

COMMUNIQUÉ

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Introduction

The Canada Revenue Agency (CRA) carries out a range of service, education, audit and enforcement activities to ensure compliance with tax laws and to maintain the integrity of Canada's self-assessment tax system. Verification of information relating to a person's liabilities or claims under the Acts that the CRA administers is a critical element of ensuring compliance. Verification often requires obtaining information and documentation from taxpayers, registrants, and third parties.

Policy Objectives

The purpose of this policy is to document the CRA's approach to acquiring information and documentation for the purpose of administering the *Income Tax Act* (ITA) and *Excise Tax Act* (ETA). The same approach applies to other Acts administered by the CRA, subject to their specific provisions. This policy provides direction and guidance to ensure national awareness and consistency in the process of acquiring information. In this regard, the policy also provides an overview of the legislative provisions that authorize CRA officials to obtain information and documentation from taxpayers, registrants and third parties.¹

¹ This policy cancels and replaces the Guidelines on Tax Planning Documents and Access to Accountants' Records dated December 1995.

Policy Statement

CRA officials are authorized to inspect, audit, review or examine:

- the books and records of a taxpayer;
- any document of the taxpayer that relates or may relate to the information in a taxpayer's books and records; and
- any document of any other person that relates or may relate to the information in a taxpayer's books and records

that may be relevant to the administration or enforcement of the ITA, ETA, and other relevant legislation.

CRA officials are authorized to request and receive any documents needed to conduct a proper inspection, audit or examination, subject to solicitor-client or litigation privilege.

CRA officials have the legal authority to request the relevant documents at any time during an inspection, audit or examination for any purpose relating to the administration or enforcement of the ITA, Part IX of the ETA and other relevant legislation. The term "any purpose" includes acquiring information for the purpose of substantiating the taxpayer's position on a specific issue, and identifying audit issues and concerns with regards to tax at risk.

Application and Authority

This policy applies to officials of the CRA who have the authority to examine the books and records that are needed in the administration or enforcement of the ITA, the ETA and other relevant legislation.

This policy applies in the administration of civil matters only. This policy does not apply to matters under criminal investigation.

This policy does not apply to the acquisition of information from provinces or territories and their agencies and partners for the purpose of fulfilling CRA's obligations under Tax Collection Agreements².

In the context of this policy, an "official" is a person who is authorized by the Minister of National Revenue to perform their duties in accordance with sections 231.1 to 231.5 of the ITA, sections 288 to 292 of the ETA and as set out in other relevant legislation.

In the context of this policy, "any other person" includes tax professionals and tax preparers, and "any document" includes accountants' and auditors' working

² This includes any Memorandum of Understanding.

papers that relate to a taxpayer's books and records and that may be relevant to the administration or enforcement of the ITA, ETA, and other relevant legislation. Accountants' and auditors' working papers include working papers created by or for an independent auditor or accountant in connection with an audit or review engagement, advice papers, and tax accrual working papers (including those that relate to reserves for current, future, potential or contingent tax liabilities).

Requesting Information

Provisions in the ITA, the ETA and other relevant legislation provide CRA officials with an array of legislative compliance tools to request or require information for verification and administrative purposes. Application of the appropriate tool is the responsibility of the official and will be done based on the situation of each case. The Annex to this policy discusses more fully the compliance tools in the ITA, ETA and other relevant legislation.

Officials' exercise of these tools will be guided by the CRA's belief that tax administrations can achieve more effective and efficient relationships with taxpayers and their intermediaries by basing CRA actions on an understanding of the taxpayer's business, impartiality, proportionality, openness and responsiveness. By doing so, the CRA's expectation is that taxpayers will base their relationship with the CRA on co-operation and trust. The CRA believes that establishing a constructive relationship between the CRA and taxpayers requires the active commitment of both parties.

Consistent with Canada's self-assessment system of taxation, compliance with tax laws is primarily an issue that should be resolved between the CRA and any specific taxpayer. Accordingly, officials will always attempt to collect information from the most direct source in the least intrusive manner possible. Officials will discuss the issue under review with the taxpayer and afford the taxpayer the opportunity to provide additional factual or relevant information on the issue. This means that officials will target their requests to documents and records (electronic or paper) that, in their view, are necessary for the scope of their review.

Information from third parties will be sought when the taxpayer cannot or will not provide this information, when it is needed by officials to determine the CRA's position on an issue and in accordance with the scope of the review. For example, since accountants' and auditors' working papers relate to a taxpayer's books and records, they may be necessary, although not routinely required, in the determination of a taxpayer's liabilities and entitlements. Officials may narrow the scope of their review, or expand the scope, depending on the existence and nature of compliance issues identified.

Officials who request information from taxpayers, registrants and third parties should always take a comprehensive view of the legislation involved. A “comprehensive view” in the context of this policy can be defined as an understanding of the various legislative tools available and how they operate in conjunction with one another.

Officials will also consider five key principles when evaluating the need to request information from a taxpayer, a registrant or a third party: Legislative Authorities, Intent, Relevance, Transparency and Impartiality.

Legislative Authorities

The CRA’s objective in conducting an inspection, audit or examination is to ensure compliance with tax laws. The applicable tax legislation provides CRA officials with the fundamental legal authority to obtain the information needed to carry out these activities on a timely basis.

The annex to this policy on Compliance Tools provides a brief overview of each of the major legislative authorities that an official may rely upon in acquiring information and documentation from taxpayers, registrants, and third parties. The annex also provides the general context in which the legislation will be used to inspect, audit or examine the books and records of a taxpayer or registrant, and documents of a third party.

Intent

The intent of an official, in terms of the scope of an audit or review, may expand or decrease depending on what facts are determined and what information is provided during the process. As an example, during an audit, the intent may change from carrying out a restricted or limited audit to conducting a full-compliance audit. The authority to expand an audit as necessary has been confirmed by the Courts³.

Officials will clearly communicate their intent to the taxpayer or registrant when requesting information for the purpose of activities such as audit or collections. At most, communications with third parties will be limited, where necessary, to identifying the taxpayer that is the subject of the audit or collection procedures, subject to any authorization granted the third party by the taxpayer.

³ *David Ludmer, Brian Ludmer, Cindy Ludmer and Ludco Enterprises Ltd. v. Minister of National Revenue* (MNR) (93 DTC 1351 at 1423)

Relevance

Acquiring appropriate information is critical to a review or audit. It has to be clear to the official conducting a review or audit that the information sought may be relevant to the audit or review being conducted. The determination of what may be relevant is a matter for the official to decide based on the scope of the review being conducted.

The Courts have recognized that the relevance of documents requested by an official can often be difficult to determine until the official has had an opportunity to examine them.⁴

Transparency

Transparency is central to a fair and efficient audit or review.

Officials will clearly identify the transaction, claim or issue they are reviewing as early as possible to the person whose affairs are under review. This will provide transparency to the process and enable the timely production of relevant information and documents.

Similarly, the progress of an audit or review will depend on the transparency and cooperation of the taxpayer, registrant or third party. Clear and open communication from the taxpayer, registrant or third party is beneficial to the compliance process.

Transparency is also paramount with respect to the CRA obtaining judicial authorization or a compliance order from the Court. CRA officials have an obligation to provide full and frank disclosure of all of the facts relevant to a case, including those that may be unfavourable to the CRA's position.

Impartiality

Officials will be objective when reviewing any information or documentation obtained during an audit. Officials will not be influenced by any subjective analyses, comments or opinions contained in the information or documentation reviewed.

The eventual outcome of the treatment of a specific transaction or issue will be determined and supported by the facts of the situation and in accordance with the applicable tax legislation.

⁴ *The Queen v. McKinlay Transport Ltd* (90 DTC 6243), *AGT Limited v. Canada* (97 DTC 5189)

Dispute Resolution

Taxpayers and their representatives are encouraged to discuss material differences of opinion regarding the relevancy of information being requested with the official requesting that information. Where taxpayers or representatives continue to have concerns, they are encouraged to raise the issue with that official's supervisor, and to move progressively to higher levels of management as appropriate.

The annex to this policy also discusses the legal recourse available, in terms of requests for judicial review under civil procedures in the *Federal Courts Act*, and procedures for resolving claims that involve solicitor-client privilege.

Monitoring and Evaluation

The Audit Professional Services Directorate (APSD) of the Compliance Programs Branch (CPB) is responsible for monitoring compliance with this policy and for evaluating its effectiveness through the audit quality assurance process. Monitoring and evaluation will support the ongoing development of best practices and strategies to achieve consistent application.

The APSD is also responsible for any reviews and revisions, as required, and for the development of further guidance concerning this policy.

Enquiries

To obtain further information please contact:

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Annex

Compliance Tools

In the context of this policy, compliance tools are the legislative authorities that allow an official to obtain information for inspection, audit or examination. Many of the compliance tools outlined in this policy are intrinsically connected with each other. It is essential that the official is knowledgeable on the use of each tool independently, with an understanding of the interrelationship between the tools. An official must utilize each appropriate tool with an understanding that one or more of the other tools may have to be employed to achieve compliance.

Compliance tools are powerful and comprehensive resources designed to achieve compliance with tax laws, and are to be used responsibly and with discretion. Taxpayers, registrants and third parties have an obligation to comply with the exercise of these tools, and non-compliance may result in significant consequences.

Books and Records

Taxpayers and registrants are required to keep books and records of account as described in subsection 230(1) of the ITA, subsection 286(1) of the ETA, and in other relevant legislation. The books and records must be adequate for the purpose of the pertinent legislation. Every person who carries on a business and every person who is required to file a return, claims a refund or rebate, or is required to pay or collect tax or other amounts, must keep records that enable the determination of the person's liabilities, obligations and entitlements. A record is defined in subsection 248(1) of the ITA and in subsections 2(1) and 123(1) of the ETA, and it includes a plan, among other items.

With respect to the ITA, subsection 230(2) requires registered charitable or athletic organizations, which may issue donation receipts, to keep records in order that the claims of donors and their eligibility for tax credits may be verified.

Canadian taxpayers must also keep records pertaining to their foreign affiliates.

Records must show an audit trail from the source documents to the financial accounts regardless of whether the transactions are documented on paper or electronically.

Documents include all records in electronic or computerized format, paper records, microfiche or microfilm, images and computer programs or files.

Inspections

An official is entitled to request taxpayer/registrant information pursuant to the inspection power found in section 231.1 of the ITA, in section 288 of the ETA and in other relevant legislation. Any such request is based on the scope and purpose of the review.

An official has the authority to inspect, audit or examine the books and records, discussed above, of a person for any purpose relating to the administration or enforcement of the ITA, Part IX of the ETA and other relevant legislation. This authority includes the power to examine not only the records and documents of the person under review, but also the records and documents of any other person that relate to the tax liability of the person under review, unless this documentation is subject to solicitor-client privilege.

As part of the inspection process, officials are permitted to ask questions. These questions must fall within the scope of the review.

Questions should be addressed to the person(s) who would be in the best position to have direct knowledge of the matter under review. An owner or manager or any other employee at a business premises can be asked to give all reasonable assistance and to answer all proper questions under the general inspection provisions. When a request made under section 231.1 of the ITA, section 288 of the ETA or other relevant legislation is not complied with, a requirement could be issued or a compliance order could be sought.

Large or complex cases may include thousands of transactions and numerous audit issues. Although not routinely required, officials may request tax accrual working papers. These documents are often prepared by the taxpayer's internal tax or accounting personnel but can include, where necessary, those prepared by an independent auditor or accountant.

Requirements

A requirement is a legal document that compels a taxpayer, a registrant, or third party to provide information and/or documentation as set out in section 231.2 of the ITA, section 289 of the ETA and in other relevant legislation. Non-compliance with a requirement can lead to substantive penalties and/or sanctions. A requirement is a legal demand and is enforceable in court and subject to criminal sanctions.

Before issuing a requirement, an official must consider the intention to enforce, as normally a requirement will not be issued if there is no intention to enforce the requirement in the event of non-compliance.

When issuing a requirement, an official must be able to demonstrate that the information required is, or appears to be, relevant and is sought in relation to the administration or enforcement of tax laws. It should be stated in the requirement whether the information is required for the audit of a taxpayer or for the collection of a debt due by a taxpayer.

Requirements can include questions. For example, officials may question the purpose of transactions where that purpose is relevant in determining compliance under the ITA, the ETA or other relevant legislation.

There is no time limit for issuing requirements. Officials can issue a requirement at any time, up to and including the appeals stage related to the audit process.

Requirements can be used to demand non-filers to file returns, or to require a person to keep records or books of account:

- In the case of the ITA and the ETA, the authority to demand a return is found in subsection 150(2) of the ITA and section 282 of the ETA. A requirement to file a return should only be issued after a demand to file the return has been issued in order for the penalty for a repeated failure to file under subsection 162(2) of the ITA and section 283 of the ETA to be applied where appropriate.
- The Minister may require a person to keep adequate books and records of account if an examination of existing records establishes that books and records of a taxpayer/registrant are inadequate in determining their liability or entitlements under the ITA or ETA. This authority is found under subsections 230(3) of the ITA and 286(2) of the ETA.

Requirements can also be used to acquire information regarding unnamed persons and foreign-based information; as discussed below.

Third Party Requirements Regarding Unnamed Persons

Officials must take special care and diligence if requirements under subsection 231.2(1) of the ITA or subsection 289(1) of the ETA are used to obtain information regarding unnamed persons from third parties who are not under audit. In this circumstance, judicial authorization must be obtained in accordance with subsection 231.2(2) of the ITA, subsection 289(2) of the ETA, or other relevant legislation.

Specifically, and with regards to gathering information relating to unnamed persons, after the decision in *Redeemer Foundation v. Minister of National Revenue*⁵ it can be concluded that:⁶

1. There is no need to issue a requirement under subsection 231.2(1) of the ITA, or to obtain judicial authorization under subsection 231.2(2) of the ITA, where the information being sought regarding unnamed persons relates solely to the audit of a named taxpayer.

This information can be requested under the inspection powers of section 231.1 of the ITA, and this applies even if it is possible that the unnamed persons may become subject to a review as result of the audit of the named taxpayer.

2. However, a requirement under subsection 231.2(1) of the ITA must be used, and judicial authorization as required under subsection 231.2(2) of the ITA must be obtained, where information on unnamed persons is sought from a third party who is not under audit.

Prior to the decision in *Redeemer Foundation v. Minister of National Revenue*, officials gathering information on unnamed persons related to the audit of a named taxpayer would often issue a requirement under subsection 231.2(1) of the ITA and seek judicial authorization under subsection 231.2(2) of the ITA. The Supreme Court has now clarified that the approach described in points 1 and 2 above should be used.

Compliance Order

The Minister may obtain a compliance order under section 231.7 of the ITA or section 289.1 of the ETA with respect to a failure to comply with either a request under section 231.1 of the ITA or section 288 of the ETA, or a requirement for information under section 231.2 of the ITA or section 289 of the ETA.

Compliance orders are also provided for in sections of other relevant legislation. This allows a judge to order a person to provide any access, assistance, information or document sought by the Minister. An official will seek a compliance order where the information requested in accordance with the inspection powers (discussed above) or with a requirement to provide documents or information (also discussed above), is not being provided. An official may decide to proceed directly to a compliance order where the taxpayer refuses to produce the information in response to a request under the inspection powers. The judge must be satisfied that the person was required under the applicable sections of

⁵ 2008 SCC 46

⁶ While this case dealt only with the provisions in the ITA, similar conclusions can be made with regards to the use of parallel provisions in the ETA.

the legislation to provide what was sought and be satisfied that it is not subject to solicitor-client privilege.

Failure or refusal to comply with a compliance order could result in the person being found in contempt of court, and thus subject to the appropriate consequence decided by the Court.

Where a taxpayer was prosecuted and convicted for not complying with a requirement, a compliance order can be obtained from the Court under subsection 238(2) of the ITA and subsection 326(2) of the ETA.

Foreign-Based Information Requirements

Pursuant to subsection 231.6(2) of the ITA and section 292 of the ETA, foreign-based information can be required from a person resident in Canada or a non-resident person carrying on business in Canada.

Foreign-based information is information or documents located outside of Canada, which may be relevant to the administration or enforcement of the ITA and the ETA. Obtaining this information in situations of non-compliance was once problematic since the information was kept outside of Canada. As a result, section 231.6 of the ITA, section 292 of the ETA and sections in other relevant legislation were enacted by Parliament to give the CRA necessary authority to secure any information or document that is located outside of Canada.

In order to secure the information, officials need to believe that the information being requested may be relevant to the administration or enforcement of the relevant legislation. There is no time period within which the information must be requested. Officials can issue a requirement at any time, up to and including the appeals stage of the audit process, although it is preferable to request the information as soon as possible.

Subsections 231.6(8) of the ITA, 292(8) of the ETA and sections in other relevant legislation provide a sanction whereby a person who substantially fails to comply with a foreign-based information requirement (e.g. withholds any information or document covered by the requirement), cannot use any of the foreign-based information or document in a subsequent civil proceeding. In effect, a person cannot selectively provide only information or documents which are advantageous to them, while refusing to provide the information or documents which could assist the Minister in arriving at a proper assessment. Note that the Minister does not have the ability to use a compliance order under section 231.7 of the ITA to enforce a requirement for foreign-based information, but a compliance order under subsection 238(2) of the ITA can be obtained from the court upon conviction.

Privileged Communications

The CRA cannot compel production of material that is subject to solicitor-client privilege or litigation privilege.

Solicitor Client Privilege

Solicitor-client privilege applies to communication:

- a) between a lawyer⁷ and a client, including an agent of the client;
- b) in seeking or giving legal advice;
- c) which is intended by the parties to be confidential.⁸

“Once privileged always privileged” is the general principle unless privilege has been waived; the communication remains privileged even if the solicitor-client relationship has ceased or the client has died.

The privilege belongs to and can be waived by the client; a lawyer cannot waive privilege unless instructed to do so by the client.

Inadvertent disclosure will generally not be considered a waiver of privilege. Communications may remain privileged if they are disclosed without the informed consent of the client.

There is a presumption that all communications between a lawyer and a client are privileged. However, not all communications with a lawyer are subject to privilege. For example, if a lawyer is not providing legal advice but is acting as a conduit for the transfer of funds, communications between the lawyer and the client are not privileged.⁹ Similarly, if a lawyer is not working in the capacity of a solicitor, the lawyer would not be providing legal advice, and communications between the lawyer and the client are not privileged. Solicitor-client privilege also does not attach itself to communications between a third party advisor and a solicitor if the advisor does not act as a channel of communication between the solicitor and the solicitor’s client, unless the advisor performs a function that is “essential” to the existence or operation of the solicitor-client relationship.¹⁰ Communications between an in-house lawyer and a board of directors may not be privileged if the lawyer also provides services other than as a legal advisor.¹¹

⁷ In Quebec, this includes notaries.

⁸ *Solosky v. the Queen*, [1980] 1 SCR 821 at page 837

⁹ *Ontario Securities Commission v. Greymac Credit Corp.*(1983), 41 OR (2nd) 328 (Div. Ct.); *Joubert* (1992), 69 CCC (3rd) 553 (BCCA)

¹⁰ Such an example can be located in the Federal Court Order between *Minister of National Revenue and Welton Parent Inc.* (2006 DTC 6093).

¹¹ *Pritchard v. Ontario Human Rights Commission*, 2004 SCC 31 at para. 20, 21, 27

If the document or other communication has been so widely distributed that it is no longer confidential, privilege will be lost. Documents that have been disclosed to someone other than the lawyer and client are not privileged, even if they have been provided to the lawyer for purposes of obtaining legal advice. An executed contract, a corporate minute book, a closing book, the books and records of a business are all examples of documents that would not generally be covered by privilege even if they were in the possession of a lawyer. Documents in the possession of a lawyer that are not privileged should only be sought from the lawyer where there is no reasonable alternative to obtain such documents from the taxpayer or some other person.

While the Court has confirmed there is no similar right of accountant-client privilege¹², where an accountant acts as an agent of the client for purposes of obtaining legal advice, the communications may be covered by privilege.¹³

Litigation Privilege

Litigation privilege covers documents created for the dominant purpose of litigation. Litigation privilege arises and operates even in the absence of a solicitor-client relationship; it applies to all litigants, whether or not they are represented by counsel.

The purpose of the litigation privilege is to create a “zone of privacy” in relation to pending or apprehended litigation. It includes information obtained from third parties.

Litigation privilege, unlike solicitor-client privilege, is neither absolute in scope nor permanent in duration.¹⁴ The material ceases to be protected once the litigation has ended.

Procedure for Resolving Privilege Claims

Officials faced with a privilege claim should write to the taxpayer to obtain particulars including:

- (a) title of the document;
- (b) date of document or other communication;
- (c) name and title of the author;
- (d) to whom the document is addressed and a list of all the persons who have been carbon copied;
- (e) whether copies have been provided to anyone else;
- (f) type of document (ex. letter; memorandum; notes); and

¹² *Minister of National Revenue v. Bruce Kitsch, Leslie Tower, Robert Tower, and BDO Dunwoody LLP*, 2003 FCA 307

¹³ *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27 at para. 11

¹⁴ *Blank v. Canada*, 2006 SCC 39

- (g) whether there are any attachments and the particulars regarding such attachments.

Once the particulars have been obtained, or if the taxpayer refuses to give the particulars, officials should contact the Department of Justice for assistance in resolving the claim for privilege.

If it appears that privilege is being asserted over non-privileged material that may be relevant to the Minister's audit or other inspection action, the privilege claim can be resolved before the courts or through an alternative dispute resolution procedure.

Section 232 of the ITA, section 293 of the ETA and sections in other relevant acts allow a person to commence an application before the courts for a determination of a question of privilege. Where the CRA initiates the procedures with respect to a claim of solicitor-client privilege, a compliance application is made pursuant to section 231.7 of the ITA or section 289.1 of the ETA; the judge presiding at a compliance application has jurisdiction to make rulings on questions of privilege.

The alternative dispute resolution procedure is a mechanism agreed upon by the Department of Justice on behalf of the CRA and the person claiming privilege. The procedure is used as an alternative to having a privilege claim resolved by the courts.

International Transfer Pricing Documentation

International transfer prices are the prices at which services, tangible property, and intangible property are traded across international borders between related parties. Transfer pricing per section 247 of the ITA specifically relates to transactions or arrangements between a taxpayer and a non-resident person with whom the taxpayer does not deal at arm's length. Where the terms or conditions of controlled transactions differ from those that would have been made between persons dealing at arm's length, adjustments will be made.

Subsection 247(4) of the ITA requires a taxpayer or partnership to keep contemporaneous documentation that provides a description of the items listed in subparagraphs 247(4)(a)(i) through (vi) of the ITA. This documentation is to be complete and accurate in all material respects. The taxpayer or partnership is required to provide this information to CRA within three months of a written request per paragraph 247(4)(c) of the ITA.

Taxpayers who do not satisfy the contemporaneous documentation requirements of subsection 247(4) of the ITA are deemed not to have made reasonable efforts to determine and use arm's length transfer prices or arm's length allocations.

Subsection 247(3) of the ITA imposes a penalty where the net amount of adjustments is larger than the threshold, which is the lesser of \$5,000,000 or 10% of the taxpayer's gross revenue. If no adjustments are made then no penalty is possible. Transfer pricing penalties are calculated at 10% of the net result of certain adjustments made under subsection 247(2) of the ITA.

This penalty is intended to be a compliance penalty focusing on the effort that a taxpayer makes to determine an arm's length transfer price and not solely on the ultimate accuracy of the transfer price. Provided that a taxpayer makes reasonable efforts to determine and use arm's length prices or allocations, a transfer-pricing penalty would not apply.

The reasonable efforts determination can only be made based on information provided to an official.

Where a taxpayer has not provided the contemporaneous documentation upon request, an official will consider using regular or foreign-based requirements, where warranted.

Judicial Review

A person on whom a requirement is served may request judicial review under civil procedures in the *Federal Courts Act*. Judicial review of a foreign-based requirement is specifically provided for in subsection 231.6(4) of the ITA, subsection 292(4) of the ETA and in sections of other relevant legislation.

Subsections 231.2(5) and (6) of the ITA, subsections 289(5) and (6) of the ETA and subsections in other relevant legislation allow a party to apply for judicial review of any authorization granted to serve a requirement on a person or on a third party relating to an unnamed person.

Penalties

Persons who fail to provide information that was requested may be liable to a penalty for each failure to provide the information requested under subsection 162(7) of the ITA, section 284 of the ETA and in sections of other relevant legislation. Note that these provisions are not applicable where other provisions of the acts set out a penalty for the failure.

A person who does not comply with a requirement may also be found guilty of an offence and thus liable to a fine of not less than \$1000 and not more than \$25,000; or both the fine as just described and imprisonment for a term not exceeding 12 months under subsection 238(1) of the ITA and subsection 326(1) of the ETA). Other relevant legislation also contains penalties for not complying

with a requirement. In the case of the *Queen v. Joseph Subacious*¹⁵ the failure to file a return after a demand was issued constituted a separate offence on each successive day after the demand. In applying this logic to cases of non-compliance to requirements, a penalty applied in accordance with subsection 238(1) of the ITA or subsection 326(1) of the ETA can quickly grow to substantial amounts.

¹⁵ 78 D.T.C. 6441