors Resolution that would change the amount of the dividend declared.

This result is not surprising. It is also not surprising that amounts are sometimes missed. This reality is exacerbated by the fact that the CDA calculation is a cumulative formula often over many years. The cumulative nature of the formula can bring on unexpected results. A case in point follows.

## Cumulative calculation of CDA

Life insurance will credit the CDA for the amount of death benefit received by a private corporation less the policy's adjusted cost basis (ACB). Could a previously paid capital dividend impact the ability to pay out all of the addition to the CDA created by a life insurance policy death benefit? Yes, this is possible.

Even though the individual components of the CDA calculation cannot be negative per section 257, since the CDA is a cumulative calculation, it is possible that the account as a whole is in a negative position at a given point in time. By way of a very simple example:

- Holdco realizes a capital gain of \$1 million in year 1 resulting in a \$500,000 credit to its CDA;
- At the end of the year, Holdco declares and pays a \$500,000 capital dividend to its shareholder;
- The CDA balance at the end of year 1 is 0;

- In year 2 Holdco realizes a capital loss of \$600,000.
- The CDA balance at the end of year 2 is negative \$300,000 (\$500,000-\$500,000-\$300,000).
- In year 3, the corporation receives a death benefit of \$500,000 from a life insurance policy with a 0 ACB, adding \$500,000 to Holdco's CDA balance.
- Only \$200,000 may be paid as a capital dividend.

Although a negative CDA balance has no immediate tax consequences it could prevent the distribution of all the CDA arising from a subsequent receipt of life insurance death benefits by Holdco.

### **Care and attention**

Cases like this one demonstrate how costly mistakes can be. And seeking rectification won't help.

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### **FOOTNOTE:**

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