

Taxpayers' rights

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Most of us can appreciate the sardonic comfort in the joke above. The collective engine of government lurches along, consuming hundreds of billions of dollars annually in Canada. While it has various sources of revenue, all being some form of tax, the engine of government has a colossal appetite for money. With few exceptions, government is not engaged in for profit business competing with the private sector. It does not, therefore, create new wealth. It only acquires the money it spends by taxing the activities (most of which are productive) and assets of the people it governs.

It is not hard for government to lay claims to our earned wealth. It needs to tax us to support its massive income transfer programs and expenditures. This need is backed up by mighty powers and procedures available to government to collect it. Most Canadians do start to see some of their money as belonging to government. This article describes some of the rights available to taxpayers to, at least, make it appear that tax assessment and collection is a fair contest.

Rights as Countervailing Power

Most Canadians will have heard about the Charter of Rights and Freedoms. This constitutional document recognizes that government is in an infinitely stronger position than an individual citizen in getting what it wants. It is difficult for an ordinary person to stand up to government, whether that be to obtain something from government or repel determined government action.

Given the maxim that power corrupts and absolute power corrupts absolutely, government would be easily tempted to exploit its strength in dealing with people to get what it wants. Historically the judiciary, and more recently the Charter, have served in Canada to constrain government and to protect people against such abuse at the hands of their governments. These are the checks and balances between a sovereign government and its people.

Criminal Law Versus Tax Law

Two domains in life where government is particularly energetic are the enforcement of the criminal law and the collection of taxes. The extraordinary power of government comes to bear on both of these domains. If you are accused and convicted of a crime, you can lose your reputation, livelihood, personal estate, liberty and, in some foreign jurisdictions, even your life.

These are interests of a high magnitude. In its pursuit of the objectives of criminal justice administration, government must be held accountable and fair to each citizen in its cross-hairs. We do not seek crime control at all costs. These constitutional rights of procedure in favour of the individual are sometimes controversial precisely because it is better that a few guilty people go free than the procedural rights of accused people are violated. Otherwise, no one would be safe from the intrusive reach of government. As we say, this balance between crime control and safeguards of rights for individual accused persons continues to be controversial. Someday, the

rights and crime control trade-off may change. Today the Charter and its judicial enforcement stands as a sturdy bulwark against government abuse of power in the criminal justice system.

What about the taxing power of government vis-a-vis taxpayers? Administrative law issues relating to retroactive law-making and natural justice may help out the taxpayer. Ultimately, taxpayers can be accused of tax-related crimes. They can access applicable Charter rights, like any other person charged with a crime. The right to be free from "unreasonable search and seizure" (section 8) applies to all government action. Therefore, it could be invoked by taxpayers to resist unreasonable searches and seizures conducted by government in furtherance of tax compliance. Apart from this, there are no constitutional rights in the Charter to protect the taxpayer from abuse of government power.

One might ask why we have extensive rights for accused criminals, but minimal rights for taxpayers. It may be that criminal investigation and prosecution is regarded more seriously in society, and calls for more protection. There is certainly more coverage of crime in our popular media, than there is of income tax compliance issues. This is doubtlessly due to the more riveting and sensational nature of crime compared to tax.

Yet one might argue that there are even more compelling reasons for greater procedural protections for taxpayers than for criminals. Virtually every adult of working age and ability is a taxpayer; very few people are criminals. There are many kinds of taxes, which are assessed and collected throughout the year. Tax law is much more detailed and elusive than criminal law. In crime, the interests of the victim and victim's family serve to offset the rights of the accused. In tax, government is the only other party involved.

One might conclude that government needs to raise money more than it needs to, or can afford to, control crime. Government abuses against taxpayers may be expected to exceed, in number and extent, abuses against accused persons. It needs money for its own preservation more than it needs every crime solved. Moreover taxpayers, from whom government is seeking money, are totally blameless and involuntary participants in taxation. Earning income cannot be considered morally reprehensible. The same cannot be said for criminals who are convicted. The act of taxing a working person is not of the same essence as punishing a criminal.

The case for protecting taxpayers from the power of government may, therefore, be even stronger than for protecting persons in the criminal justice system. It turns out that there is little procedural protection in the law for taxpayers, compared to persons accused of crimes. The reasons likely lie in a failure of political urgency for taxpayers' rights. Most people just pay what the taxing authorities demand. Large corporations hire tax planners and lawyers to minimize their tax bills. Taxation is not a purely criminal subject. It is an administrative or regulatory field where regulators might tread more softly than the police. The popular media have not championed the positions and interests of taxpayers in the same way they have brought criminal cases to public light.

The Declaration of Taxpayer Rights

Earlier this decade Revenue Canada gave itself an image and public relations problem. It seized a savings account of a child. The media reported this and other stories of heavy-handedness came forward. The Minister of National Revenue moved quickly to publicize the Declaration of Taxpayer Rights. This attempt to restore confidence in Revenue Canada was sometimes called a "Bill of Taxpayer Rights".

This statement of rights, reproduced here in its entirety, is available on the Revenue Canada website (<http://www.rc.gc.ca>). In the last few years, this Declaration has been printed on the back page of the Department's general taxpayer Guide to completing the income tax return. One cannot find any analysis and commentary on the Declaration in any books and guides published in the private sector. There are no judicial decisions that interpret and apply the Declaration. The reason for this lack of legal analysis on this Declaration is simple: it has no force of law.

The Declaration of Taxpayers' Rights was never enacted into law, much less entrenched as a part of the constitution. It contains no meaningful procedural safeguards. It is a political statement of faith and intention, not a code enforceable at law. Some individual taxpayers in court and in letters will invoke the Declaration, unaware that it has no legal effect. One cannot sue for a government violation of the Declaration. Although a taxpayer may point to a right in the Declaration, it is not an enforceable right. A judge will only take light, general notice of the Declaration when deciding a tax case, because it is merely a government statement of goodwill.

Revenue Canada, in its website, takes a different view. It claims that this Declaration has some real heft. In proud support of the Declaration, the tax department states

"The self-assessment system works only if clients have full and timely information about the law, if they are treated fairly and courteously, and if the information they provide about their affairs is held in confidence.

We were the first modern income tax administration in the world to formally proclaim the rights of taxpaying Canadians in a Declaration of Taxpayer Rights.

The Declaration consolidates certain rights found in the Charter of Rights and Freedoms, in statutes, and in common law. It summarizes our commitment to treating clients fairly, courteously, and with respect for their rights."

"You are entitled to a fair hearing and courteous treatment. Fair handling of a complaint is one of your fundamental rights. One of our obligations is to help you exercise your rights.

In your dealings with Revenue Canada on income tax matters, you have important rights.

Information: You are entitled to complete and accurate information about the Income Tax Act, the entitlements it allows you, and the obligations it imposes on you.

Impartiality: You are entitled to demand impartial application of the law. It is our job to collect only the correct amount of tax, no more and no less.

Courtesy and consideration: You are entitled to courteous and considerate treatment in all your dealings with us, whether we are requesting information or arranging for an interview¹ or an audit.

Presumption of honesty: You are entitled to be presumed honest unless there is evidence to the contrary.

You are entitled to many other rights under the laws of Canada.

Privacy and confidentiality: You are entitled to expect that we will use the personal and financial information you provide us only for purposes the law allows.

Impartial review: You are entitled to object to an assessment if you believe you have been treated unfairly. You must exercise this right within a specific period. Once you have filed a notice of objection, we will conduct an impartial review of your file. If the matter is not resolved to your satisfaction, you can appeal to the courts.

Disputed amounts: You are entitled to withhold disputed amounts, to the extent the law allows, until our officers or a court decides on your objection. If you appeal to a higher court, you can put up security instead of paying the disputed amounts.

Bilingual service: You are entitled to service in the official language of your choice.

You are entitled to know your rights and to insist that they be respected.

You have the right to every benefit the law allows

You are entitled to arrange your affairs to pay the least amount of tax the law allows. We are committed to applying the tax laws in a consistent and fair manner. We will be firm with those who are guilty of tax evasion.²"

Even if the Declaration had the traction that the Department claims it has, it still does not do much to protect the taxpayer. Most of the rights listed are common sense courtesies that government should indulge all of its citizens. The long-standing principle that everyone is entitled within the law to structure one's affairs in the way to minimize the payment of tax is not expanded here. Avoidance has always been legal; evasion always illegal.

The Fairness Provisions

As in all areas of the law, applying tax rules with relentless consistency can lead to some taxpayers being treated in an unfair manner. On occasion, extraordinary circumstances of personal misfortune or otherwise beyond a taxpayer's control prevents compliance with legal requirements to pay income tax, goods and services tax, harmonized sales tax, and customs duties and taxes.

The extraordinary circumstances beyond a taxpayer's control include: natural or human-made disasters, such as flood or fire; civil disturbance or disruptions in services, such as a postal strike; serious illness or accident; the taxing department's own delays; or serious emotional or mental distress, such as the death of an immediate family member.

In May 1991, a "fairness package" was implemented by amendment to the Income Tax Act and three information circulars. These provisions grant to the tax officials discretion to accept late or amended elections, and to cancel, reduce or waive interest and penalties assessed for 1995 and later tax years. They provide a basis for exercising discretion when insistence on the payment of such charges would be unreasonable or unfair.

In some cases there is discretion to authorize refunds past the normal three year period for 1985 and later tax years, or to apply the refund to amounts owing. One may ask to adjust 1985 or later returns to create a refund, or to reduce an amount owing. As long as the adjustment is correct, these requests will normally be processed. Taxpayers must request these fairness provisions to apply.

Over one million corporations, 158,000 importers, 110 million travellers; 21.3 million taxfilers, 2.3 million GST registrants, 1.3 million employers, 21,000 pension and related administrators, and 75,000 charities: this is what our federal income tax department dealt with alone in 1996-97 (Ensuring Fair Customs and Revenue Administration in Canada, available on website). Virtually, all Canadian taxpayers stand against the unlimited force of different levels of government to have various taxes assessed and collected throughout the year. There are few procedural rights or safeguards for them. While the fairness provisions provide some basis for discretion, there is nothing similar to the broad set of effective and generously interpreted rights for people charged with crimes. Even if the pronouncements contained in the Declaration of Taxpayers' Rights were enforceable, they are lacking in substance. They do not extend the benevolence we expect from government in all facets of daily life. None of these rights, for example, deal with the amount of tax levied. Rather, they only indirectly and partially address calculation and collection methods, so that these are fair and constrain the impulses of such a strong entity to take advantage of weaker parties.

We are reminded of a situation someone recently found herself in. The regional tax processing office is two provinces away in a different time zone. Standard form letters questioning a minor aspect of modest income from several years ago continue to be dispatched to the taxpayer. The taxpayer, in turn, calls and writes letters with ample support of the allowable claim to the regional office so far away. Every time some one new deals with the file. No one in the department takes responsibility, for making a decision. When the taxpayer is assured on the telephone that the concern is satisfied, form letters from others on the same and related issues continue. Rulings, conclusions and advice are inconsistent. The department's concerns never seem to end. there is no right against this kind of government treatment.

This long distance, futile, nominal correspondence, this refusal to understand and leave the taxpayer alone would be inexcusable harassment in any other scenario. The taxpayer remains involuntarily locked into the process because of the power of government. As it remains, only large taxpayers primarily have the resources to engage in protracted entanglements with taxing

authorities. The image of the despised tax collectors, with us since pre-Biblical times, has a good chance of enduring. Canadian governments have done little to restore faith in the imbalance of power in the tax assessment and collection exercise.

Revenue Canada remains conscious of the fact that, in taxation, fairness is only whatever government permits. Perhaps recognizing the limitations of the Declaration of Taxpayer Rights, last year it launched a Discussion Paper on Ensuring Fair Customs and Revenue Administration in Canada, and has invited feedback from Canadians. This soft, administrative approach to fairness refers to commitments to fairness, working together, and fairness in action. Voluntary government fairness will be around for the foreseeable future.

Maybe that quote at the top of this article is not a joke after all.