



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

## **Standing Committee on Finance**

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FINA • NUMBER 027 • 1st SESSION • 42nd PARLIAMENT

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**EVIDENCE**

**Tuesday, June 7, 2016**

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**Chair**

**The Honourable Wayne Easter**



## Standing Committee on Finance

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• (1125)

[English]

**The Chair (Hon. Wayne Easter (Malpeque, Lib.)):** We'll call the meeting to order. Today's hearing is pursuant to Standing Order 108(2), a study of the Canada Revenue Agency's efforts to combat tax avoidance and evasion.

We have a number of individuals before us as witnesses. I'll introduce all of them first, and then I have a statement to make.

We have as individuals, Arthur Cockfield, professor, faculty of law, Queen's University; and André Lareau, professor, faculty of law, Université Laval. From the Canadians for Tax Fairness, we have Dennis Howlett, the executive director. We also have Scott Chamberlain, general counsel of the Association of Canadian Financial Officers. From CPA Canada, the Chartered Professional Accountants of Canada, we have Ms. Joy Thomas, the president and chief executive officer.

Welcome to the witnesses. We'll get to your statements in a moment.

You may have been wondering why we started with an in camera meeting. There is considerable controversy surrounding this hearing today and a lot of concerns raised about the possibility of either members' statements or questions, or witnesses' testimony affecting court cases that are pending.

I think, as probably most everyone would know, there is the *sub judice* convention. I'll quote from it:

During debate, restrictions are placed on the freedom of Members of Parliament to make reference to matters awaiting judicial decisions in order to avoid possible prejudice to the participants in the courts. This self-restraint recognizes the courts, as opposed to the House, as the proper forum in which to decide individual cases...

The *sub judice* convention is first and foremost a voluntary exercise of restraint on the part of the House to protect an accused person, or other party to a court action or judicial inquiry, from any prejudicial affect of public discussion of the issue. Secondly, the convention also exists, as Speaker Fraser noted, "to maintain a separation and mutual respect between legislative and judicial branches of government". Thus, the constitutional independence of the judiciary is recognized.

I think all the witnesses here know that there are two court cases pending before the Tax Court of Canada with respect to whether the tax plan at issue complies with the Income Tax Act. The second one before the Federal Court of Canada is with respect to whether KPMG is required to disclose the names of its clients in connection with its tax plan.

The discussion we had in camera was to decide whether, given the risk of being prejudicial to a court case, we should remain in camera or go public. The committee decided that we would go in public.

There is some risk in doing so. To prevent any prejudicial comments being made that might affect the court case, the chair will rule fairly strenuously. If I believe a witness or a member is moving in a direction that could have implications for the court cases, rather than making generalities about combatting tax avoidance and evasion, then I will ask that that person's mike be cut, and we will go to the next question.

• (1130)

With those ground rules in mind, I would encourage witnesses and members in their comments not to say anything in their comments that could possibly be prejudicial to the pending court cases.

With that, we will start with our witnesses.

Mr. Cockfield.

[Translation]

**Prof. Arthur Cockfield (Professor, Faculty of Law, Queen's University, As an Individual):** Mr. Chair, ladies and gentlemen, good morning.

[English]

Thank you again for inviting me to appear before this committee. Though I've had the opportunity or privilege in the past to appear on a number of occasions, I thought I'd introduce myself to the committee members because only

[Translation]

Mr. Caron is still on this committee.

[English]

My education includes degrees from Western University, in finance and accounting from the Ivey Business School; from Queen's University law school; and I have a master's and doctorate from Stanford University, primarily focusing on international tax law. I'm the author/editor of 12 books and over 50 academic articles published in the world's leading tax journals. I've served as a legal consultant to the OECD, the Department of Justice, the Office of the Attorney General of Canada, the Department of Finance, and the Office of the Privacy Commissioner of Canada as well. My most recent article that's relevant to this committee is entitled "Big Data and Tax Haven Secrecy" published two months ago in *Florida Tax Review*. It involves the first analysis of the first mega data leak obtained by the International Consortium of Investigative Journalists, made public in 2013. In fact, I had been retained a year and a half prior by the CBC to assist the journalists in understanding that leak, and I've just published my research results.

In my brief comments, I thought I'd start by striking a positive tone in that for the last three years, beginning with the Harper administration and now with the Trudeau administration, we've actually seen some progress in this area. Some of the positive steps include the whistleblower laws, embedding tax lawyers at the CRA, bringing back the criminal investigation unit—that was critical—and the dedication of more resources to auditing.

In terms of the road ahead, some of the recommendations that I would offer this committee would be an ongoing commitment from the senior leadership at CRA to tackle the problem of offshore tax evasion. I think there is a problem with the coordination among the federal agencies—FINTRAC, CRA, and Justice and so on—which could be improved. The incentives for the crown prosecutors need to change. I'd like to see more penalties when warranted by the CRA for gatekeepers, accountants, and lawyers who engage in reckless, negligent, or willful blind advice to their clients.

In the past I've recommended consolidated reporting for multinational corporations. We have something similar that's arisen, namely country-by-country reporting. I have technical recommendations to make in that area, but I'll just mention one today. Specifically, in meeting with FINTRAC recently, I only then became aware that we have suspicious transaction reports that trigger FINTRAC's interest, but, more importantly, there is no law that triggers a suspicious activity report that gives a bank official the ability to report an activity. U.S. prosecutors and prosecutors elsewhere have relied on these for successful pursuit of offshore tax evaders.

Those are my comments. Thank you.

**The Chair:** Thank you very much, Mr. Cockfield.

Mr. Lareau.

**Prof. André Lareau (Professor, Faculty of Law, Université Laval, As an Individual):** Good morning to you all.

[Translation]

Good morning. My name is André Lareau. I am a professor of tax law at Université Laval. I was the faculty dean. I earned my bachelor's degree in law at the Université de Sherbrooke, my master's degree at Osgoode Hall Law School and a master's degree in

American tax law at the University of Miami School of Law. I also accompanied Radio-Canada to the Isle of Man for the investigation last year.

Tax laws are complex, and the Income Tax Act is very different from what it was several years ago. Why is it so long? The reason is the complexity that has become necessary because of the actions proposed by tax experts, who find a way to create strategies to circumvent measures that require new provisions to counter the provisions implemented by the tax experts.

In 1985, the judgment in the Stupart case indicated that the Department of National Revenue, now known as the Canada Revenue Agency, could not take on a transaction made only for tax purposes when the transaction complies with the other guidelines in the act.

In that regard, the general anti-avoidance provision was created in 1988 and is contained in section 245 of the Income Tax Act. It is understood that this is a general anti-avoidance provision, not an anti-evasion one.

Since I was asked to appear here to speak about KPMG in the Isle of Man, I will humbly submit that the strategy put in place by KPMG does not fit—

• (1135)

[English]

**The Chair:** I would prefer that you really don't get into the KPMG case. That is the one before the courts. If you want to want to talk of tax avoidance in general, that's fine, but I don't want to go down a path that's going to cause trouble.

**Prof. André Lareau:** Mr. Chairman, I was invited to speak about KPMG, but I'll speak generally.

If an accounting firm or a tax firm creates a scheme whereby a sum of money is eventually owned by an offshore corporation, and this money initially comes from a donor in Canada and then the money comes back to Canada, that is not covered by GAAR.

[Translation]

This is not an amount that is subject to the general anti-avoidance rule. Why? Because there is no tax avoidance, but rather tax evasion. Don't try to see avoidance or an application of section 245 of the Income Tax Act here. It is not included in that respect.

What we are talking about is tax evasion. We are talking about a situation in which someone tries to cover money transfers by indicating that they are donations, when that is obviously not the case.

What is a donation? It is a divestiture of a sum without anything being expected in return. As soon as something is expected in return, as soon as the money comes back to the owner or the owner's immediate family or individuals dependent on the owner, it is an amount received and, therefore, not a donation.

For a tax strategy to be valid, it must respect the tenets of the act. In this case, of course, the tax strategy would not respect the letter or the spirit of the act.

Furthermore, I would invite the Minister of National Revenue to be very careful in all circumstances involving voluntary disclosure. Since voluntary disclosure is governed by purely administrative rules, I would invite the Minister of National Revenue not to exercise her discretion in the case of sums that come from abroad and that, obviously and in some circumstances, may be the product of fraud against the act. Therefore, administrative discretion should not be exercised in that regard.

Furthermore, in terms of files that may be outstanding with respect to amounts from the Isle of Man, I would also invite the Minister not to negotiate arrangements and not to conclude agreements so that the files can be submitted to the court and we can get to the bottom of this.

Lastly, I would say that the tax strategies highlighting donations do not stop at those we know about. Tax strategies highlighting donations can be carried out as part of Canadian corporate asset freezes, while the added value of these companies goes abroad in the form of donations to the benefit of donors. All the profit of a Canadian company eventually comes back as donations, which is demonstrated in the documentation that has been provided to you.

Thank you.

● (1140)

[English]

**The Chair:** Thank you very much, Mr. Lareau.

From Canadians for Tax Fairness, Mr. Howlett, the floor is yours.

**Mr. Dennis Howlett (Executive Director, Canadians for Tax Fairness):** I'll start, and then my colleague, Scott Chamberlain, will complete our presentation.

I'm very pleased that this committee is holding hearings on this matter, as I was involved. I was the recipient of an anonymous phone call in March of 2015 regarding a court case involving an accounting firm that was stalled in court.

I began an investigation and—

**The Chair:** Dennis, I'd prefer that you didn't talk about individual cases, even if you don't name them. If you can be fairly general...

**Mr. Dennis Howlett:** Okay.

That's what led to our being here today, and I am pleased to be able to speak to the issues that arise.

We all know that a lot of revenue is lost to both provincial and federal governments. In my brief to the finance committee in 2013, I estimated that the losses annually were between \$5.3 billion and \$7.8 billion. Since then there have been other investigators who have come to similar conclusions. One I'd mention is Gabriel Zucman in his recent book called *The Hidden Wealth of Nations*, who also concludes that there must be about \$300 billion, or 9% of total Canadian wealth, held offshore. That is much higher than for the United States. In the United States it is only about 4%, so Canada actually has a serious problem here.

Individuals and corporations would not be able to use tax havens to hide their wealth without the encouragement and assistance of facilitators. The facilitators include banks, financial institutions, wealth management firms, law firms, and accounting firms. We need

additional legislative controls to regulate this industry, and the government must be much more aggressive in going after facilitators. That's the best way to do it, and would in fact be far more effective than using additional auditors. If you cut off the facilitators, you cut off more than half the business, and half the problem is solved.

I believe there are a number of very dedicated CRA staff. They have, with great difficulty, uncovered some serious cases of suspected tax evasion only to find, in many instances, that their cases were not followed through by CRA management, for whatever reason. We did a study called "What's Wrong at the CRA and How to Fix It." I've given copies, both in French and English, to all members of the committee. It was based on interviews with quite a few CRA auditors. It's clear that some of them felt that there was political interference resulting in cases being dropped, even though they felt there was a strong case to be made. There really is a question about how the CRA management is pursuing some of these cases. Why would they go to a court to try to get names of clients when they could serve a search warrant and get the information that way?

We also continue to call for better protection for whistleblowers. Because of the media profile that I've achieved, I get a lot of people coming forward to me. There are a lot more whistleblowers and cases that have been revealed to me, and I am working with media and the authorities to try to help them pursue those cases.

The particular case that we're not supposed to refer to is only the tip of the iceberg. There are a lot more serious problems at stake, and the government has to do a lot more to get to the bottom of the problems of the CRA and to take on the serious challenge of dealing with tax evasion and tax fraud related to tax havens.

Scott will continue our presentation.

● (1145)

**Mr. Scott Chamberlain (General Counsel, Association of Canadian Financial Officers, Canadians for Tax Fairness):** Thank you, Dennis.

I would like to draw your attention to what we view as a fundamental gap in the tax system that contributes to excessive tax avoidance in the industry, and can be easily closed without the industry having to breach accountant-client privilege, a privilege that is both a misdirection to this committee and a fiction, by the way.

We have examples both in Canada and the United States, and we've provided a document to the committee, an academic paper, on that. Attached to it are the details of various examples. In particular I would draw your attention to some cases in the U.S., starting at page 19, where "facilitators"—as Dennis has described them—conceive of, develop, get legal opinions on, sell, market, promote, and profit from tax products that have not been vetted by the Canada Revenue Agency.

Early on in my practice I was a labour and employment lawyer, and I had the occasion to negotiate wrongful dismissal settlements. In late 1999 and the early 2000s the questions of retirement allowance and deductibility came up frequently. I had occasion, as a first-year lawyer, to write to the CRA for an interpretation of a tax structure that we were thinking of in order to minimize tax for our wrongful dismissal clients. This is a well-known, oft-used function of the CRA. Any lawyer or any accounting firm can write the CRA and get an opinion as to the applicability of the tax laws to a plan.

What we see is an industry that is not using this function. In the United States it is an obligation under legislation to register all tax products. Again I can refer you to the same paper that makes reference to that law, but also the U.S. Senate standing committee had a report on this as well that describes it requiring all tax products to be so registered and vetted prior to being implemented.

Essentially Canadians for Tax Fairness believes it's time to prioritize the public interest over the cloud of secrecy and the confidentiality in the tax industry.

We have a number of recommendations that are included in our submission to you today, and I'll just briefly go through them.

The first is that the government should consider legislating a duty on lawyers and accountants under the Income Tax Act to report suspected avoidance and evasion, and to register all tax products. These aren't novel. Registering tax products is already in place in the United States, and the duty to report tax evasion and aggressive avoidance is already in place in the U.K. under the 2002 Proceeds of Crime Act. All lawyers and accountants in the U.K. who suspect aggressive tax avoidance, or evasion, have a duty to report that to the revenue agency, and a duty not to advise the client that they have done so. That's punishable by a jail term of up to 14 years.

In terms of registering, this could be CRA or an independent body of the Tax Court charged with giving these interpretations.

Second, we'd like to see an independent study of tax avoidance/evasion investigations initiated by CRA to ascertain the rates of penalties imposed, interest applied, rates of settlements reached, and convictions secured, by the amount of tax in dispute. From recent surveys in the press, even just yesterday, Canadians believe that there's one set of rules for the rich and another set of rules for the poor. We'd like to see the investigations that have been completed. How many lead to convictions when it's lesser amounts of money as opposed to higher amounts of money, based on those criteria?

Third, we'd like you to introduce a stop corporate tax dodging bill, building on MP Murray Rankin's previously introduced private member's bill, the economic substance bill.

Fourth, we'd like to see criminal investigations called in appropriate circumstances.

• (1150)

Fifth, we think this committee should call on the Office of the Conflict of Interest and Ethics Commissioner of Canada to investigate the highly unusual hospitality practices of senior CRA executives.

I'm a negotiator. I negotiate with Treasury Board officials. I negotiate contracts in my day job. I can tell you that Treasury Board negotiators know not to accept even a cup of coffee from me. We may go out, meet, and talk, but they'll buy their coffee and I'll buy mine. You don't buy drinks for public servants. It's a very clear rule.

Second to last, we'd like to see the government commence the long overdue legislative review of the Public Servants Disclosure Protection Act. This is the whistle-blowing act that applies to the public sector, and it needs to apply to the public sector and the private sector, as is the case in other Commonwealth countries, such as New Zealand.

I'm on the commissioner's public sector disclosure advisory board. This is four to five years overdue. Whistle-blowers need greater protection. They need to be rewarded for doing the right thing. They need to be encouraged to come forward.

Finally, we encourage this committee to continue this hearing and to call a number of witnesses, including U.S. whistle-blower Michael Hamersley and perhaps the professor who is the author of the article we've shared with you today.

Thank you for your time.

**The Chair:** Thanks very much, Mr. Chamberlain.

We'll turn to Ms. Joy Thomas, president and CEO of the CPA.

Ms. Thomas, the floor is yours.

**Ms. Joy Thomas (President and Chief Executive Officer, Chartered Professional Accountants of Canada):** Good morning, Mr. Chair, members of the committee. Thank you for inviting CPA Canada to participate in today's hearing.

My name is Joy Thomas. I am a chartered professional accountant, and effective April 1, 2016, I became the president and CEO of CPA Canada.

CPA Canada is the national professional body representing more than 200,000 Canadian CPAs. Our responsibilities include the development of the CPA education program, as well as continuing professional development programs. CPA Canada also supports Canada's internationally respected, independent standard-setting process, and provides guidance to support high-quality corporate reporting and business practices in Canada and globally. We do this in the public interest.

CPA Canada was created in 2013 as part of the nationwide unification of Canada's provincially regulated CAs, CMAs, and CGAs. In the spirit of collaboration, we created one profession carrying one designation: chartered professional accountant.

I'm here today in that spirit of collaboration.

At home and abroad, we have a long record of working constructively with those who develop the programs and the policies that are essential economic, social, and competitive tools for all governments. This collaborative approach is strongly endorsed as a best practice by the OECD. This is particularly important when it comes to ensuring tax policy is aligned with the changing business environment.

Examples of our collaboration include our representation on many government panels and committees such as: the advisory panel on Canada's system of international taxation; the minister's underground economy advisory committee; the CRA/CPA Canada framework agreement, to help Canada maintain a world-class tax system; and Finance Canada's public-private sector advisory committee on anti-money laundering, anti-terrorist financing. These are just a few examples of how we have collaborated with the government to implement tax reforms, and to combat tax evasion and other illegal practices.

Our position on tax evasion has always been clear, and it was set out in a 2013 white paper, "Tax evasion is Illegal. Illegally avoiding tax—by disregarding the law, by not reporting taxable income, and by hiding funds offshore"—is harmful to our economy, to our society, and to the rule of law.

At the same time, taxpayers have always been entitled to plan their affairs to reduce the tax they owe, provided the steps taken comply with the law. We all do this, even when we contribute to an RRSP, for example. Still, tax law remains very complex, so it should come as no surprise that there are times when the taxpayers and the CRA will disagree.

Continuing in the spirit of collaboration, I'd like to briefly set out some suggestions to address these issues going forward. First, income tax law is extremely complex. Simplifying the act needs to be on the agenda. Second, along with other national associations, academics, and think tanks, we have called on an overall review of our tax system. Third, we continue to support investment in CRA's enforcement efforts as set out in budget 2016. Fourth, it is important for us to have a good discussion about balancing CRA's need for objective information with the taxpayer's right to confidential advice, to maintain a healthy self-assessment tax system. Finally, the government needs to consult widely with taxpayers and various stakeholders as it moves forward.

CPAs work with millions of Canadians each year. Chartered professional accountants volunteer countless hours at tax clinics and financial literacy sessions in communities across Canada, and we hear directly from Canadians and gather feedback to support and inform our participation on committees such as this one.

Canadians have the right to demand a fair and equitable tax system, one that attracts both businesses and talent. CPA Canada advocates for a tax system that reflects the best interests of all Canadians. We are pleased to engage with this committee and the government in a respectful discussion about tax policy, and we appreciate this opportunity to contribute to the ongoing discussion.

Thank you very much.

•(1155)

**The Chair:** Thank you very much, Ms. Thomas. You certainly made one person on committee smile when you said "overall review of our tax system". That would be Mr. MacKinnon, and he's first up.

Mr. MacKinnon.

[*Translation*]

**Mr. Steven MacKinnon:** Thank you, Mr. Chair.

I would like to thank all the witnesses for their presentations. They provided a wealth of nuance and information. The committee has been well served by the evidence you presented today.

I'll start with Prof. Lareau and Ms. Thomas. No one will be surprised that I am starting with this issue.

[*English*]

Ms. Thomas, perhaps you could expand on your comments about the complexity of the tax code as it has evolved over the years and how that has contributed to tax avoidance and tax evasion. More generally, if you were to give guidance to this committee on conducting a review of such a thing, where would you begin?

[*Translation*]

**Prof. André Lareau:** As I mentioned, the provisions of the act have become increasingly complex, given the ability of some firms to show a fertile imagination to create increasingly complex strategies. Some of these strategies are valid. We're talking about tax optimization in this case. Other strategies are more on the border of what is between the spirit and the letter of the act. So we are talking about tax avoidance, which will be sanctioned by the court when there is an abuse involving the act.

However, the burden of proof lies with the Canada Revenue Agency, which must demonstrate that abuse took place. We have a real problem here because this burden of proof is difficult and complicated to establish. That is why I am not at all convinced that the general anti-avoidance regulation, which came into effect in 1988, was the right answer, given that an additional burden was created for the Canada Revenue Agency.

In other situations, some tax experts take fewer precautions, cut more corners and move more toward tax evasion. Clearly, under the Income Tax Act, we can't counter each tax evasion strategy. It would be impossible for the act to specify not to do one thing or another. The act therefore provides penalties for tax evasion. However, the complexity of the act and the complexity of tracing large-scale—international, obviously—tax evasion are such that the only tool to counter it is tougher penalties for the architects of these tax tools.

In many cases, the clients aren't the ones who have designed the tax strategy. I'm not talking about simply hiding undeclared money in a bank account in the Bahamas. I'm talking about complex tax strategies where there are candidates for an administrator position and people who are behind the screens. In those cases, the only way to make the architects of these tax gimmicks understand that they have gone past the limit allowed would be to deprive them of their freedom. Imprisonment should be seriously considered.

The Canada Revenue Agency has the duty to prosecute individuals and entities in general, to the extent of the act. These aren't just people who have signed a document, but also people responsible for the actions of a firm that must face justice. Financial penalties are too light for a major firm. No matter how many millions of dollars the financial penalty is, it will never be enough. Loss of freedom will be the only appropriate punishment in many circumstances.

● (1200)

[English]

**The Chair:** We like to try to keep the answers relatively the same length as the questions.

Mr. MacKinnon, do you want to ask your next question or do you want to go to Ms. Thomas?

**Mr. Steven MacKinnon:** I do have one further question.

I'll ask Ms. Thomas to keep her response relatively succinct. I'm sure we'll be able to come back to this theme and other questions.

I have one other quick question, Mr. Chair.

**The Chair:** Go ahead, Ms. Thomas.

**Ms. Joy Thomas:** Thank you.

There's no question that the tax system is very complex in this country, and that's not unusual to other countries as well. It has become very complex. One of the reasons is that it is such an important mechanism, an important policy lever, for stimulating the economy and the overall prosperity for Canadians.

Over the years, it has become very, very complex. However, there has not been a full review of the income tax system in this country since 1966, with the Royal Commission on Taxation. CPA Canada has long called for a review, top to bottom, of the income tax system, in addition to some of the other reviews that are going on.

The reason that we called for a complete review of the Canadian income tax system is to reduce that complexity, to help make it more competitive, to help make it more efficient and effective and fair for Canadian taxpayers.

**Mr. Steven MacKinnon:** Thank you very much.

**The Chair:** Be fairly quick.

**Mr. Steven MacKinnon:** Yes.

Mr. Howlett, I'll get right to the point. You alleged that there was political interference in the Canada Revenue Agency. That's a pretty serious charge. How do you substantiate that?

**Mr. Dennis Howlett:** We've talked to quite a few auditors who, in some cases, were not sure how high up the orders came, but they suspected that some of the cases they were investigating were involving well-connected companies or individuals. They felt there was a very strong case, and for some reason they were told to stop the investigation. They were very serious.

Our advice was that one of the best ways to get to the bottom of this would be to encourage CRA staff to go to the Public Sector Integrity Commissioner who has the authority to investigate, and he could find out exactly where this came from. We would encourage the new minister to encourage CRA staff, if they have concerns related to that, to use the independent office, so it would be free from current political interference of a new government. That would be the best way to get to the bottom of this.

We don't have sufficient evidence, and we did not go publicly in the media about this because we felt it needed to be investigated. We've encouraged the CRA staff we've spoken to to take advantage of that independent officer of Parliament.

● (1205)

**The Chair:** We'll have to cut you off there.

Mr. McColeman, for seven minutes, please.

**Mr. Phil McColeman (Brantford—Brant, CPC):** Mr. Howlett, you just went public with this accusation. I'm curious. Does it apply to a specific period of time of a specific government, or is it a general comment of how the tax department works, in terms of your accusation regarding the connectedness of the political to the actual carrying out...?

**Mr. Dennis Howlett:** Our "What is Wrong at the CRA?" study was conducted during the spring and summer of 2015. It was based on interviews with 20-some CRA auditors. They were referring to cases that in some cases went back several years, so it would have covered a period of time.

We very carefully and deliberately did not ask, or refused to be informed of the names of any individual or corporation involved, because that would have contravened the law. We were very careful not to go there. I do not know the details—

**Mr. Phil McColeman:** Thank you. That's enough information, sir.

I have a limited amount of time and I have a lot of other questions. I wasn't asking for it in depth.

**Mr. Phil McColeman:** Mr. Cockfield, you mentioned at the outset of your comments about the positive steps that have been taken, both in previous government and this government.

Throughout your comments, you mentioned problems with the coordination between ministries perhaps, or agencies, within government. Can you expand from your analysis where the most egregious disconnects happen?



**Prof. Arthur Cockfield:** Again, I began on a very positive note, but in my writings I've been quite critical of the CRA, at least in the last 20 years, ramping up to 2013.

One of the problems was revealed in the Liechtenstein leak. That came from 2007, where there were over 100 Canadian taxpayers with undisclosed offshore accounts in this European tax haven. There was a six-year audit by the CRA of these taxpayers. At the end of the day, only two taxpayers were referred to prosecution by the crown, and the crown, the Department of Justice, decided not to prosecute anybody. Here we have an obvious disconnect between the investigators of a potential crime or an alleged offshore tax evasion crime, and the folks at justice who need to prosecute them. I think embedding the tax lawyers at an earlier stage in the investigation helps to work against that disconnect.

In other cases, we have FINTRAC, which is absolutely swamped with these suspicious-transaction reports. They get hundreds of thousands of them. Sometimes in the research community we call this a "drinking at the firehose" problem. They're just overwhelmed with information. It's not clear to me that they're particularly well coordinated with the CRA to pursue offshore tax cheats.

Finally, the RCMP, our federal police force, has virtually no resources at all to investigate white-collar crime. They're primarily looking at cigarette smuggling, often via Indian reserves. In terms of cross-border financial crime, that's clearly an important file. But we really don't have a federal police force that can assist the CRA abroad and within Canada in pursuing these criminals.

**Mr. Phil McColeman:** Recently there was a news report, I think it was in *Maclean's*, but I'm not sure, that said that in the last period of the last government there was \$1.57 billion recouped because of the initiatives taken. I wonder, on issues such as the offshore tax informant program, whether or not you're in favour of that program and other such programs moving forward.

**Prof. Arthur Cockfield:** Absolutely. I think that was a very positive legislative change. I think it was budget 2013 when that came about. I just think of the famous UBS Geneva case. There was a U.S. Senate investigation that revealed Canadians had stored in this one bank \$5 billion offshore. We've never seen a penny of that, nor have we seen disclosure of the clients who have these undisclosed offshore accounts. In any event, the reason the Americans were successful is because one banker was paid a reported \$100 million by the IRS to assist with the investigation, and that led to billions of dollars of deferred-prosecution fines by the U.S. Department of Justice. It's just one example of how successful the whistle-blower program can be. I think there's some evidence already in Canada, despite the fact it's so new, that it's helpful.

• (1210)

**Mr. Phil McColeman:** Good.

There's been a common thread across the discussion today on a couple of fronts. One is whistle-blowers. We just covered that off with you, Mr. Cockfield.

Mr. Lareau, you mentioned stiffer penalties. What do you think is appropriate, from your area of expertise? What should those penalties look like? Obviously, there's jail time, but can you elaborate further? In terms of the measures against the so-called

facilitators that were mentioned in the presentations here, what would those stiffer penalties look like?

**Prof. André Lareau:** We have seen that in 2005 there was a fine of more than \$400 million U.S. against KPMG, and other penalties after that for other accounting firms. This has not been a deterrent.

There is so much money involved here that the only way that tax evaders will understand that tax evasion is stealing money is if they lose their freedom. When you're stealing money, say when you go to rob a bank, you just cover your face. When you rob your neighbours, when you rob your family through the tax system, when you hide behind a tax haven, and when you hide behind a corporate shield, then you're just hiding the same as when you rob a bank. The only way that you understand you're cheating the system is by having your freedom taken away from you. To me, this is the only measure that will work. Not only should those who signed legal opinions and accounting opinions be covered by these jail terms, but also the high members of these firms, because they are responsible for what their firms are doing.

One other aspect that should also be mentioned is the voluntary disclosure system. It is too easy and too simple to say, "Well, I'll hide for a while, and then I'll come back into the system whenever I feel it's time to come clean." There are no penalties associated with that. If you compare that with other countries, where they have windows of opportunity to come clean, you have three months to come clean usually or you will face very stiff penalties.

In the States you have a permanent system, but at the time of the UBS case in 2009, you had three months' time to come clean. You had stiffer and stiffer penalties for that, whereas here, you can come clean any time you want. There are no penalties. What sort of message does that send to other people?

**The Chair:** We'll have to cut you off there. We're well over time.

Mr. Caron and Mr. Dusseault, you're splitting the time I understand.

Mr. Dusseault.

[*Translation*]

**Mr. Pierre-Luc Dusseault (Sherbrooke, NDP):** Thank you, Mr. Chair.

I will share my time with Mr. Caron.

My first question is for you, Ms. Thomas, and it has to do with the penalties or disciplinary action that could be taken against members of your professional association.

Could members of your profession face disciplinary action if a court of law found their tax plans abusive and illegal? Do accountants who prepare these plans also have obligations toward your professional association?

[*English*]

**Ms. Joy Thomas:** Just to clarify, CPA Canada is not a regulatory body. The regulation of the accounting profession, like all professions in Canada, is through provincial legislation.

That said, the provincial regulators for the accounting profession take their accountability to the public very seriously, and we have harmonized codes of professional conduct across the country that meet or exceed the codes of professional conduct put out by the International Ethics Accounting Standards Board of the International Federation of Accountants. We have high best practices in terms of our codes of conduct.

Those codes of conduct clearly lay out that illegal practices are not acceptable. There is a disciplinary process. It begins with a complaints inquiry process, then an investigation, and finally a disciplinary process.

There are a number of sanctions available to the provincial regulators in that regard, including monetary fines and expulsion from the profession.

• (1215)

[Translation]

**Mr. Pierre-Luc Dusseault:** Thank you for your answer.

Prof. Cockfield, are you aware of agreements that some taxpayers sign to avoid penalties and interest when it is fairly clear to the Canada Revenue Agency that tax evasion, an illegal act, is taking place?

Have you often seen secret agreements like this during your career?

[English]

**Prof. Arthur Cockfield:** *Merci.*

There are thousands of settled cases between CRA and taxpayers each year. I don't know any data offhand concerning that.

In terms of aggressive offshore tax avoidance or tax evasion, again I don't have any data, but it's not unusual for the government to enter into a confidential agreement with a taxpayer. It's somewhat like a guilty plea by an accused person. I think 95% of individuals who are accused of breaking criminal laws in our country go for a guilty plea. There is a public forum where the judgment is rendered, but for the most part the public doesn't follow that. Again, some newspapers publish it.

So yes, it is par for the course entering into these sorts of settlements. One can query whether the settlement is too lenient, but that's a whole different kettle of fish.

Thank you.

[Translation]

**Mr. Pierre-Luc Dusseault:** Thank you.

I'll now turn to Prof. Lareau.

Suppose that, in 2016, I divest myself of all my possessions and legal authority over certain funds that belong to me, and I give them to a company outside the country. I would subsequently no longer have any legal authority over what is done with that money, but five years later, I happen to receive a donation from a foreign company. In 2016, would the Canada Revenue Agency consider it a donation and not income?

**Prof. André Lareau:** I don't know what the position of the Canada Revenue Agency or the court would be in this case. All I can tell you is that a donation is a divestiture. There must also be an intention to donate. There is a maxim in law that states, "donner et retenir ne vaut", which means that someone cannot, at the same time, give something and be certain or almost certain of receiving something in return. The donation involves a divestiture or a cut in respect of the property that someone has divested.

To answer your question, if we make a donation but a portion or all of the amount comes back to us, I do not think see that it would be a donation.

**Mr. Pierre-Luc Dusseault:** Thank you. I think it all depends on the intention of receiving something in return.

I will now turn things over to Mr. Caron.

[English]

**The Chair:** I think you wanted two minutes, and you have them.

[Translation]

**Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP):** Thank you, Mr. Chair.

My first question is this.

When taxpayers make a mistake on their income tax return, they are set straight by the Canada Revenue Agency and fines apply. However, when there are significant mechanisms like the ones we have talked about, they are often asked to repatriate the money and are not fined.

I would like to know where the limit or the bar is for this. Why should Canadians have to pay fines when people who placed money outside the country are asked to repatriate the money and are not fined? After they were caught or risked getting caught, they simply pay the tax they would have otherwise paid. Where is the limit on this? Why is there a distinction like this?

Prof. Lareau and Prof. Cockfield, I invite you to answer the question.

• (1220)

**Prof. André Lareau:** The United States has an interesting system called streamlined procedures. As long as the amounts in question are low, there is good faith on the part of the taxpayer and the situation is not repeated, non-U.S. residents may not be fined and Americans would be fined 5% of the amount due. The fine is very low because this is a case that is outside a criminal or almost criminal context. It's an honest mistake. For someone—an immigrant, for instance—who does not understand the law very well and does not know how to apply it correctly, the fines are low. However, in all the cases where significant amounts come from offshore accounts and where there is camouflage, those are not covered by these streamlined procedures, and the fines are high.

**Mr. Guy Caron:** Thank you.

Prof. Cockfield, do you have anything to add?

[English]

**The Chair:** No, I have to cut it off there.

Ms. O'Connell.

**Ms. Jennifer O'Connell (Pickering—Uxbridge, Lib.):** For my first question, I want to get back to the question of ethics. It's my understanding that tax professionals, accountants, etc., do have professional conduct standards that are set for them as CPA professionals. It says in here that they should at all times act "in a manner which will maintain the good reputation of the profession and its ability to serve the public interest".

To Ms. Thomas, and then perhaps if I have time we can hear from others, in what scenario would tax avoidance schemes, even if not in advance determined to be illegal, act in the public interest?

**Ms. Joy Thomas:** I can't really get into the specifics. I'm not quite sure how to respond directly to that question, because I don't know what the specifics of the situation would be. I think what has to occur in all circumstances is that through the complaints inquiry process and the investigation, the facts of the situation have to be laid out. Part of our challenge here is that this tax law is so complex, determining what is acceptable and unacceptable tax planning can be a challenge.

In any case like that, there would have to be an investigation to determine if it did err on the side of bad judgment and there needed to be some sanctions put to it. But we have to get back fundamentally to the root cause of all of this, which is that we are dealing with a system that continues to grow in complexity, that is international in scope, and that we really do need to think about having a full review of it. We need to think about how we are entering this dialogue between CRA and the taxpayers and the tax preparers, to make sure that tax payers and tax preparers fully understand and can interpret some of this very complex law.

**Ms. Jennifer O'Connell:** Could you perhaps build on that, Mr. Cockfield, if you can?

It seems to me—and not being a CPA or a lawyer—that even the professional standards are only applied after a scheme, say, is deemed illegal, but when you get into the law of it, and I think this might be somewhat of a silly or exaggerated example, but if you look at the Criminal Code and you look at an egregious offence, let's say assault or murder, it doesn't specify all of the ways that somebody would have to murder somebody for it to be deemed illegal. It's the end result and the spirit of the law.

Again, from the testimony I'm hearing and everything we're talking about, it seems like here's the letter of the tax law and anything that's not in black and white is the way, perhaps, that all of these loopholes can be created. Why does it seem that tax law is applied in an absolute letter of the law way, and that if all of these examples of schemes or loopholes are not explicitly laid out, the spirit of the law and the outcome are weighted differently than—again, my perhaps exaggerated example—in other areas of criminal law?

• (1225)

**Prof. Arthur Cockfield:** Tax law is interesting in how one is supposed to interpret it. All of this goes back to an old English case called Duke of Westminster, where the House of Lords told us that we could govern our affairs as we saw fit to avoid taxes as long as we complied with the letter of the law. This created a lot of problems in Canadian jurisprudence over the next hundred years. Professor Lareau mentioned that we tried to change things in the late 1980s by

introducing a general anti-avoidance rule, a GAAR, that said not just that letter of the law matters, but also the spirit, that you can't abuse the Income Tax Act. So it is tricky, but having said that, within the Income Tax Act there are a host of different penalties for advisors who engage in reckless, negligent, or willfully blind behaviour. As I mentioned at the outset, one way to attack the problem is to pursue those penalties against the advisors.

We've heard that the CPAs are regulated. Of course, lawyers in this crowd would know that we're also a self-regulatory body. I published a book on legal ethics that annotates all the dozens of cases every year where the Law Society of Upper Canada sanctions lawyers. So sanctions are there as well.

However, the more obvious are in the Income Tax Act. As Professor Lareau also mentioned, there are whoppers. You can go after the advisors, like the Department of Justice did with the KPMG tax shelters of a decade ago and fined them \$450 million. That was a much larger scale tax shelter called BLIPS—bond linked issue premium structure—and related structures, so it was a very different thing. But we do see that's possible to discourage reckless behaviour.

I'm not, of course, commenting on the KPMG case.

**Ms. Jennifer O'Connell:** Mr. Chamberlain, you mentioned tax products in the U.S. having to be vetted and registered. Does that also come with somewhat of an audit and access to, in that case, the IRS in the sense that it's one thing to vet and register, but someone also has to regulate and audit, and the fact that whatever has been registered is actually what is being offered and not just some version of it, which I assume would provide some access? In this case, if it were the CRA auditing that, was there legislation to ensure in random audits that what was being offered was actually the item that was vetted?

**Mr. Scott Chamberlain:** I don't know the precise answer to your question. I can undertake to look into it. In fact, it was difficult to research where that regulatory obligation came from, because I just recently discovered it. All I can do is refer you to a document that was provided, or that will be provided electronically, which is the "U.S. Tax Shelter Industry: The Role of Accountants, Lawyers, and Financial Professionals". This was a 2003 report from the Senate committee in the United States.

If it's all right, I can read you a short passage, which is somewhat telling of this problem, or I can direct you to it. I'll actually just draw your attention to page 13, which details both that requirement and the reality that large accounting firms chose not to register, knowing that was a breach of the law, and did so in a calculated way. Evidence given to the Senate of the United States was that they calculated the profits and the tax that would be saved versus the lack of enforcement for this registration. It's much like the Ford Pinto was a calculation, and it cost us less to fix the Pinto than to pay off the people who were going to be killed. It's not exactly the same, but it is a cold calculation that was done.

What I would say further to your first question regarding the self-regulated professions is that I spent eight to ten hours looking through all the reported cases since 1987. They're online. That's almost 30 years of cases. I looked through the unlawful conduct provisions, and I looked through the reputation of the profession. There wasn't one case about tax evasion internationally. There were fraud cases that were domestic. There was not one case about that.

**The Chair:** Thank you, Mr. Chamberlain. We're well over time.

Mr. Liepert.

**Mr. Ron Liepert (Calgary Signal Hill, CPC):** I'll start with Ms. Thomas.

First of all, this whole area of taxes is something that is complicated. I always like to look at things the way I think the majority of my constituents would look at them. Really, the only issue is that they want to ensure that they don't pay more taxes than they're required to pay, come tax time. Is there a difference between tax avoidance and tax evasion?

• (1230)

**Ms. Joy Thomas:** Yes, there is a difference. Tax evasion, we all know, is unlawful and unethical, and it's very harmful to our economy. Tax "avoidance" is effectively a term used to define tax planning. As Canadian taxpayers, we all have the right to organize our tax affairs in such a manner as to pay the least amount of tax that we are legally obligated to pay through law. That is the fundamental difference.

I think where it gets confusing, though, is in the area of aggressive tax avoidance. Already, others here have mentioned that aggressive tax avoidance is really where you get into not planning your tax affairs in the spirit and the intent of the legislation of the tax policy.

**Mr. Ron Liepert:** Just plain tax avoidance is not illegal, as was mentioned by the questioner a few minutes ago. The statement by the member across the way was clear that tax avoidance was illegal. Is that...?

**Ms. Joy Thomas:** Tax avoidance is a term used for tax planning, and it's not illegal.

**Mr. Ron Liepert:** Right, so part of this issue, as I read it and in the way my constituents look at it, is that they hear about things like tax avoidance and tax evasion and, frankly, it makes them angry. It makes them angry because there are a lot of terms just thrown around out there that are probably inappropriate. I heard one just a few minutes ago from Mr. Howlett, who said that there was "political interference" at the CRA.

Your answer to my colleague left a lot to be desired. I'm political. I'm elected. I'm considered to be a politician. Quite frankly, when you throw something out there by saying there's political interference, I think you owe it to the Canadian public to be more specific than how you answered in this hearing. I'm going to give you another opportunity to be more specific, because if you can't be, I would suggest that maybe you take back that comment about political interference at the CRA.

**Mr. Dennis Howlett:** As I said before, I deliberately made sure that I did not know the particulars of the cases that were mentioned by CRA auditors. I did not interview them myself. We hired a journalist to do the interviews and to keep the names of the CRA

auditors from us, so I don't even know the particular CRA people who said this.

What I do know is that there was a pattern. There was more than one. There were a number of CRA auditors interviewed who had serious complaints and suspicions about political interference, and it is evidence sufficient to warrant further investigation. That is what is in the recommendations in the report, that the government should encourage CRA staff to take advantage of the Public Sector Integrity Commissioner's offices to try to get to the bottom of this issue.

I know it's a very serious matter, and that's why I think it needs to be brought to the government's attention, so that it can determine whether there is, in fact, something there or not. All I know is that there were enough cases that were brought forward to our attention that we felt something needed to be done about this. I have met with the minister's office to talk about this issue and have recommended that CRA staff be encouraged to come forward to the Public Sector Integrity Commissioner.

**Mr. Ron Liepert:** Mr. Cockfield, maybe I can conclude with this comment. We've had a couple of instances just here this morning where you have tax avoidance being deemed to be illegal. You have allegations of political interference that is very difficult to substantiate. If my numbers are correct, we have hundreds if not thousands of informants about illegal tax schemes, and yet the crown has not been successful in any of the cases, if I am correct. Is there a theme here that there's a lot that's thrown out in the way of allegations but very little that can be substantiated?

• (1235)

**Prof. Arthur Cockfield:** Yes, and to return quickly to your earlier comments, when I teach tax law I tell my students that, if they have an RRSP, they are engaged in tax avoidance—that is a registered retirement savings plan, like many of your constituents have, presumably. That is legal, but your constituents are right to be confused. I've been studying this my entire professional career and I'm still confused. At some point, the tax planning becomes so egregious, so aggressive that one needs to take steps to curtail it, to potentially punish or at least sanction the advisers as well as the taxpayers who take it up. It is confusing. It's not an easy area, and that's why the crown may be reluctant but, as I mentioned, it has to go after these bad apples for precedential value at a minimum. It has to go after them, prosecute them, and get successful convictions. That's something we have a terrible record at in our country.

**The Chair:** Thank you both.

Mr. Ouellette, the floor is yours.

**Mr. Robert-Falcon Ouellette (Winnipeg Centre, Lib.):** Mr. Cockfield, I'd love to ask you just a few questions. You wrote this interesting article, "Big Data and Tax Haven Secrecy", and there's a lot of information in it. I guess you had the opportunity of looking at the International Consortium of Investigative Journalists' Panama papers, the leaks, and trying to understand that in greater detail. You write that the ICIJ leaks provided evidence of capital flight from non- or quasi-democratic countries to wealthier democracies like the U.S. and other OECD nations. Apparently there is a small portion of elites in countries such as China who use tax haven intermediaries as conduits to invest their monies.

**Prof. Arthur Cockfield:** Sure. Thank you. It's a very boring academic article, but thank you for bringing attention to it.

**Mr. Robert-Falcon Ouellette:** I don't think it's boring at all.

**Prof. Arthur Cockfield:** There is an estimated \$10 trillion to \$35 trillion hidden offshore in tax havens. When we look at the empirical research by economists in this area, we see money moving all around the world. It typically comes from middle-income, developing countries that are quasi-democratic or ones with outright tyrants, and it ends up in places like Canada; frankly, in Vancouver condominiums. This has been well covered by the media and increasingly by the academic community. In a strange way, the point I make in the paper—and this is really not particularly original—is that we benefit from this strange system. Last year alone, \$1 trillion has left China, according to *The New York Times*.

We are beneficiaries of this system, and I think our legal regime is indirectly encouraging it. For instance, the Panama papers leak revealed that the Panamanian law firm was recommending Canada as a good place to base your ultimate investment because our laws don't necessarily reveal the beneficial owners of these investments, and of course, if you're coming from a rough place and you're investing in Canada, you don't want your home government to find out about it. Because of this phenomenon, Canada again has benefited.

**Mr. Robert-Falcon Ouellette:** You have also highlighted that a country can exhibit tax haven behaviour even if it has a high income tax rate, and you're looking at the United States. Many OECD countries serve as a form of tax haven, because they do not disclose tax or financial information. They have very tight secrecy laws about sharing information of clientele. This often encourages, I guess, a lot of this offshore tax evasion and allows crime. You even, in your article, highlight the potential for the financing of terrorism.

**Prof. Arthur Cockfield:** Yes, it's a more recent concern that tax haven conduits are being used to facilitate terrorist financing. I'm working on a paper—I have a grant for that—with Christian Leuprecht. We're putting together some research in that area.

The traditional concerns are offshore tax evasion and international money laundering. Yes, I do believe that countries such as Canada are not quite as egregious as the Americans, using Delaware limited liability companies that completely mask and anonymize the non-resident investor. We're not quite that far. But our laws could be changed to prevent this. Yet it's almost understandable. We like the inward foreign direct investment and portfolio investment. It's benefiting our economy, frankly. That serves as a disincentive, as I discuss in my research.

**Mr. Robert-Falcon Ouellette:** I was interested in talking about the whistle-blower legislation. In some jurisdictions, from whistle-blower legislation, you can actually receive a benefit payment if you squeal someone out, shall we say.

Do you think it's high enough here in Canada? Do you think it should be around 50%? Do you think that would allow some accountant to say, "Look, there's my client. He's clearly conducting illegal activity. It's worth \$2 million or \$3 million. If I were to get 50% of that, maybe I'd be more inclined to react to my code of professional conduct and fulfill my obligations to my professional

order and actually say what's going on and talk to the CRA and give more information?"

• (1240)

**Prof. Arthur Cockfield:** I think the answer is clear. In our country it would be unconstitutional to require lawyers to rat on their clients.

We had a case last year—

**Mr. Robert-Falcon Ouellette:** Not clients; rather, professional financial advisers.

**Prof. Arthur Cockfield:** It would be contrary to our rules of professional obligation to reveal confidential information.

There was a case last year, the Federation of Law Societies of Canada versus the Queen, where it was held to be unconstitutional to require lawyers to report some client information to FINTRAC in some circumstances.

As for accountants, there's more leeway to regulate them, but I think most accountants would be very reluctant to go down this road.

Our whistle-blower program, again, is a good idea. Maybe it ought to be tweaked. It's still too new to see whether it will bear fruit, but I absolutely think it's a positive step.

**The Chair:** Thank you both.

Mr. Nater.

**Mr. John Nater (Perth—Wellington, CPC):** Mr. Howlett, for the study that you conducted, you mentioned that you conducted about 20 or so interviews with CRA auditors. How were those auditors selected?

**Mr. Dennis Howlett:** We, in some cases, found auditors who had recently retired, and so were freer to talk. We had auditors refer others to them. We also had the co-operation of PIPSC, the Professional Institute of the Public Service, which represents auditors in the CRA. Some of their members were informed that we were doing this study, and so some auditors came forward and contacted us to participate in the study.

We describe in our study the process of how that happened. We are not claiming this is a scientific poll. It tended to bring forward those who had concerns or issues, although there were a number who also were quite positive about what the CRA was doing. There are a range of views represented. That said, we're not claiming that it's necessarily a scientific study.

The reason we did the study is that I was getting calls, because I had been in the media. Various CRA auditors, and so on, were coming forward to me. I thought, okay, there's enough of this happening that we better take a look at it. That's why we had an independent journalist conduct the interviews for us. We didn't even know the names of all the people who were interviewed.

**Mr. John Nater:** Okay, but I have a couple of points.

There was a degree of self-selection, then, in terms of the interview process.

**Mr. Dennis Howlett:** Yes.

**Mr. John Nater:** Was there a peer review process of the findings?

**Mr. Dennis Howlett:** No, there was no peer review process. It's not an academic study. It was shared with government. The new minister has a copy of it. We did make these recommendations and the findings available to the government because we felt this warranted further investigation. We weren't claiming that this is the end of the story, but that there were sufficient issues of concern here that should be investigated further. That was our conclusion.

**Mr. John Nater:** Okay. I'm from from academia. We were required to have non-medical research ethics approval before conducting a study with human subjects to do interviews. Am I right to assume there was no such approval for the subject leading into this?

**Mr. Dennis Howlett:** No, it's not an academic study.

**Mr. John Nater:** That leads me to believe then that your allegation of political interference may be tough to substantiate, based on the fact that this was a study taken with a degree of self-selection, no outside ethics approval, and no peer review process. How are we to believe and substantiate these allegations when we don't have this framework in place that a normal academic study, for our academic colleagues here, would normally have to undertake when making such serious allegations? How are we supposed to take that seriously when some of these mechanisms aren't in place to clarify that?

•(1245)

**Mr. Dennis Howlett:** We were not reaching a conclusion about those issues. We were simply saying that there were sufficient cases brought forward to our attention that we felt they warranted further investigation. We have encouraged some of the CRA auditors to take their case to the Public Service Integrity Commissioner. We felt that was the best way forward.

It points to a problem here. First, many CRA staff were fearful of complaining to their superiors, were concerned about the atmosphere in the CRA; and second, our whistle-blower laws, while they've made a step forward with the Public Sector Integrity Commissioner, are still not adequate, in our view. That's why we're calling for a long overdue review of the Public Service Integrity Commissioner and that law. We think that law should be strengthened. There is not the same level of protection in the Canadian regime as in the United States, or New Zealand, or other countries. There are a lot of ways in which it could be improved. For some whistle-blowers who have blown the whistle on Canadian mining companies' practices in Africa, for example, there is no protection available for them. Very few come forward because they are threatened with being fired. They face reputational risk and not being able to find a job again, and that needs to be corrected.

**The Chair:** Thank you, both.

Mr. Grewal, for five minutes.

**Mr. Raj Grewal (Brampton East, Lib.):** At its core, this is about tax fairness, making sure that all Canadians, corporations included, pay their fair share, making sure that they don't cross the line between avoidance and evasion. As a former corporate lawyer, this was obviously an ongoing discussion. On any mergers and acquisition deal, you had to make sure that there was a tax plan in place. That was more tax avoidance than tax evasion.

My question is for Mr. Cockfield. It goes to the core of the issue that you have come out pretty aggressively against the CRA. I'm not going to disagree with you on the fact they don't do a good job in prosecuting Canadians who try to evade tax internationally. Specifically, in your experience, this wealth of experience that you have in international taxation, what jurisdiction gets it right? What country would you say that Canada or the CRA could model itself after?

**Prof. Arthur Cockfield:** That's a very good point.

I didn't say this, but it's a very tricky matter to go after these folks. Most countries do a lousy job. I sometimes say that the Americans get the tip of the iceberg, but at least they're getting the tip. The U.S. has a very aggressive reputation, with 500 international auditors and so on who travel around the world. So the Americans are often touted as one example. The Germans are another good example. Prior to the Panama leaks, I think they had 300 auditors breaking down doors and looking through tax records and so on. Then, finally, the Australian Taxation Office, the ATO, has a terrific reputation in having of innovative policies to address offshore tax cheats. We've adopted a similar risk assessment system in our country to that of the Australians.

Those are the three examples that I think we ought to take a careful look at.

**Mr. Raj Grewal:** In your experience, are those tax agencies better funded than the CRA? The CRA went through a lot of cuts. Now our government has made a pledge to invest resources in it. When the CRA was before our committee, they said that's going to do a very good job. I can't remember the number, but for every dollar invested in addressing the issue,  $x$  percent is given back, and it's usually higher than \$1.50 or \$2.

In your experience, are the German officials and the U.S. officials better funded? Do they have more resources than Canada has for the CRA?

**Prof. Arthur Cockfield:** I'm not aware of any concrete information.

My sense is that the Americans traditionally were much more funded, and then again, they have this vast army of the DEA, ICE, Customs, the FBI, and so on that assist with tracking down tax cheats and international money launderers. But the Americans have just slashed their budget and have fired a whole bunch of international auditors for political reasons in the last couple of years, and so there's a lot of discussion. That's highly problematic.

I think the Germans, too, have devoted more resources to the problem. As I mentioned at the outset, it is a welcome change to see these additional resources to help the CRA. I think that will help a lot.

•(1250)

**Mr. Raj Grewal:** In my constituency, I usually get the small-business owner or the single parent who comes into our office and is being audited by the CRA. The CRA is sending them letters and giving them phone calls. They're reading the news—they're well informed—and they're very upset, to say the least, at the fact that wealthy Canadians are getting away without paying their fair share. The CRA is overly aggressive, in my humble opinion, on the average Canadian who is just trying to put food on the table and clothes on their kids' backs.

Mr. Howlett, you made a pretty substantial comment that there's political interference in the CRA. I would actually say, from what I heard today, that it happens more often than not at the CRA. Specifically, you mentioned that political interference has led to cases being dropped or not prosecuted. Then, when other honourable members of the committee here asked you to substantiate that claim, in my humble opinion, sir, and with no disrespect, your comments back did not lead one to believe that one could make that claim. You say that political interference is happening at the CRA but that you cannot prove it. You can't point to one factual element to say that, or to one auditor or somebody in the CRA who could give you a concrete example.

I worked on Bay Street. Rumour mills swirl like anything. I mean, in Ottawa, we're probably even worse for it in the bubble.

I take your claim very seriously. I think my constituents and all Canadians across the board would take something like political interference in their tax agency extremely seriously. So I urge you, if there is concrete information there, to please come forward with it to the committee to ensure that we do our job as elected officials to correct that problem, because I think it's a very serious allegation you just made.

**The Chair:** Mr. Howlett, we'll ask you to keep the answer fairly tight. We're running out of time.

**Mr. Dennis Howlett:** We have given more details to the minister's staff, and it's not just political interference that is the issue here. We have ended up with a tax system that treats ordinary taxpayers in one way and rich taxpayers in another. We end up with a completely unfair system in which some people can afford tax planning assistance and expensive tax lawyers and accountants, and others can't, and one in which the CRA has been going after the low-hanging fruit, throwing the book at people who in some cases had simply made a mistake, and systematically going after most of the major tax evaders—and I'll use the word “evaders”—by letting them do voluntary disclosures with no penalties, and, in some cases, not even with any interest.

That ends up as an unfair system, and there are serious problems at the Canada Revenue Agency. This new government has begun to address some of the problems, but I would suggest there are still other problems that you need to get to the bottom of. We would be happy to co-operate, assist, and help the government to do so. There is a serious problem here that needs fixing.

**The Chair:** We'll have to cut you there. Mr. Howlett—

**Mr. Dennis Howlett:** Our report really puts the emphasis on fixing it, and not just on the problems.

**The Chair:** Thank you, Mr. Howlett.

Mr. Caron, we'll hold you to three minutes.

**Mr. Guy Caron:** Monsieur Lareau and Mr. Cockfield, I'll ask my question in English this time.

There is such a thing as privilege between attorney and client. There is such a thing as privilege between a doctor and a patient. There is such a thing as privilege between, say, a member of the clergy and the faithful.

Is there such a thing as privilege between a tax accountant or tax lawyer and a client? Regardless of the answer, should there be?

**Prof. André Lareau:** The Income Tax Act covers privilege between client and lawyers and notaries. Accountants are not covered here in the Income Tax Act.

The Supreme Court last week rendered a judgment regarding notaries with respect to their accounting files, accounting documents, *des cas comptables*, and the Supreme Court said that even though the Income Tax Act says they are not privileged, they are indeed privileged.

The Income Tax Act is unconstitutional in that respect, so they are privileged with respect to notaries and lawyers, but not with respect to the accountants in the Income Tax Act. I'm not talking about the accountants with respect to their profession. I'm talking about the Income Tax Act.

•(1255)

**Mr. Guy Caron:** Mr. Cockfield.

**Prof. Arthur Cockfield:** The only thing I would add is that it gets even more complicated when you have a firm like KPMG with an affiliate law firm. Generally speaking, accountants don't enjoy this privilege, but often their opinions and their plans are attached to what lawyers say, and then things get highly problematic, because privilege does cover the lawyers, so our lawyers' opinions shielding the work by accountants are an issue.

**Mr. Guy Caron:** Madam Thomas.

**Ms. Joy Thomas:** Canadian taxpayers all have the right to confidential tax advice. In Canada, lawyers are able to provide confidential tax advice to their clients, and tax accountants are not.

The reason that taxpayers are allowed to have and are given the right to have confidential tax advice is that it's just good policy. It's what opens up a very frank, open, and transparent dialogue that enables the taxpayer to lay out their full tax situation so they can be appropriately counselled.

**Mr. Guy Caron:** I don't disagree with this. Actually, I agree with you in the most general case, but it also removes the transparency when there is something that's quite questionable taking place.

[Translation]

Prof. Lareau spoke about the case of someone making a donation that ultimately is not a donation because something is returned to the person later.

[English]

We're talking about aggressive tax avoidance. We can't do our work, and we can't get to the bottom of things regarding situations like these, because there is such secrecy.

How do we get around this? How do we ensure privacy, and how do we prevent that privacy from becoming a hurdle that encourages what could be illegal or immoral behaviour?

**Ms. Joy Thomas:** That's a great question. We've been on record for about 10 years, looking for the ability for our clients to access confidential tax advice from tax preparers.

We also, though, in asking for that have always said that we need to have a full dialogue on where the line is and what should not fall under confidentiality, because of those particular reasons.

I think we really do need to have a full dialogue about that. We need to get it right between the government and CRA's ability to seek compliance with the law, and the taxpayers' right to confidential advice.

**The Chair:** Thank you. I'm sorry. You're well over time, Guy.

You had a single question, Mr. Champagne. We'll cut it at that.

[Translation]

**Mr. François-Philippe Champagne (Saint-Maurice—Champlain, Lib.):** Thank you, Mr. Chair.

Prof. Lareau and Prof. Cockfield, thank you for sharing your expertise with us.

Two things stand out in your testimony: the complexity of tax evasion and its international character.

I'm sure you are aware that, in the last federal budget, we invested \$444 million so that the Canada Revenue Agency could have the technology, resources and teams needed to address tax evasion. We also focused on international cooperation.

In this regard, I would like to know what you think are the best practices in international cooperation on this issue. As you know, this is an international phenomenon. Canada may be required to fight tax evasion effectively. Prof. Lareau and Prof. Cockfield mentioned the speed, complexity and, above all, the international character of the various tax systems and the way people benefit from them.

[English]

**The Chair:** I have to cut you off there, because I thought it was a short question.

Can somebody give us a 20-second answer?

**Prof. Arthur Cockfield:** I will try.

I think the most important effort Canada is participating in is the OECD common reporting standard for the automatic exchange of cross-border tax information.

**The Chair:** I have one thing to do with the committee, and then I will thank the witnesses.

Committee members have received a letter dated June 4 from legal counsel Mr. Jamal. I think you all know the letter I am referring to. Is it okay to make that letter public? I can't see any problem with doing that.

● (1300)

**Ms. Jennifer O'Connell:** Yes.

**The Chair:** Okay.

With that, I certainly want to thank all the witnesses, and the members as well, for trying to stay within the parameters that we needed to adhere to in this hearing.

We thank you for your information and for coming forward today.

The meeting is adjourned.









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