

TAX SURVIVAL for CANADIANS Stand up to the CRA



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DEDICATION



To my beautiful wife, Nicole, and my entire family who have patiently been along side me throughout all the craziness of my career fighting to make the Canadian tax system a little more fair for the taxpayers.

Thanks for everything ... I know that at times, dealing with me has been very taxing.



INTRODUCTION



For those who follow the tax golden rule: If a taxpayer always files his or her tax returns honestly, perfectly, and on time, keeps all supporting documentation, and pays all his or her taxes when due, the person need not fear the Canada Revenue Agency.

For all others: Beware.

Canada's tax laws are very powerful and the way in which these laws are applied may have very serious consequences for a taxpayer. The outcome is sometimes fair, and sometimes not. And due to the great power bestowed upon the Canada Revenue Agency (CRA), there is a great possibility that tax laws can be used to oppress taxpayers.

Lord Denning, a famous and influential English judge, said of tax legislation that it is "... drawn so widely that in some hands it

might be an instrument of oppression. It might be said that: honest people need not fear: that it will never be used against them ... that is an attractive argument, but I would reject it. Once great power is granted, there is a danger of it being abused."

Recently I spoke to a taxpayer who, like many other Canadians, operated a small corporation with three employees who worked with the owner and his wife. The corporation performed oil field consulting services in the

oil sands of Northern Alberta for 15 years. The corporation had a tax debt of approximately \$200,000 and with its current contracts it would have been able to pay the entire debt off within a year or less. Unfortunately for the corporation, its three employees, and its husband and wife owners, the cry for help came too late. By the time I provided a preliminary consultation, the corporation was in the midst of closing down.

Despite the fact that the corporation had been generating a profit of more than \$25,000 per month after all employees and expenses were paid, and would have easily and quickly been able to pay off its tax bill, a number of things had gone wrong. The tax debt had been accumulating over a number of years, but the corporation was able to weather and survive various recessions which had caused many other businesses in the oil industry to fail. With the sharp rise in oil prices, the corporation was finally gaining strength and over the year prior to my consultation with the taxpayer, the corporation had been able to reduce its tax debt from \$425,000 to less than half of that; however, this was not good enough for the Canada Revenue Agency (CRA). The CRA wanted the debt paid off in full and the collections agent would not wait any longer.

Within a one-week period, the director of the corporation had discovered that the corporate bank account was frozen, and that all remaining funds had been taken by the CRA. Further, he learned that the CRA would be giving him 30 days in which to pay off the debt in full. Unfortunately because the corporation was in trouble with the CRA, the banks would not lend any funds to pay off the debt, and the director of the corporation was forced to comply with a number of harsh demands made by the CRA in order to arrange a payment plan for the outstanding debt and to have its bank account unfrozen.

These demands included providing bank statements and credit card statements for the three previous months as well as financial records, an accounts receivable listing, and the names of all corporate clients. The taxpayer was told that this information had to be provided in order to prove to the CRA that the corporation could afford the \$20,000 per month payment plan that had been proposed by the director. The collections agent promised that the information from the taxpayer would only be used to verify income and determine ability to pay, and the taxpayer thought it would be best to fully comply with the request. By cooperating with the CRA, the taxpayer provided information which was ultimately used against the corporation.

By the time I had spoken to the taxpayer, the CRA had already send a letter to each of the corporation's five clients advising them that if they owed any money to the corporation that they were required by law to remit it to the CRA instead of to the corporation. This effectively blocked any payments to the corporation from its clients.

Within days of being provided with the client list, the CRA had effectively stopped the flow of all funds to the corporation, leaving it without the means to pay employees or purchase fuel for its trucks. Further, these letters damaged the corporation's reputation severely within the industry, and out of fear that the corporation could no longer deliver services effectively, four of its five contracts were cancelled within days. By the time the CRA had released the corporate bank account, there was no more business to be had, there were no employees left to fulfill the remaining contract, and there was a husband and wife team who had already remortgaged their home in order to help their business during the rough times.

Within a few weeks the couple started missing mortgage and vehicle payments, and within a few short months they lost their home and one of their two vehicles, and had to sell virtually everything they owned in order to survive.

The corporation was forced to shut down, and since the tax debt was primarily GST and payroll source deductions, as directors of the corporation, the couple was faced with the director's liability claims causing a brand new collections agent at the CRA to pursue them personally for the debt.

Ultimately after the corporation closed, the taxpayers obtained employment working for companies in their industry. But after they were personally assessed for the corporation's debt, and after their wages were garnished by 40 percent to pay the CRA, they had no choice but to declare personal bankruptcy and end the torment.

At the end of the day, following the freezing and emptying of the corporate bank account, which resulted in approximately \$13,000 of the tax debt being paid, and following the closure of the corporation, the loss of five jobs, and the personal bankruptcies of the two directors, the CRA never received another dime of the \$200,000 in outstanding taxes, which otherwise would have been paid within the year.

This is not a unique story. This happens every day in every province and territory across Canada.

In order to understand the CRA, you must familiarize yourself with the structure of the CRA, the mechanics of filing taxes, and the complexities of dealing with the CRA's employees. Without understanding the basics, many of which are outlined in this book, you should not expect to succeed in defending yourself against the CRA. However, understanding the basic mechanics of the CRA is not enough. What

most people do not realize, and why many people find it frustrating to deal with the CRA, is that in order to really understand it, you must realize that while it is governed by laws and rules, it is run by people and their personalities which are not always consistent or fair.

To understand the CRA is to understand how its employees operate. Despite how logical you think you are, and despite how much faith you have in the Canadian government, if you have not dealt with the many hundreds of collections agents within the CRA, you will have virtually no chance at predicting what they will do next or how they are motivated. This is because they don't operate the way collections agents in the real world operate. They do not receive a commission for taxes collected, and thus by and large, do not really care if the tax debt is actually collected by the CRA. Instead, a great many collections agents are more concerned with closing a file quickly than they are concerned with collecting the debt — even if it means forcing a taxpayer into bankruptcy.

To be able to understand the CRA employees, and in order to effectively deal with the agency — especially the collections agents — you must leave traditional logic behind. You need to get into the mindset of the public servant on the other end of the phone who perhaps aspires to be a manager one day, and wants a pay increase each year, but wants to go home at 4:30 when his or her shift is over.

You must think about what it is like to work for a company that has a virtually unlimited budget and will always have the money to pay its employees regardless of how much money the employees earn for it or how the economy is doing. Consider what it is like to work for a company that always has money for its payroll and a company that could never go bankrupt or close down. It's a company where employees can make whatever promises they want to the

clients, but invariably refuse to put anything in writing so they can routinely break those promises and not suffer any consequences. Consider it a company that rewards employees for closing files rather than earning money, and allocates more money towards the employees' budget for each conviction of taxpayers in

criminal court for failing to file a return on time. In essence, it is a company that is so very different from any company in the country that its employees have lost touch with how a real business operates. When you understand all of this, you will begin to understand the CRA.

1

INTRODUCING THE CANADA REVENUE AGENCY (CRA)



Section 91(3) of the *Constitution Act*, 1867, provides the ability for the federal government to tax, and section 92(2) provides that ability for the provinces to tax. It was not until 1917 that the federal government started to apply an income tax, which was imposed to help finance World War I. At the time of the war, more than 90 percent of tax revenues were from indirect taxes; a number which has decreased sharply over the years. Today, income tax provides the greatest component of taxes collected by the government, and it has never disappeared from the Canadian landscape.

The Canada Revenue Agency (CRA) is a federal agency responsible for administering the tax laws of Canada such as the *Income Tax Act* and the *Excise Tax Act*, as well as the laws of many provinces and Aboriginal governments.

Formed pursuant to the *Canada Revenue Agency Act*, the CRA is the backbone of taxation in Canada, without which nobody would file returns or pay taxes and the entire country would grind to a halt. Our airports and borders would stop operating. Our soldiers wouldn't be paid to protect our country, and the police wouldn't be paid to patrol our cities. In short, the CRA is a necessity, and in order to achieve its mandate of administering the taxation system, it has been given very broad powers to get the job done.

Besides the administration of the domestic tax system, the CRA is the body that is involved with the administration of tax agreements between Canada and various other countries. It also administers various types of social benefits and incentive systems such as the Canada Pension Plan and Employment Insurance, and it oversees the registration of Canadian charities.

1. Your Relationship with the CRA

Taxpayers have a complicated relationship with the CRA. When it comes time to pay their taxes, taxpayers are not too pleased with the CRA; however, when taxpayers receive benefits or tax refunds, attitudes quickly change for the better. The relationship is complicated by the fact that there are certain obligations that taxpayers have towards the CRA, which they may not always wish to respect, and in turn there are certain rights that taxpayers have when dealing with the CRA — rights the CRA routinely overlooks and violates.

1.1 Your rights

Some of the taxpayers' rights come from statutes such as the Canadian Charter of Rights and Freedoms and the *Income Tax Act*. Certain other rights come directly from the Taxpayer Bill of Rights.

Put forth in 2007, the Taxpayer Bill of Rights includes a series of 15 rights that in theory (and not always in practice) are supposed to be guaranteed to each taxpayer. Some of these come directly from statute, such as the right to relief from interest and penalties that arise due to extraordinary circumstances, while other rights, such as the right to expect the CRA to be accountable, are service-related rights, complaints about which are overseen by the Taxpayers' Ombudsman.

According to the Taxpayer Bill of Rights poster available from the CRA, you have the right —

- to receive entitlements and to pay no more and no less than what is required by law;
- to service in both official languages;
- to privacy and confidentiality;

- to a formal review and a subsequent appeal;
- to be treated professionally, courteously, and fairly;
- to complete, accurate, clear, and timely information;
- as an individual, not to pay income tax amounts in dispute before you have had an impartial review;
- to have the law applied consistently;
- to lodge a service complaint and to be provided with an explanation of the CRA's findings;
- to have the costs of compliance taken into account when administering tax legislation;
- to expect the CRA to be accountable;
- to relief from penalties and interest under tax legislation because of extraordinary circumstances;
- to expect the CRA to publish its service standards and report annually;
- to expect the CRA to warn you about questionable tax schemes in a timely manner; and
- to be represented by a person of your choice.

1.2 Your obligations

Simply put, the obligations of a Canadian taxpayer are to respect tax legislation and do all the things required by such legislation and by the CRA in the time frame required. This means that taxpayers must file returns and pay their taxes when required to do so, and cooperate with the CRA's requests for information during the course of an audit or investigation, unless the investigation is criminal in nature, in

which case the taxpayers may avail themselves of the Canadian Charter of Rights and Freedoms against self-incrimination and unreasonable search and seizure.

As long as Canadian taxpayers honestly and diligently discharge their duties to the CRA (which includes keeping all documents for the CRA if that time comes), they usually have nothing to fear. However, if a taxpayer runs into trouble, or has a fire that destroys his or her documents, he or she may be in for a rough ride — regardless of how honest and diligent he or she has been.

2. What the CRA Knows about You

The CRA knows a great deal about taxpayers because it keeps extensive and detailed records. Like a giant computerized elephant, the CRA does not forget recorded taxpayer information, and as its databases and computer systems become more sophisticated over time, it is better able to use this information to its benefit — often to the taxpayers' detriment.

A taxpayer must trust that the CRA will use every piece of information at its disposal against a taxpayer. When it comes time to freezing a taxpayer's bank account, the CRA remembers each payment made and the financial institution from which the cheque was drawn; when it comes time to granting (or denying) a request for taxpayer relief, the CRA will be able to point to that time 20 years in the past where the taxpayer was late on filing his or her return by a day, and will use this delinquency as a basis to deny relief which theoretically is guaranteed as a right.

Some personal information that the CRA has in its database comes directly from taxpayers. Every time you file an income tax return with the CRA, the information from your returns becomes part of the permanent record.

If you are audited, the CRA learns more about you and adds this information to its database. If you speak to the collections officers, they take detailed notes which are also added to your record. The CRA knows when you have made payments, the promises you have broken, and the financial institution you use to pay your taxes.

The CRA also obtains information passively from a taxpayer's employer. For example, whenever an employer provides a taxpayer with a T4 slip, the employer also sends that information to the CRA. So whether or not you have filed your tax return, the odds are that the CRA knows how much income you have earned.

Through information requests and periodic checks of taxpayer credit reports, the CRA can obtain a whole host of additional information about a taxpayer, his or her assets, and his or her financial transactions from employers, clients, financial institutions, accountants, and other third parties. All the information that the CRA has obtained, whether passively or actively, will be used to ensure that it has extracted the right amount of taxes from a taxpayer.

While the CRA is fairly diligent in its information collection and processing, in some cases, the CRA has incorrect information about a taxpayer, and in the course of an audit or an objection to a reassessment, the taxpayer may be put in the position where he or she has to use his or her own documentation to prove the CRA is wrong. When reassessments or assumptions of the CRA auditors are incorrect, a taxpayer's ability to produce correct documentation can greatly impact his or her financial future, and in the case of a business, its success or failure. As such, it is imperative that both individuals and business owners are in the position to properly dispute incorrect reassessments by producing the necessary documentation.

According to item one of the Taxpayer Bill of Rights, taxpayers have the right to receive entitlements and pay no more and no less than required by law. However, if the CRA has the wrong information, and attempts to assess taxpayers for more than is required by law, taxpayers must be ready to challenge the CRA's interpretation and application of the facts and law to ensure that they are not paying more than their fair share. This is the burden of the taxpayers, and once the CRA assesses taxes, they are assumed to be correct unless it is proven otherwise. If a taxpayer waits too long to make the challenge, the assessment is set in stone and is not subject to being changed — no matter how incorrect it is.

It must be kept in mind that irrespective of the fact that the CRA is assumed to be correct, notices of reassessment which appear to be incorrect are not necessarily an indication that the taxpayer, or his or her accounting professional, has done something wrong. Often the CRA makes a mistake, which stems from a faulty assumption or incorrect documentation about a taxpayer. In order to uphold a taxpayer's right not to pay more than he or she is required to by law, it is crucial to understand the CRA's system for maintaining information on taxpayers (see section 2.1).

In 2009 and 2010, the CRA audited approximately 380,000 small- and medium-sized businesses and issued notices of reassessment requiring these businesses to pay \$2.1 billion in additional tax, interest, and penalties. In many cases, these reassessments could have been challenged, and the tax payable could have been reduced by providing the proper documentation.

While most returns are processed by the CRA without manual review, as to ensure the taxpayer's timely receipt of notices of assessment, it must be kept in mind that every return

is in fact screened by the CRA and is susceptible to later review. Amazingly, the processing time is usually between two to six weeks for the 25 million returns filed yearly in Canada.

Practically every tax lawyer who has dealt directly with the CRA will agree that unless dealing with the simplest of issues, resolution is never simple. There are factors that aggravate the complexity of dealing with the CRA, such as understanding the *Income Tax Act* (ITA), a very complex statute, as well as dealing with the CRA. The CRA is comprised of a massive administrative body, which can make it unreasonable for a self-represented taxpayer to expect a simple resolution to his or her tax problems — especially without proper record keeping.

The following sections discuss the types of information the CRA collects about the taxpayers.

2.1 Information slips

Information slips are issued and prepared by payers, employers, and administrators, and are required for Canadian income tax returns to report many types of income, including benefits that one has paid during a tax year. Typically, taxpayers receive three copies of each information slip — one copy must be submitted with their federal tax return, the second copy must be submitted with their provincial or territory tax return, and the third copy must be kept as a record by the taxpayer.

The following are the various types of information slips:

- **T3 — Statement of Trust Income Allocations and Designations:** This slip is issued by trustees and financial administrators to advise the CRA and the taxpayer about earned income for the year from business trusts, estates, and mutual funds in non-registered accounts.

- **T4 — Statement of Remuneration Paid:** This slip is issued by employers to employees to advise the CRA and the taxpayer of employment income the taxpayer earned during a tax year and the amount of income tax that was deducted at the source. Employment income includes bonuses, commissions, salary, tips, vacation pay, taxable allowances, value of taxable benefits, honorariums, and payment in lieu of notice.
- **T4A — Statement of Pension, Retirement, Annuity, and Other Income:** Employers issue this slip to employees to inform the CRA and the taxpayer of earned income from a given tax year, including the amount of income tax deducted. It may further be issued by corporate directors, pension administrators, trustees, or estate executors or liquidators.
- **T4A(OAS) — Statement of Old Age Security:** This slip is issued by Service Canada to advise the CRA and the taxpayer of Old Age Security income earned by the taxpayer during a tax year, including the amount of income tax deducted.
- **T4A(P) — Statement of Canada Pension Plan Benefits:** This slip is issued by Service Canada to advise the CRA and the taxpayer of Canada Pension Plan (CPP) benefits received during a tax year, including the amount of income tax deducted. CPP benefits include child benefits, retirement benefits, death benefits, and survivor benefits.
- **T4E — Statement of Employment Insurance and Other Benefits:** Service Canada issues this slip to advise the CRA and the taxpayer of Employment Insurance benefits paid to the taxpayer for the previous tax year, including any income tax deducted, and any amount paid toward an overpayment.
- **T4RIF — Statement of Income from a Registered Retirement Income Fund:** This slip is issued by financial institutions to advise the CRA and the taxpayer of monies received out of one's Registered Retirement Income Fund (RRIF) for a given tax year and how much tax was deducted.
- **T4RSP — Statement of RRSP Income:** This slip is issued by financial institutions to advise the CRA and the taxpayer of monies withdrawn or received from one's Registered Retirement Savings Plan (RRSP) for a given tax year and how much tax was deducted.
- **T5 — Statement of Investment Income:** This slip is issued by organizations which pay royalties, dividends, or interest, in order to advise the CRA and the taxpayer of investment income earned for a given tax year. Investment income includes insurance policies, interest earned from bank accounts, annuities, bonds, and any account with a broker or investment dealer.
- **T5007 — Statement of Benefits:** Issued by agencies or bodies to report payments for workers' compensation benefits or social assistance.
- **RC210 — Statement of Advance Payments for Working Income Tax Benefit:** This slip is issued by the CRA to advise the taxpayer of any working income tax benefit payments that were made to the taxpayer during the year.
- **RC62 — Statement of Universal Child Care Benefit:** Issued by Human Resources and Skills Development Canada,

this slip outlines the total Universal Child Care Benefits paid to the taxpayer during a tax year and any repayment of benefits from a previous year.

2.2 Information arising from “requests” for information

In order to accomplish audit and enforcement activities, the CRA has been provided with broad rights to review taxpayers’ books and records. Information is not limited to access of information merely within the taxpayers’ possession; so long as it is within the course of conducting the audit or inspection, it is possible that the CRA may seek relevant information in the possession of others.

To that end, the CRA has been provided by law with substantial authority to access all types of documents. This broad authority includes access to documents of third parties, auditors’, and accountants’ papers that may be relevant to the taxpayer’s books and records, or to the enforcement or administration of relevant tax legislation. It is important to note that although this authority is broad, it is still subject to important exceptions, such as the solicitor-client privilege or relevant litigation privilege.

According to the CRA’s policy statement (available on the CRA website), the collection of information by officials is done in the least intrusive and most direct manner, but in practice this is not always the case. Oftentimes auditors will attempt to collect information from the source that is most likely to provide it to them the fastest — regardless of any inconvenience, cost, or embarrassment to the taxpayer.

Typically, officials narrow their requests to documents that are within the scope of review, and will generally communicate directly with the taxpayer to retrieve relevant documents or records. Such information is often only sought

from third parties when the taxpayer is not or has not been cooperative in providing the information.

2.3 Information from other countries

Canada has agreements with numerous other countries, which prevent the double taxation of income otherwise subject to tax in both countries. These agreements (i.e., tax treaties) contain elaborate rules to determine which country gets to tax the income, and what part of the income the country may tax.

Besides preventing double taxation and establishing a country’s turf in terms of ability to tax a given taxpayer, these tax treaties also provide for the exchange of information between treaty partners. At the time of writing, in Canada there are currently 89 tax treaties in force, 10 more which have been signed but are not yet in force, and 2 more under negotiation. What this means for a taxpayer, is that there are potentially 101 countries which can be called upon by the CRA to provide any information it has on the taxpayer’s dealings in that country. This includes any financial transactions and records, income, pension earnings, and any other relevant information necessary for the CRA to enforce domestic taxation laws. Any income that one has earned or stashed in these countries is subject to being divulged to the CRA voluntarily, or as a result of a request. Further, some of the treaty countries will even cooperate with the CRA’s requests to obtain payment owed by a taxpayer and may seize assets and bank accounts held abroad by the taxpayer.

2.4 Information from financial institutions

To the extent possible, financial information is collected directly from the taxpayer, but in cases where such information is not made available by the taxpayer, rest assured the CRA

will obtain it directly from a financial institution. Canadians should take notice that any and all information about a taxpayer that is being held by a financial institution is subject to being obtained by the CRA.

There are absolutely no privacy rights between the taxpayers and their financial institutions. It is of relative ease for the CRA to obtain any financial information it requires from a financial institution.

2.5 Information from tax returns of third parties

The CRA obtains information about taxpayers from information returns filed by third parties with respect to specific transactions. It then compares and verifies the information received by the third parties to ensure the taxpayers have accurately reported on their tax returns. This system of match and detect is frequently used to detect any non-filing of returns. Information returns predominantly deal with —

- partnerships carrying on business in Canada;
- employee paid remuneration;
- corporate security transactions if the corporation deals or trades in securities;
- financial institutions payment of accrued bond interest;
- offshore investments, including foreign affiliates, non-resident trust distributions or transfers, and designated foreign property (e.g., estate, portfolio investments, bank accounts) of Canadians if the total property value exceeds \$100,000; and
- interest, dividends, or royalty payments to Canadian residents, and other payments to non-residents of Canada.

2.6 Information gathered from third parties about unnamed taxpayers

Sometimes the CRA launches an investigation into a group of people it doesn't even know the names of yet. It used to be a well-established law that if the CRA wanted information about known taxpayers, it could simply issue a requirement to produce such information and serve it upon those third parties it believed would have the information. However, until recently, the CRA was not investigating groups of unknown people so the law on the matter had not yet developed.

One case that was the focus of a lot of public attention involved the CRA's demands for eBay Canada to produce records and documents relating to Canadian "Power Sellers." The CRA wanted to verify whether these Power Sellers, who have notoriety on eBay for high sales volumes, had reported all of their eBay income on their returns. Based on the decision in a similar case where the CRA had obtained a court order requiring the Greater Montreal Real Estate Board to provide information regarding real estate agent members, eBay ended up providing the information requested.

In the Greater Montreal Real Estate Board case, the CRA initially obtained a court order for a list of the names of all the agent members including a list of properties sold by each. The CRA was investigating what it believed was widespread failure of real estate agents to report all their commissions. Rejecting the challenge mounted by the Real Estate Board, the Federal Court of Appeal noted that section 231.2 of the *Income Tax Act* permitted the CRA to conduct "fishing expeditions" as long as the necessary court orders or warrants were obtained.

2.7 Information gathered from the taxpayer

Information is gathered from the taxpayers at the time of filing, and at the time of any subsequent review of their returns.

Taxpayers are required to file a return if they owe any taxes to the CRA for the relevant reporting period, or if they have been requested to file by the CRA. There are also various other reasons why a taxpayer may be required to file a return, which are discussed in Chapter 3.

If there is no tax payable, and if a taxpayer is not caught by one of these reasons, then no return needs to be filed, and thus the CRA will not gather any information from the taxpayer for that given year — that is unless the CRA performs an audit for that year.

According to section 150(1) of the *Income Tax Act* (ITA), annual tax returns must be filed by taxpayers in the prescribed form, which means providing the CRA with certain data points (i.e., each figure in a tax return is a data point, such as CPP contributions and taxes deducted at source). Filed returns should include documentation to support relevant income and expenses; however, detailed books and records themselves are not to be included with the filing. Section 230 of the ITA explains that although not all information is required to be filed, it is essential that the taxpayer maintain these books and records of accounts in case of later review.

Once the returns have been provided by the taxpayer, and either before or after issuance of the initial Notice of Assessment, the CRA may seek further information regarding the taxpayer's tax obligations. The CRA may simply request additional information or may audit the taxpayer on either a narrow or broad

basis. Depending on the type of audit, the auditor may focus narrowly on specific issues, or investigate on more of a large-scale review, auditing all aspects of the taxpayer's finances, including personal and business finances.

3. Confidentiality

When the Minister obtains filed returns or other relevant information, confidentiality prevents the use of this information, unless specifically for the administration and enforcement of the *Income Tax Act* (ITA). Confidentiality of taxpayer information within the income tax collection system in Canada is paramount.

The CRA is prohibited in all but certain specified instances from disclosing taxpayer information, according to section 241 of the ITA. The Supreme Court of Canada, in *Slattery (Trustee of) v. Slattery* [1993], has commented on the purpose of section 241 as follows:

“Section 241 involves a balancing of competing interests: the privacy interest of the taxpayer with respect to his or her financial information, and interest of the Minister in being allowed to disclose taxpayer information to the extent necessary for the effective administration and enforcement of the *Income Tax Act* and other federal statutes referred to in s 241(4). Access to financial and related information about taxpayers is to be taken seriously, and such information can only be disclosed in prescribed situations. Only in those exceptional situations does the privacy interest give way to the interest of the state.”

Section 241 of the ITA limits the scope of confidentiality to taxpayer information only. Taxpayer information includes any type of information, so long as it relates to the taxpayer, that has been created for or by the Minister for the purposes of the ITA or is prepared from

such information but does not include information that does not directly or indirectly reveal the identity of the taxpayer to whom it relates.

Essentially, the CRA is prohibited by the ITA from knowingly using taxpayer information for purposes other than for the course of administrative or enforcement under the ITA, including prohibition against knowingly allowing access to or knowingly providing taxpayer information to any person. Agency officials who are in breach of this confidence are subject to penalties under subsection 239(2.2) of the ITA. Penalties may include imprisonment of up to 12 months, and/or fines of up to \$5,000.

Moreover, according to subsection 241(2) of the ITA, agency officials cannot be compelled to produce or provide any evidence relating to a taxpayer for use in a non-tax related legal proceeding.

Re *Glover v. Glover* related to a case in which Mrs. Glover was awarded the custody of her two young children who were then removed from the home by Mr. Glover. In an attempt to track down Mr. Glover, a judge of the Supreme Court of Ontario ordered the CRA to provide the Court with Mr. Glover's address. Upon an appeal of the initial decision, the Court of Appeal of Ontario concluded that Mr. Glover's address was necessary to the CRA and an integral part of the information received by the CRA. Thus according to law, this information could only be provided by the CRA to persons authorized by law to receive it. According to the court, neither the Supreme Court of Ontario nor Mrs. Glover was such a person under section 241, and thus the CRA was prohibited from providing it to them.

Unlike the case in *Re Glover v. Glover*, a taxpayer's information is not always protected by law. In fact, the Minister is authorized by

the ITA to break confidentiality by disclosing taxpayer information in certain instances, such as the administering of criminal justice, government programs, or of the ITA itself. This disclosure occurs when the taxpayer's privacy interest is outweighed by the public interest in administering justice. According to section 241 of the ITA, disclosure of taxpayer information is permitted when related to —

- imminent danger of physical injury or death to any individual,
- criminal proceedings,
- the transfer of information from and between the government, and
- legal proceedings that are related to the administration enforcement of the ITA.

An interesting exception to highlight under subsection 241(3) is in connection to criminal proceedings when commenced by the laying of an "information" (i.e., in order to prosecute, this document provides information about the crime the person is suspected to have committed) or a "charge." In this exception, the CRA cannot initiate the criminal proceeding by using confidential information; the CRA must base its case on independently obtained evidence. Only once an actual charge has been laid, the proceedings initiated, and the need for confidential information to substantiate the case, may confidential information then be used.

For example, this exception would apply when the CRA suspects that a taxpayer may be a drug dealer. In this case the CRA would be prevented from providing information to the police that would result in laying charges for the crime. However, if the police had already charged an individual with this crime, the CRA would be permitted to provide personal information that may assist the Crown in making its case against the taxpayer.

Taxpayers' are not without hope when compelled to disclose confidential tax information in a criminal proceeding. Instances have shown taxpayers successfully stopping disclosure by the CRA by invoking section 11 of the Charter of Human Rights. This is shown in *Tyler v. M.N.R.* [1991], where the taxpayer was facing charges both criminally and under the *Narcotic Control Act* when the Minister required the taxpayer to hand over confidential tax information, including statements of assets, liabilities, income, and expenses, pursuant to subsection 231.2 of the ITA. Although the information was required by the CRA, it intended to communicate this information to the police while the charges were outstanding. This allowed for the taxpayer to successfully prevent the release of such information, arguing that providing such information would deny him the right to silence under section 11 of the Charter of Human Rights, which says that a person who has been charged of an offence has the right "not to be compelled to be a witness in proceedings against that person in respect of the offence." This would appear to include having to provide information to the CRA which in turn could be incriminating or provide evidence against oneself which could be used in court. In this case, an order was issued by the Federal Court of Appeal to prohibit the CRA from releasing information or communicating with the police regarding the confidential taxpayer information received in the statements.

3.1 Third party confidential information

Competing interests exist with respect to third party confidentiality rights in contrast to the taxpayer's right to access of information from the CRA. There is a strong public policy interest in guaranteeing that taxpayer information remains confidential, hence the balance of these interests often weighs in favor of the taxpayer.

Sometimes, when a taxpayer needs to access the information of another party in order to make his or her case, a balancing test must be performed to see if it is justifiable to release the information of a third party for the benefit of another taxpayer's case.

For instance, in *MNR v. Huron Steel Fabricators* (London), the trial judge used the balancing test to determine if the public interest would be harmed by the disclosure of tax returns by a company which was not party to the action. The court's decision that no public harm existed withstood appeal. Similar decisions have been found when courts determine that the public interest is best served by production of information.

Other cases have provided additional safeguards for taxpayers by further limiting disclosure, such as in the case of *Amp of Canada Ltd. v. The Queen*, where the court limited the use of the competitor's materials by imposing restrictions. The court limited the use of the competitor's information only for the period of litigation; the disclosure was only to be made to expert witnesses and counsel; and the materials were to only be used for the purposes of the litigation.

While there have been cases where confidential information has been disclosed to the CRA, the opposite is also true. Take for instance the case of *Crestbrook Forest Industries Ltd. v. The Queen*; the corporate taxpayer sought from the CRA during a discovery request, the production of specific information that the CRA had relied on in the tax assessment of the corporation. The source from which the CRA had obtained the information was from a survey.

The participants of the survey were told that providing information during the survey was entirely confidential. Hence, it would be

contrary to public interest should confidentiality be broken by providing information obtained under the promise of confidentiality. As such, the Federal Court of Appeal prohibited the production of such information. The court explained in this case that, “where the Crown has obtained information in confidence from

taxpayers on a voluntary basis and for a specific and defined purpose, it may not subsequently make use of that information for a different purpose, namely the reassessment of other taxpayers, in circumstances where such use will almost inevitably result in a breach of the Crown’s undertaking of confidence.”