

Unreported Income Not on a CRA T1 Form Is not Always Tax Evasion

Version 6.1

by

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Abstract

Private property “income” can only be reported by letter and not on a Canada Revenue Agency (“CRA”) T1 form. Only “income” deemed by law to be Canada’s “public money” is filed on a T1. CRA uses the SIN to identify individual taxpayers as two legal persons.

1 Summary

Over the last ten years or so Canadian courts have been full with people who claim that they do not have to pay income tax. There are so many different theories that Associate Chief Justice of Alberta wrote about this ‘movement’ in an 135-page *obiter* in the divorce case **Meads v. Meads**¹, calling such persons “*Organized Pseudolegal Commercial Argument* [“OPCA”] *Litigants*”. Some argue the *Income Tax Act* “ITA” is unconstitutional,² as they³ believe it to be a direct⁴ tax. Another theory is that due to common law’s human right to private property⁵, a natural person is not included⁶ in the definition of “person” in the *ITA* and so is an *ITA* “exempt person” (the courts ruled both positions to be incorrect). Yet another theory is the *ITA* taxes an entity that the individual represents, but in the **Stanchfield**⁷ case, the individual plaintiff failed to show how to create a second entity in a fashion recognized by law, so such an individual was ruled to be indivisible. In a nutshell, Crown’s position is that as the individual is indivisible and not an *ITA* “exempt person”, all ‘income’⁸ by such an indivisible individual is subject to, and taxable, by the *ITA* as ‘profit’, which is also undefined by the *ITA*.

The *ITA* is legal and constitutional via an individual representing an office of Her Majesty as an officer by forming a corporation sole. As the *ITA* taxes ‘profit’ from ‘income’, and income for any office is profit, such “**office profit**”⁹ is taxable. An individual who is not an officer lacks the legal power to convert income into or to receive it as “**office profit**” (which is also public money), receives instead private property as *ITA* “exempt income” which is deemed to be equal to zero. This dual capacity allows the *ITA* to tax individuals as officers while also protecting private property rights in compliance with Canada’s common law principles and international human rights covenants. It also makes individual income tax an indirect federal tax and therefore constitutional, as it is a tax on the “**office profit**” (public

¹ *Meads v. Meads*, 2012 ABQB 571, Pages 15-150

² See, for example, *R. v. Klundert*, 2004 CanLII 21268 (ON CA), <http://canlii.ca/t/1hqhg>, and subsequent appeals still ongoing ten years later.

³ Most tax lawyers believe individual income tax is a direct tax; see, for example, lawyer Paul McKeever’s web site: <http://www.ownlife.com/tax/>

⁴ See, for example, *Kasvand v. The Queen*, 94 DTC 6271; appeal refused, 95 DTC 5618

⁵ Libertarians take this position. See, for example, Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), where Nozick says: the taxation of labour income “is on a par with forced labor”—resulting in the “(partial) ownership by others of people and their actions and labor” (page 169), and David Duff, University of British Columbia (UBC), Faculty of Law, *Private Property and Tax Policy in a Libertarian World: A Critical Review*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=719742

⁶ *Kennedy v. Canada (Customs & Revenue Agency)*, 2000 CanLII 22837 (ON SC), <http://canlii.ca/t/1wd1t>

⁷ *Canada (National Revenue) v. Stanchfield*, 2009 FC 99 (CanLII), <http://canlii.ca/t/22g7x>

⁸ There is no definition of ‘income’ or ‘profit’ in the *Income Tax Act*. For more see the **Appendix**.

⁹ See our definition of the phrase “office profit” in the **Appendix**.

money) of Her Majesty's federal office that the federal officer represents, and not a tax on the private property income of an individual who is not an officer.

Since the *ITA* protects private property rights, the *ITA* can only *deem* and not mandate an individual's income to be public money for Her Majesty's office, which must be reported accurately and on time, as not to do so is analogous to a breach of trust by a public officer¹⁰. However, if the deeming is rebutted, (which must be allowed since the *ITA* protects private property rights), then the individual's income not as such an officer is *ITA* "exempt income" which *ITA* s.3(f) deems to be zero. There is no line on Canada Revenue Agency's ("CRA") T1 forms¹¹ to file such private property "exempt income" because a T1 uses the all-lower-case 'social insurance number' to indicate that it is only for filing the public money of Her Majesty's office (in contrast to the upper-and-lower case Social Insurance Number that denotes one's position as an *ITA* "legal representative"). This line omission, and the *ITA* s.3(f) deeming such "exempt income" = 0, both prevent private property from being illegally converted into public money on a T1 and thereby protects Her Majesty's honour¹². That is why I propose that not reporting on CRA's T1 form an individual's private property (*ITA* "exempt income") is not always tax evasion.

2 Essential Elements of Tax Evasion: Crown's Perspective

Outside the legal profession, tax evasion is commonly perceived as a failure to declare all income. In the case of ***R. v. Balla***¹³, Crown stated that the essential elements of tax evasion are: jurisdiction, identity, time, location, *actus reus* (guilty act) of evasion (having failed to file income tax returns) and *mens rea* (guilty mind) of evasion (failing to file knowing that the evasion of taxes would be the result).

3 Essential Elements of Tax Evasion: A Fraud Against Public Money

I propose *three* essential elements for tax evasion are missing from Crown's list in ***Balla***. It is useful to look at *whom* tax evasion is against, and *what* the status of the money is:

*"As between tax avoidance (tax planning) and tax evasion, only the latter is a criminal offence. Tax evasion at its core perpetuates an element of **fraud against the treasury** and typically carried out through some form of concealment or deceit with the intent to evade or defeat a tax or payment of the tax."* – *Tax Evasion*¹⁴, Page 1-10

Financial Administration Act, s.2: "**public money** means all money belonging to Canada..."

Financial Administration Act, s.2: "**Consolidated Revenue Fund** means the aggregate of all **public moneys** that are on deposit at the credit of the Receiver General"

¹⁰ *Financial Administrative Act* ("FAA") s.2 "public officer": <http://canlii.ca/t/52jt4>

¹¹ CRA's T1 forms are archived by CRA at: <http://www.cra-arc.gc.ca/formspubs/t1gnr/llyrs-eng.html>

¹² *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14 highlighted the concept of "honour of the Crown": <http://canlii.ca/t/fwfft>

¹³ *R. v. Balla*, 2009 BCPC 136, at [59], www.canlii.ca/t/241fc

¹⁴ *Tax Evasion*, William Innes, <http://carswell.com/product-detail/tax-evasion/>

From above, two characteristics of tax evasion are that 1) it is a fraud¹⁵ 2) against the treasury with Canada's public money. In Canada, that is the Consolidated Revenue Fund ("CRF"), where taxes, fines and penalties under the *ITA* are paid into and benefits are paid out of. It is clear that the CRF is not private property.

Fraud is a legal remedy against someone taking public money for private use, or private property for public use. A *FAA* s.2 "public officer", an agent of Her Majesty¹⁶ that has been alleged to embezzle public money for personal use is charged under *Criminal Code of Canada*¹⁷ ("CCC") s.122:

s.122. Breach of Trust by Public Officer - Every official who, in connection with the duties of his office, commits **fraud** or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the **fraud** or breach of trust would be an offence if it were committed in relation to a **individual**.

CCC s.122 states "whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person". As an individual owns private property, this corroborates that private property is distinct from public money. Here is a CRA press release on one of their agents guilty¹⁸ of 'Breach of Trust by Public Officer':

Former CRA Employee Sentenced for Fraud and Breach of Trust

TORONTO, ONTARIO (Marketwire - Nov. 29, 2007) - Pertab Lall, of Mississauga, pleaded guilty in the Ontario Court of Justice in Brampton on June 18, 2007, to one count of fraud over \$5,000, and one count of **breach of trust by a public officer**. Today, he was sentenced to 18 months in jail.

Mr. Lall, who was an employee of the CRA at the time the offences took place (1999-2002), accessed the tax accounts of 17 deceased individuals. The accounts were reactivated for the purpose of filing **fraudulent** income tax returns and making Canada Child Tax Benefit claims. This resulted in the CRA issuing approximately \$150,945 in refunds to post office boxes, and bank accounts through direct deposit, belonging to Mr. Lall.

The third essential element comes from the *ITA* deeming¹⁹ that all income by an individual taxpayer is received as an officer for Her Majesty's office identified by the "social insurance

¹⁵ Tax evasion became a predicate offence (a crime that is a component of and results in a more serious offence) to fraud on July 12, 2010: <http://www.parl.gc.ca/content/sen/committee/411%5CBANC/12EV-49362-e.HTM>, testimony before a Senate Committee by Claude St-Pierre, Director General, Enforcement and Disclosures Directorate, Compliance Programs Branch, Canada Revenue Agency, page 12-9. Taxpayers charged with tax evasion can now also be charged with fraud under the *Criminal Code*.

¹⁶ Her Majesty legally personifies the public in Canada: *Citizenship and Immigration Canada* (2009). *Discover Canada*. Ottawa: Queen's Printer for Canada. p. 2.

¹⁷ *Criminal Code*, RSC 1985, C-46, s.122 <http://canlii.ca/t/5298I>

¹⁸ *R. v. Lall*, [2007] O.J. No. 5213 (Ont S.C.J.) (Unreported decision)

¹⁹ *The Composition of Legislation*, 2nd Ed., Driedger, 1976, Department of Justice Ottawa: "**Deemed**: Used to establish legal fictions. For a statutory purpose it is often necessary to deem a thing to be something it is not." The *ITA* uses the word "deem" 3,681 times – or about four times every three pages.

number” styled all in lower case, or, as Canada’s public money and not as the individual’s private property. If such an individual converts Canada’s public money for private use, it would be theft by conversion, a CCC offence²⁰.

There seems to be a legal similarity between ‘Breach of Trust by a Public Officer’ and tax evasion/fraud, which earlier was defined also as an individual who has taken public money for private use. It seems that for tax evasion/fraud to occur:

- 1) The individual is deemed by the *ITA* to be an *ITA* “officer” of Her Majesty,
- 2) That *ITA* “officer” somehow is identified from other public officers of Her Majesty,
- 3) That officer somehow has fiduciary duties to the public (personified by Her Majesty),
- 4) That officer is in breach of its fiduciary duties handling public money of that office.

4 Essential Elements of Tax Evasion/Fraud: The First Two Missing Elements

If the individual *declines* to receive public money as an officer of Her Majesty, the individual then has no fiduciary duties to the public to breach. This is the *second* essential element for tax evasion that Crown *assumes* and does not prove in court - even if the accused is also charged with fraud. It seems the first two missing essential elements of tax evasion that Crown *deems* are:

- 1) Crown *deems* the ‘income’ received in the taxpayer’s hands is public money and is not the individual’s private property.
- 2) Crown *deems* the individual consents to be an *ITA* “**officer**” dealing with Canada’s public money, and so has certain fiduciary duties to the public.

I will show how the four items above can occur, and then result in tax evasion.

5 Officer Deals with Public Money; is also Agent of Her Majesty

From Chapter 3, individual taxpayers often deal with public money because taxes, fines, penalties, tax credits and benefits, such as *Employment Insurance (“EI”)* and *Canada Pension Plan (“CPP”)* all flow in and out of the CRF. An office that deals with public money is a “public office”²¹. When such an office is lawfully occupied, a **fiduciary duty** is established against the officer owed to the public at large since it is a trustee of the people as an **agent** of Her Majesty. Therefore, if an individual consents to be an officer of Her Majesty, it also becomes Her Majesty’s agent and deals with public money and not **private property**. Justice Kovatch corroborates this in *HMTQ v. Doug Amell et al*²², saying that

²⁰ *Criminal Code of Canada*, s.322(1): <http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/#sec322subsec1>

²¹ *Black’s Law Dictionary*, 4th Ed. “Public office – public property is under control of the office.” This fits with the *FAA* s.2 definition of “public officer”.

²² *HMTQ v. Doug Amell et al* 2010 SKPC 107, at [50]: www.canlii.ca/t/2c05t

such an officer is a “**statutory agent identified with a social insurance number**”. A CRA audit is arguably one agent of Her Majesty (CRA) auditing²³ another agent of Her Majesty.

To further corroborate that an individual taxpayer could become Her Majesty’s agent as it deals with **public money** instead of **private property**, the following is CRA’s P-182R²⁴ Policy Statement on the indicators that a principal-agent relationship exists:

CRA P-182R: Fiduciary Duty

“The agent must act in the best interests of the principal and may not put its own interests before those of the principal. Where the agent is in a position in which its interests conflict with those of the principal, the agent is obliged to fully disclose that conflict to the principal.”

Translation (*if a statutory **agent** identified with a ‘social insurance number’*):

The officer/agent must act in the best interests of Her Majesty and **may not put its own interests before those of Her Majesty**. Where the officer/agent is in a position in which its interests conflict with those of Her Majesty, the officer/agent is **obliged to fully disclose that conflict** to Her Majesty.

CRA P-182R: Filing of Returns

“In an agency relationship, the principal exerts a degree of control over the agent. Evidence of that control could include the requirement for the agent to obtain approval to incur certain expenses or the requirement for the agent to provide ongoing reports.”

Translation (*if a statutory **agent** identified with a ‘social insurance number’*):

If an agency relationship, Her Majesty exerts a degree of control over the officer/agent. Evidence of that control could include the requirement for the officer/agent to obtain approval to incur certain expenses or the requirement for the officer/agent to file returns (**i.e. T1, T2125, T2**).

CRA P-182R: Filing Honestly and Completely

“One of the ways in which an agent’s fiduciary duty serves to restrict the agent’s actions concerns secret profits. Except with the consent of the principal, an agent is not permitted to receive any financial advantage in excess of that which the agent is entitled to as remuneration.”

²³ Since both are agents of Her Majesty, CRA can arbitrarily assess if the individual officer/agent fails to file. See Chapter 32, “Assessment versus ITA “Assessment”, “Re-Assessment”, and “(Re)assessment”.

²⁴ GST/HST Policy Statement on Agency, P-182R, Canada Revenue Agency, <http://www.cra-arc.gc.ca/E/pub/gi/p-182r/README.html>. While this CRA Policy Statement is for GST, the principles and duties of an agency relationship should be the same for non-GST matters.

Translation (*if a statutory **agent** identified with a ‘social insurance number’*):

One of the ways in which an officer/agent’s fiduciary duty serves to restrict the officer /agent’s actions concerns secret profits. Except with the consent of Her Majesty, an officer/agent **is not permitted to omit filing “public money” for Her Majesty’s office**, which the officer/agent is entitled to, under the ITA, as remuneration (after taxes are paid).

CRA P-182R: Audit Representations

“If an agency relationship, the principal will authorize the agent to provide representation on the principal’s behalf. Consequently, whether it is agency should be evident from the purported agent arranging transactions for the principal and not trading on its own account.”

Translation (*if a statutory **agent** identified with a ‘social insurance number’*):

If an agency relationship, Her Majesty will authorize the officer/agent to provide representation (**i.e. CRA audits and appeals**) on Her Majesty’s behalf (for Her office). Consequently, whether it is agency should be evident from the purported agent/officer arranging transactions for Her Majesty’s office and **not trading on its own account**.

Based on the above characteristics from CRA’s **P-182R Policy Statement** that point to a principal-agent relationship, one could conclude that an individual as an officer of Her Majesty is also an agent of Her Majesty. However, being an officer is also essential to the ITA as officers gain legal powers and owe legal duties that individuals of full capacity do not possess, nor are liable for.

6 Officer: Has Legal Powers and Duties Absent from Individual

The CCC uses the phrase “private person” only twice: as seen earlier in Chapter 3 under s.122, ‘*Breach of Trust by a Public Officer*’, and in s.25(1) below:

Criminal Code of Canada, s.25(1): Protection of Persons Acting Under Authority:

25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

- (a) as a **private person**,
- (b) as a peace officer or public officer,
- (c) in aid of a peace officer or public officer, or
- (d) by virtue of his office, ...

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do **and in using as much force as is necessary** for that purpose.

CCC s.25(1) clearly shows that a private person is distinct from an officer. As an office invokes certain legal powers and duties, the officer gains those legal powers and duties that an individual does not have nor is liable for. For example, a CRA officer has the power to look at anyone's tax filings; a judge (court officer) has immunity from libel and slander in his court rulings; a prosecutor (court officer) is mostly immune from prosecution. Police forces swear in police dogs as police officers to give them the same legal protection²⁵ given to human police officers. All four officers here have a duty to serve Her Majesty since she legally personifies all Canadians²⁶. That is why all the officers have to swear an oath of office to Her Majesty – even if that means having to help the police dog put his paw on the Bible during the swearing-in ceremony²⁷.

As we will see later in Chapter 12, one legal power of an office is the ability to convert any consideration into what I define in the **Appendix** as “**office profit**”. If such an officer of that office is also handling public money, it also has, as we saw earlier in Chapter 5, a **fiduciary duty** to report accurately and on time all the public money in its hands. It is allowed (as a privilege of the office) via Canada's implied consent to use that public money for private use, minus the income tax paid for using the office. All these legal powers and duties of this office are absent for an individual of full capacity. However, (as we will see later), since the *ITA* *deems* all individuals to be such an officer, CRA *deems* all individuals to have the legal powers, privileges, and duties attached to that office, such as that office's property is Canada's public money and not the individual's private property.

7 Corporations: Aggregate or Sole

There are two main categories of persons in law: natural or private persons, and artificial persons. Since we just saw in the CCC that a private person is distinct from an officer, it follows that an officer must be an artificial person²⁸, who are further subdivided into aggregate artificial persons, such as limited companies, trusts, non-profit societies, and foundations, etc., and sole artificial persons, or corporations sole (see diagram, “**Persons in Law**”).

The first example of a **corporation sole** is His or Her Majesty in Right of Canada, as per the case of ***Canadian Broadcasting Corporation***²⁹:

²⁵ Canada has now given police dogs more legal protection with the proposed Quanto's Law: <http://www.cbc.ca/news/canada/edmonton/quanto-s-law-brings-closure-after-police-dog-s-death-say-police-1.2125668>. Subsection 445.01 of the *Criminal Code* has been added to give them the same protection as human police officers: <https://openparliament.ca/bills/41-2/C-35/>.

²⁶ Her Majesty legally personifies the public in Canada: *Citizenship and Immigration Canada* (2009). *Discover Canada*. Ottawa: Queen's Printer for Canada. p. 2.

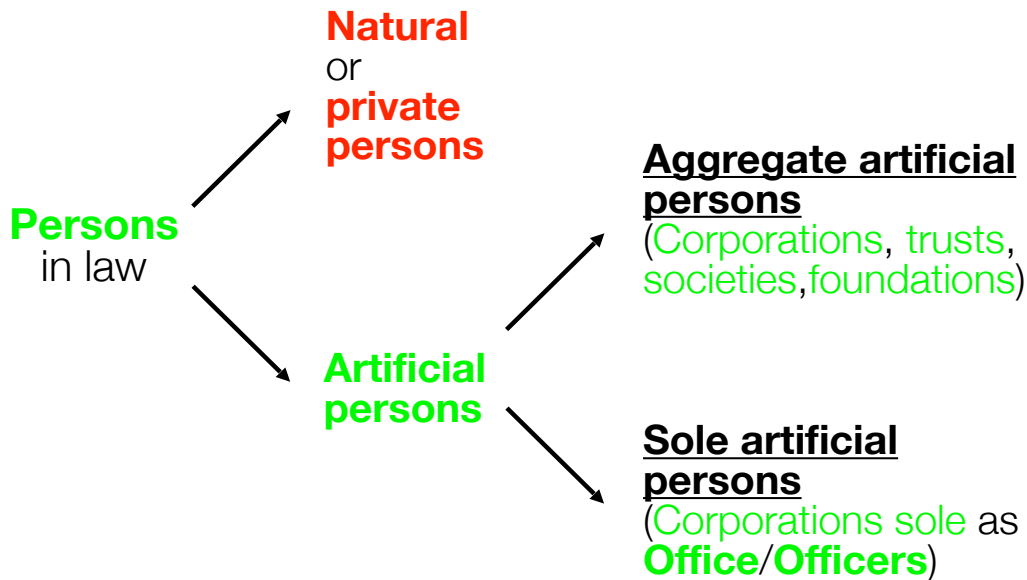
²⁷ <http://www.newsnet5.com/news/local-news/oh-cuyahoga/garfield-heights-two-welcome-two-new-k-9-officers>.

²⁸ *Principles of Contract*, 6th Ed., Sir Frederick Pollock, p. 107: “Officer: *The Roman invention, adopted and largely developed in modern law, of constituting the official character of the holders for the time being of the same office, ... into an artificial person... of legal capacities and duties.*”

²⁹ *The Queen v. The Canadian Broadcasting Corporation*, [1957] O.J. No. 655

Persons in Law

Corporation sole as office/officer



*13 The position which the King and his prerogative held in the common law is summarized in Blackstone's Commentaries. In the 16th and early 17th centuries the law invested the King with a **political capacity** as well as a **natural capacity**.*

*35 ...When Parliament names Her Majesty in a statute means Her Majesty, not in her capacity as a natural person but in her capacity as a **corporation sole**, a persona ficta (**artificial person**).*

In **Regina v. Porisky & Gould**³⁰, the Court noted:

[46] *The law has long recognised the distinction between a natural person and an artificial person, such as a corporation. And it has recognised a corporation sole which applies to an office, such as a bishop.*

However, a corporation sole is **not** restricted to just queens, kings or bishops, as per this 1917 Alberta court case:

*'If the original district bodies corporate continue, then it appears that it would be this single trustee who, **being clothed with all the powers and subject to all the responsibility** of the preceding Board of Trustees who were the body corporate, is to be now considered as the 'body corporate'. It looks as if we had here **another** example of a 'corporation sole' i.e. of one single person being ex officio a corporate body, a thing hitherto perhaps only exemplified in the **King or Bishop**.'*
- **Arnegard v. Board of Trustees**³¹

³⁰ *R. v. Porisky and Gould*, 2012 BCSC 657, <http://canlii.ca/t/fppg9>

³¹ *Arnegard v. Board of Trustees of the Barons Consolidated School District*, Alberta, 1917, page 306

Since this court ruled it is false that only queens and clergy can form a corporation sole, and we are familiar with lawyers, judges and prosecutors (all court officers) and police officers, and since Her Majesty who has dual individual capacity is the legal equivalent of all Canadians, it is obvious that Canadians can also have dual individual capacity by being officers through corporations sole by filling offices.

8 Corporation Sole: Formed By Filling An Office

A corporation sole is usually formed by Letters Patent or by a direct Act of Parliament or of a Province. For income tax purposes, however, I propose this occurs by becoming an officer that fills a particular office of Her Majesty.

From earlier, ***Regina v. Porisky & Gould*** said, “... a corporation sole which applies to an office”. Sir Edward Coke³², considered to be the greatest jurist of the Elizabethan and Jacobean eras, in his famous set of books, *Institutes of the Lawes of England*³³ defined a corporation sole as “a man who fills an office”. The Industry Canada Government website³⁴ states: “A corporation sole creates a corporation out of an office.”

Based on the above, one could conclude that an individual could form a corporation sole by filling a particular office by becoming an officer. How is this office with Her Majesty identified, and how is it created? In Chapter 9, I propose it is identified with the all-lower-case ‘social insurance number’, which appears to be undefined³⁵; then, in Chapter 10, we will look at how individuals create these offices with Her Majesty.

9 Identifying Her Majesty’s Office for Income Tax

From *ITA* s.248(1), there are many kinds of offices with Her Majesty:

248(1) “office” means the position of an individual entitling the individual to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a minister of the Crown, the office of a member of the Senate or House of Commons of Canada, a member of a legislative assembly or a member of a legislative or executive council **and any other office**, the incumbent of which is elected by popular vote or is elected **or appointed in a representative capacity** and also includes the position of a corporation director, and **“officer” means a person holding such an office;**

While many of these offices seem to be just a job with Her Majesty, recall from Chapter 6 that officers have special legal powers and duties absent from an individual. Many such officers hold more than one office. For example, a CRA agent is an officer of Her Majesty authorized to administer the *ITA*. That same CRA officer is likely also paid (as we will see

³² Sir Edward Coke was Attorney General for England and Wales; later was the Chief Justice of the Common Pleas; later still, Chief Justice of the King’s Bench. He also authored the 1628 *Petition of Rights*.

³³ *Institutes of the Lawes of England, Coke on Littleton*, Sir Edward Coke: Co. Lit. 2a

³⁴ Industry Canada website, <http://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/cl00384.html>

³⁵ The *ITA* does not define the words ‘income’, ‘profit’, ‘source’ or ‘non-taxable income’ either. Possible reasons are discussed in Chapter 43, “Why Lack of Full Disclosure for Agents of Her Majesty?”

later) as a *CPP* or *ITA* officer, and therefore must have income tax, CPP, EI deducted from its paycheque. The same goes for police officers, judges (officer of the court), etc. To be identified as such officers, CRA officers carry CRA identification and police officers carry police badges; judges wear special robes. But how does one identify someone who consents to be an *ITA* officer for income tax? The answer seems to be a two-step process.

Most Canadians have experienced being unable to apply for CPP unless first having a Social Insurance Number. According to the NAS-2120 form on the Services Canada web site link³⁶ (see attached, '**SOCIAL INSURANCE NUMBER APPLICATION**'), such an application is clearly for an upper-and-lower case Social Insurance Number and not an all-lower-case 'social insurance number'.

Upon receiving the upper-and-lower case Social Insurance Number, most individuals fill those nine digits onto a CRA TD1 form. However, all federal and Provincial TD1 forms³⁷ use the all-lower-case 'social insurance number' and not the upper-and-lower case Social Insurance Number issued by Services Canada and as styled in *ITA* s. 237(1):

237(1) Every individual (other than a trust) who was resident or employed in Canada at any time in a taxation year and who files a return of income under Part I for the year, or in respect of whom an information return is to be made by a person pursuant to a regulation made under paragraph 221(1)(d), shall,

- (a) on or before the first day of February of the year immediately following the year for which the return of income is filed, or
- (b) within 15 days after the individual is requested by the person to provide his **Social Insurance Number**,

apply to the Canada Employment Insurance Commission in prescribed form and manner for the assignment to the individual of a **Social Insurance Number** unless the individual has previously been assigned, or made application to be assigned, a **Social Insurance Number**.

An electronic search for the upper-and-lower case "Social Insurance Number" from the PDF version³⁸ of the *ITA* from Canada's Department of Justice web site reveals that term used thirty times; a search for the all-lower-case 'social insurance number' as used in the TD1 from that same document resulted in zero matches. But is there legally a difference?

The *Employment Insurance Act*³⁹ ("EIA") uses five times the upper-and-lower case Social Insurance Number, but **never uses** the all-lower-case 'social insurance number':

³⁶ Social Insurance Number: <http://www.servicecanada.gc.ca/eng/sc/sin/>

³⁷ TD1 forms: www.cra-arc.gc.ca/formspubs/frms/td1-eng.html

³⁸ *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), from Canada's Department of Justice, <http://laws-lois.justice.gc.ca/eng/acts/I-3.3/index.html>

³⁹ *Employment Insurance Act*, SC 1996, c 23, <http://canlii.ca/t/52664>



Government of Canada / Gouvernement du Canada

PROTECTED WHEN COMPLETED - B

SOCIAL INSURANCE NUMBER APPLICATION

This application form is not required if you go in-person to apply. Refer to the Information Guide or call 1-800-206-7218 (select Option #3) or 506-548-7961 (long-distance charges apply) to determine if you are eligible to apply by mail.

This application form must be accompanied by original document(s).

I am applying for a (an):

- FIRST SOCIAL INSURANCE NUMBER (SIN)
- UPDATE or CORRECTION TO SIN RECORD
- CONFIRMATION OF SIN
- LEGAL CHANGE OF NAME
- CHANGE OF STATUS
- CHANGE TO THE EXPIRY DATE ("900 Series SIN")
- OTHER - SPECIFY _____

FINDER NO	DATE
DO NOT WRITE IN THIS AREA	

INFORMATION CONCERNING THE APPLICANT

PRINT CLEARLY IN BLUE OR BLACK INK

1	APPLICANT'S NAME TO BE SHOWN ON SIN RECORD	First Given Name	Other Given Name(s)	Family Name
2	APPLICANT'S DATE OF BIRTH	Day	Month	Year
3	APPLICANT'S SEX	<input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Check if the applicant is a twin, triplet, etc.		
4	APPLICANT'S MOTHER'S NAME AT HER BIRTH	Given Name(s)	Family Name at Birth	
5	APPLICANT'S FATHER'S NAME AT HIS BIRTH	Given Name(s)	Family Name at Birth	
6	APPLICANT'S PLACE OF BIRTH	City, Town or Village	Province/Territory/State	Country
7	APPLICANT'S FAMILY NAME AT BIRTH	8 OTHER FAMILY NAME(S) PREVIOUSLY USED		
9	DID THE APPLICANT EVER HAVE A SOCIAL INSURANCE NUMBER (SIN)? If yes, write the nine digit number here _____ - _____ - _____ <input type="checkbox"/> No <input type="checkbox"/> Unknown (don't recall)			
10	APPLICANT'S STATUS IN CANADA	Check one of the following: <input type="checkbox"/> Canadian Citizen <input type="checkbox"/> Registered Indian <input type="checkbox"/> Permanent Resident <input type="checkbox"/> Temporary Resident <input type="checkbox"/> Other		11
	IS THE APPLICANT currently residing in Canada?	<input type="checkbox"/> Yes <input type="checkbox"/> No		Daytime Telephone Number
				Evening Telephone Number
12	APPLICANT'S MAILING ADDRESS	In care of (if different than the name in item 1) Number and Street Apartment, suite or unit No. City, Town or Village Province/Territory/State Country Postal/ZIP Code		
13	The personal information you provide is collected for the administration of the Employment Insurance Act (EIA) and the Department of Employment and Social Development Act (DESDA). It will be used by Service Canada officials (operating within Employment and Social Development (ESD)) for the purpose of assigning a Social Insurance Number (SIN) to you or your child, as authorized by the DESDA. Your personal information is administered in accordance with the DESDA, the EIA and the Privacy Act and your information will be retained in the Social Insurance Register. Participation is voluntary. However refusal to provide your personal information will result in you or your child not receiving a SIN. The information you provide may be shared with federal departments and agencies that are authorized users of the SIN and in accordance with the Treasury Board Secretariat Directive on the Social Insurance Number for the administration of benefits and services. The information may also be shared with provincial departments and agencies for the administration of benefits and services and/or federal and provincial departments for the administration and enforcement of the legislation for which they are responsible. The information and documents you provide may also be verified with provincial and territorial vital statistics registers or Citizenship and Immigration Canada records. The information may also be used and/or disclosed for policy analysis, research and/or evaluation purposes, and may be linked to various sources of information under the custody and control of ESD. However, these additional uses and/or disclosures of your personal information will not result in an administrative decision being made about you. You have the right to the protection of and access to your personal information, which is described in Personal Information Bank (HRSDC PPU 390) of the government publication Info Source. Instructions for obtaining this information are outlined in Info Source, which is available online at infoSource.gc.ca. Info Source may also be accessed online at any Service Canada Centre. I acknowledge that the information provided on the application form is true and complete. Signature of applicant/representative: _____ Date : _____ Relationship of representative to the applicant: <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Legal Guardian <input type="checkbox"/> Legal Representative IMPORTANT: If you are a representative such as a parent, legal guardian or legal representative applying on behalf of the applicant you must sign for the applicant and provide additional document(s). Refer to the Information Guide for Applicants -Additional document(s) required for representatives. Printed Name of representative: _____ Telephone Number of representative: _____			
IT IS AN OFFENCE TO FRAUDULENTLY USE YOUR SIN, INCLUDING TO KNOWINGLY APPLY FOR MORE THAN ONE SIN AND TO SELL, GIVE OR LEND YOUR NUMBER OR CARD TO ANYONE WITH THE INTENT TO DECEIVE.				
DO NOT WRITE BELOW - FOR OFFICE USE ONLY				
A	ALL NAMES AS SHOWN ON PRIMARY DOC.	Given Names	Family Name	
B	DATE OF BIRTH AS SHOWN ON PRIMARY DOC.	Day	Month	Year
C	PRIMARY DOCUMENT SEEN	Abbreviation		
D	DOCUMENT NO.	E SUPPORTING DOCUMENT SEEN		
F	USER CODE:	RESPONSIBILITY CENTRE NO. WHERE REFERRAL GENERATED:	REFERENCE (FINDER) NO.:	OFFICER'S INITIALS:
G	SECONDARY DOCUMENT SEEN	Abbreviation		
H	REMARKS / REASON FOR PRIORITY REQUEST			



Social Insurance Number

Obligation

138. Every person employed in insurable employment, and every self-employed person in respect of whom Part VII.1 applies, must have a **Social Insurance Number** that has been assigned to that person under an Act of Parliament.

Change of name

139. When the name of a person to whom a **Social Insurance Number** has been assigned changes because of marriage or otherwise, the person shall inform the Commission of their new name within 60 days after the day on which the change of name becomes effective, unless they have already so informed another authority empowered to receive that information.

Regulations

140. For the purposes of sections 138 and 139, the Commission may, with the approval of the Governor in Council, make regulations respecting

- (a) applications for a **Social Insurance Number**;
- (b) the assignment and use of **Social Insurance Numbers**;
- (c) requirements that must be met by persons who have been assigned **Social Insurance Numbers**; and
- (d) requirements that must be met by employers.

The *Canada Pension Plan*⁴⁰ (“*CPP*”) has a definition for the upper-and-lower case “Social Insurance Number” in s.2.(1), but also has no definition for the all-lower-case ‘social insurance number’ either:

“**Social Insurance Number**” means a **Social Insurance Number** assigned to an individual under the authority of any Act of Parliament, and “**Social Insurance Number Card**” means a **Social Insurance Number Card** issued to an individual under that authority;

The *CPP* also uses the upper-and-lower case “Social Insurance Number” twenty-eight times (excluding headings) in s.98 to s.102, but, like the *ITA* and the *EIA*, it never uses the all-lower-case ‘social insurance number’:

Application for assignment of Social Insurance Number

98. (1) Every individual who applies for a division under section 55 or 55.1 shall, within thirty days of the date of application for such division, if he has not earlier been assigned a **Social Insurance Number**, file an application with the Minister, in such form and manner as may be prescribed, for the assignment to him of a **Social Insurance Number**.

(2) Every individual who reaches eighteen years of age and is or becomes employed in pensionable employment on or after reaching that age shall, within thirty days after he reaches

⁴⁰*Canada Pension Plan*, R.S.C., 1985, c. C-8, s.2.(1): <http://canlii.ca/t/52hkh>

eighteen years of age or becomes employed in pensionable employment, as the case may be, if he has not earlier been assigned a **Social Insurance Number**, file an application with the Minister, in such form and manner as may be prescribed, for the assignment to him of a **Social Insurance Number**.

(3) Every individual who is required by [section 30](#) to file a return of his self-employed earnings for a year, other than an individual to whom subsection (1) or (2) applies, shall on or before the first day on or before which he is required by [section 33](#) to pay any amount as or on account of the contribution required to be made by him for that year in respect of those earnings, if he has not earlier been assigned a **Social Insurance Number**, apply to the Minister, in such form and manner as may be prescribed, for the assignment to him of a **Social Insurance Number**.

Assignment of Number

(4) The Minister shall, on application by an individual to whom a **Social Insurance Number** has not earlier been assigned, cause a **Social Insurance Number** to be assigned to the individual and a **Social Insurance Number** Card may be issued to the individual.

Employer to maintain record of Social Insurance Number

(5) Every employer who employs an employee in pensionable employment shall, in the case of an employee to whom subsection (2) applies, within 30 days after the day on which the employee reaches 18 years of age or becomes employed in pensionable employment, whichever is the later, require the employee to inform the employer of their **Social Insurance Number**, and the employer shall maintain a record of the **Social Insurance Number** of each employee.

Employee to provide Social Insurance Number

(6) Every employee who is required under subsection (5) to inform the employer of their **Social Insurance Number** shall do so within 30 days after the day on which they are required to do so by the employer.

Application to be signed by applicant

99. (1) An application for a **Social Insurance Number** shall be signed by the applicant in his own hand but where the applicant is unable to sign his own name, he may attest the application by making his mark in the presence of two witnesses whose names and signatures shall be shown thereon.

Change of name

(2) When the name of an individual to whom a **Social Insurance Number** has been assigned changes, by reason of marriage or otherwise, the individual shall inform the Minister of their new name, unless they have already so informed another authority empowered to receive that information,

(a) if the individual is employed in pensionable employment, within 60 days after the day on which the change of name becomes effective; or

(b) if the individual is not employed in pensionable employment but later becomes so employed, or is required to make a contribution under this Act in respect of their self-employed earnings, within 60 days after the day on which the individual becomes so employed or after the first day on or before which they are required under [section 33](#) to

pay any amount as or on account of the contribution required to be made by them in respect of those earnings, as the case may be.

Agreement respecting assignment of Social Insurance Numbers

100. (1) The Minister may, on behalf of the Government of Canada, enter into an agreement with the government of a province providing a comprehensive pension plan under which the Minister may cause **Social Insurance Numbers** to be assigned to persons to whom **Social Insurance Numbers** have not earlier been assigned, on the basis of applications made by those persons to the appropriate authority in that province.

Numbers deemed to have been assigned under Act

(2) Any **Social Insurance Numbers** caused to be assigned by the Minister under any agreement entered into under subsection (1) shall be deemed for all purposes of this Act to have been assigned under this Act.

Regulations

101. (1) The Governor in Council may make regulations

- (a) requiring employers to distribute to their employees applications and other material relating to applications for **Social Insurance Numbers**;
- (b) prescribing districts for purposes of assigning **Social Insurance Numbers**, in which persons who reside therein may file their applications for **Social Insurance Numbers** and, having regard to the public convenience, the place or places within each district at which those persons may apply;
- (c) prescribing the conditions on which and manner in which **Social Insurance Number** Cards that have been lost or destroyed may be replaced;
- (d) authorizing the Minister and the Minister of National Revenue to cause a **Social Insurance Number** to be assigned and a **Social Insurance Number** Card to be issued to any individual who has not earlier been assigned a **Social Insurance Number**;

Offence and punishment

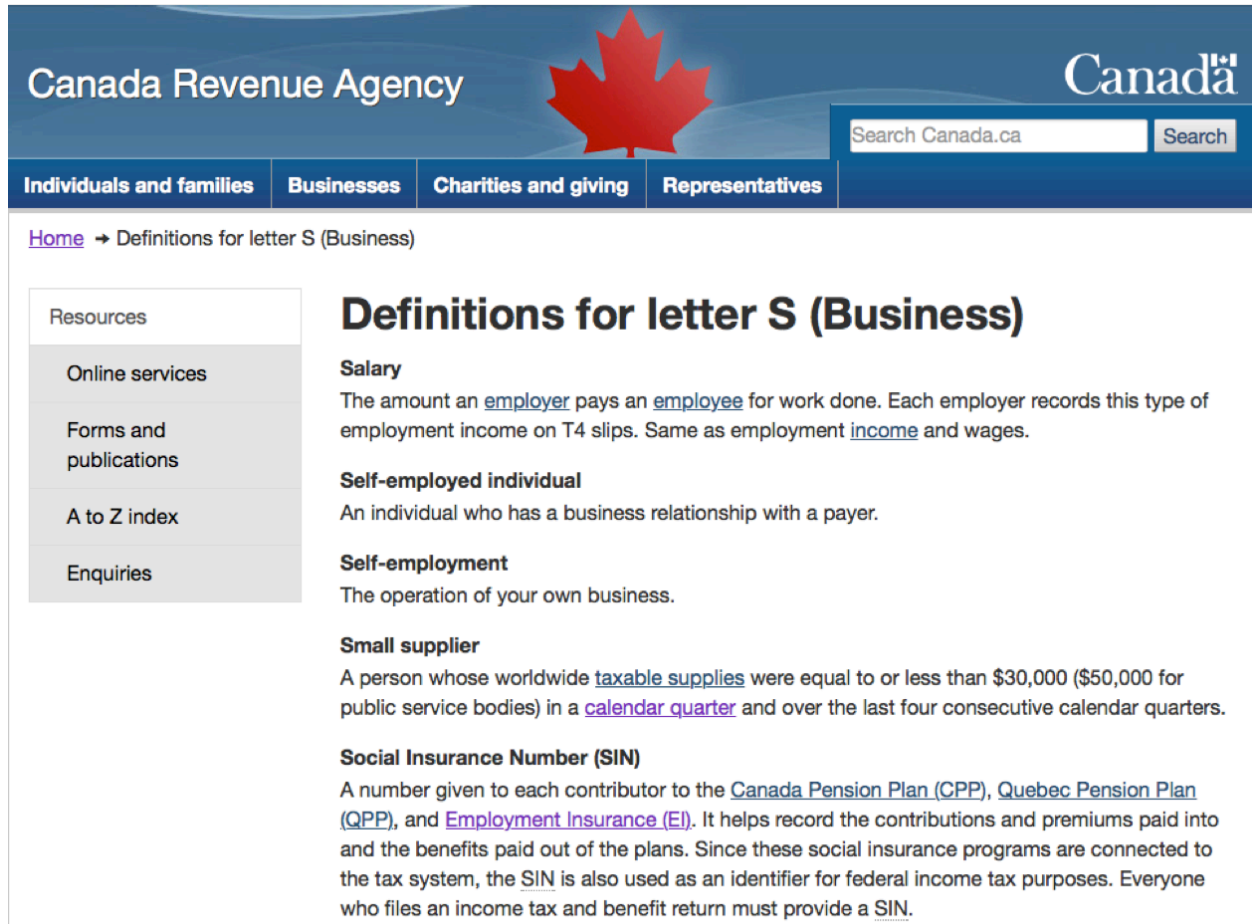
102. (1) Every person who, in his application for a **Social Insurance Number**, knowingly furnishes any false or misleading information is guilty of an offence punishable on summary conviction.

(2) Every person who has been assigned a **Social Insurance Number** and who knowingly makes application again to be assigned a **Social Insurance Number**, whether giving the same or different information in that application as in his previous application, and whether or not he is assigned a **Social Insurance Number** again, is guilty of an offence punishable on summary conviction.

Continuing our search, CRA's website has definitions (albeit not law since not statutory definitions) for both the upper-and-lower case "Social Insurance Number"⁴¹ and the all-lower-case 'social insurance number'⁴² (see attached: "**Definitions for letter S (Business)**" and "**Social insurance number (SIN)**"):

⁴¹ CRA, under *Definitions for letter S*: <http://www.cra-arc.gc.ca/tx/bsnss/glsry/s-gn-eng.html>

⁴² CRA: <http://www.cra-arc.gc.ca/tx/ndvdlis/tpcs/ncm-tx/rtrn/cmpltng/prsnl-nf/sin-nas/menu-eng.html>



Canada Revenue Agency

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[Home](#) → Definitions for letter S (Business)

Resources

- Online services
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- Enquiries

Definitions for letter S (Business)

Salary
The amount an [employer](#) pays an [employee](#) for work done. Each employer records this type of employment income on T4 slips. Same as employment [income](#) and wages.

Self-employed individual
An individual who has a business relationship with a payer.

Self-employment
The operation of your own business.

Small supplier
A person whose worldwide [taxable supplies](#) were equal to or less than \$30,000 (\$50,000 for public service bodies) in a [calendar quarter](#) and over the last four consecutive calendar quarters.

Social Insurance Number (SIN)
A number given to each contributor to the [Canada Pension Plan \(CPP\)](#), [Quebec Pension Plan \(QPP\)](#), and [Employment Insurance \(EI\)](#). It helps record the contributions and premiums paid into and the benefits paid out of the plans. Since these social insurance programs are connected to the tax system, the [SIN](#) is also used as an identifier for federal income tax purposes. Everyone who files an income tax and benefit return must provide a [SIN](#).

Social Insurance Number (SIN)

A number **given** to each contributor to the [Canada Pension Plan \(CPP\)](#), [Quebec Pension Plan \(QPP\)](#), and [Employment Insurance \(EI\)](#). It **helps** record the contributions and premiums paid into and the **benefits** paid out of the plans. Since these social insurance programs are connected to the tax system, the [SIN](#) is also used as an identifier for federal income tax purposes. Everyone who files an income tax and benefit return must provide a [SIN](#).

Social insurance number (SIN)

Your SIN is the authorized number for income tax purposes under section 237 of the *Income Tax Act* and is used for certain federal programs. You must give it to anyone who prepares information slips (such as a T3, T4, or T5 slip) for you. Each time you do not give it when you are supposed to, you **may** have to pay a \$100 penalty... You must also give it to us when you ask us for personal tax information.

Canada Revenue Agency

Canada

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Individuals and families Businesses Charities and giving Representatives

Home → Individuals and families → Tax return → Completing → Personal information → Social insurance number (SIN)

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Social insurance number (SIN)

Your SIN is the authorized number for income tax purposes under section 237 of the *Income Tax Act* and is used for certain federal programs. You must give it to anyone who prepares information slips (such as a T3, T4, or T5 slip) for you. Each time you do not give it when you are supposed to, you may have to pay a \$100 penalty. Check your slips. If your SIN is missing or is incorrect, inform the slip preparer. You must also give it to us when you ask us for personal tax information.

For more information, or to **get an application for a SIN**, contact [Service Canada](#).

Completing your tax return

Enter your SIN on the first line of the "Information about you" area of the "Identification" section on page 1 of your tax return.

Forms and publications

- [General Income Tax and Benefit Package - Guide, return and schedules](#)

Date modified: 2014-03-31

Both share the nine-digit number provided by Services Canada⁴³; both have shared the acronym⁴⁴ "SIN" since 2001 on CRA's T1 form⁴⁵. Furthermore, Revenue Canada used the upper-and-lower case "Social Insurance Number" on T1 forms up to 1990, then switched over to the all-lower-case 'social insurance number' in the 1991 T1, where it currently (2015 T1) remains. As CRA has different descriptions for the two SINs, started sharing that acronym in 2001, and made the switch described above in 1991, a reasonable conclusion is that they are legally different (see the attached forms, "**History of the T1 GENERAL**", "**T1 for 1990**", "**T1 for 1991**", "**T1 for 2000**", "**T1 for 2001**", and "**T1 for 2015**").

CRA's web site says that an upper-and-lower case Social Insurance Number is "*a number **given** to each contributor*". From earlier, the *EIA* s.138 says that, "*every person employed in insurable employment, and every self-employed person in respect of whom Part VII.1 applies, must have a **Social Insurance Number** that has been assigned to that person*".

⁴³ Canadian Payroll Association, Payroll Terminology: "*SIN: Unique nine-digit number provided by Service Canada*". <http://www.payroll.ca/CPA/Resources/Tools/Lexicon/Definition.aspx?t=451>

⁴⁴ *The Canadian Style Manual*, Ch. 1.16, Public Works and Government Services Canada Translation Bureau, <http://www.btb.termiumplus.gc.ca/tpv2guides/guides/tcdnstyl/index-eng.html?lang=eng>

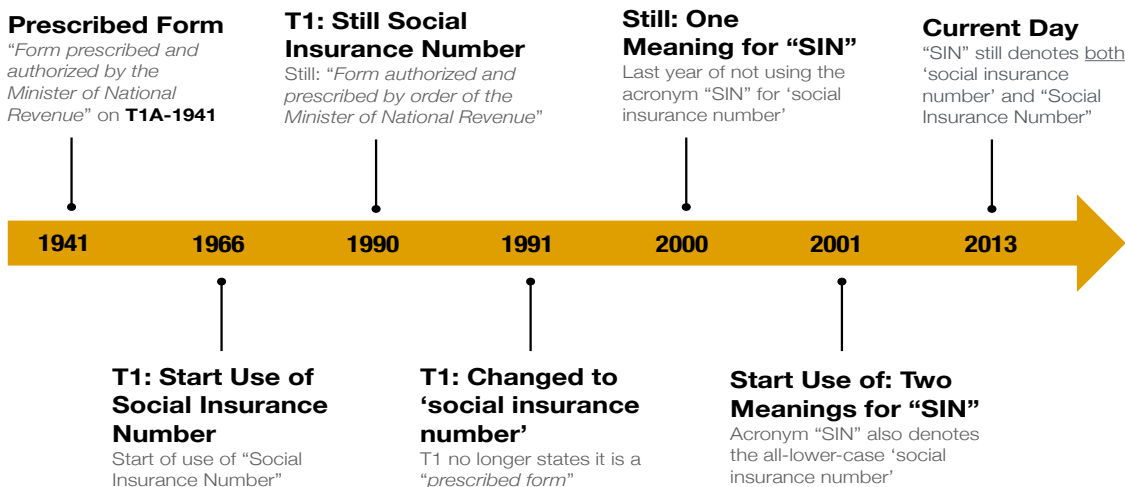
⁴⁵ The CRA website archives T1s back to 1985: <http://www.cra-arc.gc.ca/formspubs/t1gnri/llyrs-eng.html>

under an Act of Parliament” and in Section 140, “for the purposes of sections 138 and 139, the Commission may, with the approval of the Governor in Council, make regulations respecting (a) applications for a **Social Insurance Number**”. One concludes that the upper-and-lower case Social Insurance Number is the one that is **given** by Services Canada (formerly HRDC) when one applies for such a number.

CRA’s web site then says about the all-lower-case ‘social insurance number’: “your SIN is the authorized **number** for income tax purposes under section 237 of the Income Tax Act...” Notice it says the same **number** is for income tax purposes; it does **not** say that the upper-and-lower case Social Insurance Number is for income tax purposes under section 237 of the ITA, which we saw earlier says, “within 15 days after the individual is requested by the person to provide his **Social Insurance Number**, apply to the Canada Employment Insurance Commission in prescribed form and manner for the assignment to the individual of a **Social Insurance Number** unless the individual has previously been assigned, or made application to be assigned, a **Social Insurance Number**.”

CRA also says about the ‘social insurance number’: “Your SIN is used for certain federal programs. You must give it to anyone who prepares information slips (such as a T3, T4, or T5 slip) for you.” As we will see later, the all-lower-case ‘social insurance number’ is used not only for T3, T4, or T5, but also for many other CRA forms, such as the T1 and the TD1. Furthermore, saving CRA’s web definition⁴⁶ of the Social Insurance Number as a PDF file (see attached, “**Definitions for letter S (Business)**”) reveals that the SIN used twice in that paragraph actually refers both times to the all-lower-case ‘social insurance number’:

History of the T1 GENERAL



⁴⁶ CRA Definitions for letter S: <http://www.cra-arc.gc.ca/tx/bsnss/glssry/s-gn-eng.html>

Step 5 - Summary of Tax and Credits There are two methods of tax calculation (see Table A instructions)

Taxable Income from line 260 on page 2 400 _____

TABLE METHOD ONLY

Federal Income Tax (look up amount from line 400 in Table A)	401	
Enter: Total non-refundable tax credits from line 350 on page 2	402	
Federal Tax (line 401 minus line 402: if negative, enter zero or from line 406 on Schedule 1) 406		
Federal political contribution tax credit	Total contributions 409	⊙
Allowable tax credit (from calculation at line 410 in guide)	410	•
Investment tax credit (attach form T2038 (IND))	412	•
Labour-Sponsored Funds tax credit (attach receipts)	414	•
	Total of above credits 416	▶
	Federal tax before federal individual surtax (line 406 minus line 416: if negative, enter zero) 417	
Federal individual surtax (look up amount from line 406 in Table B or from line 419 on Schedule 1)	419	
	Net Federal Tax (add lines 417 and 419) 420	
British Columbia tax (look up amount from line 406 in table B or from line 423 on Schedule 1)	423	
Subtract: Transfer of spouse's unused renter's tax reduction (from calculation on spouse's T1C (B.C.))	425	•
	Net British Columbia Tax 427	▶
Canada Pension Plan contribution payable on self-employment earnings from page 3	431	
Repayment of Social Benefits (from calculation at line 235 in guide)	432	
Repayment of child tax credit overpayment from Schedule 7, Part B	434	
	Total Payable (add lines 420 to 434 inclusive) 435	

Please do not use this area

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Total income tax deducted from all information slips	437	• ⊙
Federal Credits		
Child tax credit (attach Schedule 7, complete Parts A and B)	444	•
Federal sales tax credit (attach Schedule 7, complete Parts A and C)	446	•
Canada Pension Plan overpayment	448	•
Unemployment Insurance overpayment	450	•
Refund of investment tax credit (attach form T2038 (IND))	454	•
Part XII.2 tax credit (attach T3 slip)	456	• ⊙
Provincial Credits		
British Columbia tax credits	464	•
Other Credits		
Tax paid by instalments	476	• ⊙
Forward averaging tax credit (attach form T581)	478	•
	Total Credits (add lines 437 to 478 inclusive) 482	▶

Subtract line 482 from line 435 and enter the difference in applicable space below.

A difference of less than \$1.00 is neither charged nor refunded.

Refund 484 _____ • Balance Due 485 _____

I hereby certify that the information given in this return and in any documents attached is true, correct and complete in every respect and fully discloses my income from all sources.

Please sign here _____

Telephone _____ Area code _____ Date _____

It is a serious offence to make a false return.
Privacy Act Personal Information Bank number RCT/P-PU-005

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Language of correspondence — Langue de correspondance

Please indicate below the language of your choice for subsequent correspondence and returns.

Veuillez indiquer plus bas dans quelle langue vous désirez recevoir toute correspondance subséquente et vos prochaines déclarations de revenus.

1. English Anglaise
2. French Française

Amount Enclosed _____

Please attach cheque or money order payable to the Receiver General. Do not mail cash.
Payment is due not later than April 30, 1991.

If you paid to have your return prepared, please check box

Form authorized and prescribed by order of the Minister of National Revenue for purposes of Part I, Part I.1 and Part I.2 of the Income Tax Act, Part I of the Canada Pension Plan Act and Part VIII of the Unemployment Insurance Act.

Step 5 – Summary of Tax and Credits

There are two methods of tax calculation (see Table A instructions)

Taxable Income from line 260 on page 2 400 _____

TABLE METHOD ONLY

Federal Income Tax (look up amount from line 400 in Table A)	401	
Enter: Total non-refundable tax credits from line 350 on page 3	402	
Subtract line 402 from line 401: If negative, enter zero or enter amount from line 406 on Schedule 1. FEDERAL TAX		
	406	
Federal political contribution tax credit Total contributions 409		⊙
Allowable tax credit (from calculation at line 410 in guide)	410	•
Investment tax credit (attach form T2038 (IND))	412	•
Labour-sponsored funds tax credit (attach receipts)	414	•
Total of above credits	416	→
Federal tax before federal individual surtax – subtract line 416 from line 406: if negative, enter zero	417	
Federal individual surtax (look up amount from line 406 in Table B or enter amount from line 419 on Schedule 1)	419	
Add lines 417 and 419. Net Federal Tax		
	420	
Canada Pension Plan contribution payable on self-employment earnings from Schedule 8	421	
Repayment of social benefits (from calculation at line 235 in guide)	422	
Repayment of child tax credit overpayment from Schedule 7, Part B	426	
British Columbia tax (look up amount from line 406 in Table B or enter amount from line 428 on Schedule 1)	428	
Subtract: Transfer of spouse's unused renter's tax reduction (from calculation on spouse's T1C (B.C.))	430	•
Net British Columbia Tax	431	→
Add lines 420 to 426 inclusive and line 431. Total Payable		
	435	
Total income tax deducted (from all information slips)	437	• ⊙
Federal Credits		
Child tax credit (attach Schedule 7, complete Parts A and B)	444	•
Canada Pension Plan overpayment	448	•
Unemployment Insurance overpayment	450	•
Refund of investment tax credit (attach form T2038 (IND))	454	•
Part XII.2 trust tax credit (attach T3 slip)	456	• ⊙
Employee and Partner GST rebate (attach form GST-370)	457	• ⊙
Other Credits		
Tax paid by instalments	476	• ⊙
Forward averaging tax credit (from form T581)	478	•
British Columbia tax credits	479	•
Add lines 437 to 479 inclusive. Total Credits	482	→

Please do not use this area

683	
684	

Subtract line 482 from line 435 and enter the difference in applicable space below.
A difference of less than \$2.00 is neither charged nor refunded.

Refund	484	•	Balance Due	485	•
If you want a direct deposit, complete Form T1-DD.			Amount Enclosed		

Please attach cheque or money order payable to the Receiver General. Do not mail cash.
Payment is due no later than April 30, 1992.

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It is a serious offence to make a false return.
Privacy Act Personal Information Bank number RCT/P-PU-005

Language of correspondence Please indicate below the language of your choice for subsequent correspondence and returns.	Langue de correspondance Veuillez indiquer plus bas dans quelle langue vous désirez recevoir toute correspondance subséquente et vos prochaines déclarations de revenus.
1. English <input type="checkbox"/>	Anglaise <input type="checkbox"/>
2. French <input type="checkbox"/>	Française <input type="checkbox"/>

I hereby certify that the information given on this return and in any documents attached is true, correct and complete in every respect and fully discloses my income from all sources.

Please sign here

Telephone	Area code	Date
-----------	-----------	------

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If you paid to have your return prepared, please check this box

Income Tax and Benefit Return

Identification

Attach your personal label here. Correct any wrong information. If you are not attaching a label, print your name and address below.

First name and initial _____

Last name _____

Address _____ Apt. or Unit No. _____

City _____

Province or territory _____ Postal code _____

Enter your social insurance number if it is not on the label, or if you are not attaching a label: _____

Enter your date of birth: _____ Year Month Day

Your language of correspondence: English Français

If this return is for a deceased person, enter the date of death: _____ Year Month Day

Marital status on December 31, 2000 (check the box that applies): (see the "Marital status" section in the guide for details)

1 Married 2 Living common law 3 Widowed
4 Divorced 5 Separated 6 Single

If box 1 or 2 applies, enter your spouse's social insurance number if it is not on the label, or if you are not attaching a label: _____

Enter the first name of your spouse: _____

Check this box if your spouse was self-employed in 2000: 1

Do not use this area _____

Enter your province or territory of residence on December 31, 2000: _____

If you were self-employed in 2000, enter the province or territory of self-employment: _____

If you became or ceased to be a resident of Canada in 2000, give the date of: _____

entry Month Day or departure Month Day

Elections Canada (see the guide for details)

Do you authorize the Canada Customs and Revenue Agency to provide your name, address, and date of birth to Elections Canada to update your information on the **National Register of Electors**? Yes 1 No 2

Your authorization is needed each year. This information can be used for electoral purposes only.

Goods and services tax / Harmonized sales tax (GST/HST) credit application

Are you applying for the GST/HST credit? (see the guide for details) Yes 1 No 2

If yes, enter the number of children under age 19 on December 31, 2000 (if applicable) _____

If yes, enter your spouse's net income from line 236 of your spouse's return (if applicable) _____

Foreign income

As a Canadian resident, you have to report your income from all sources both inside and outside Canada.

Please answer the following question

Did you own or hold foreign property at any time in 2000 with a total cost of more than CAN\$100,000? (read the "Foreign income" section in the guide for details) **266** Yes 1 No 2

If yes, attach a completed Form T1135.

If you had certain dealings with a non-resident trust or corporation in 2000, see the "Foreign income" section in the guide.

Do not use this area	172					171				
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T1 GENERAL 2001

Income Tax and Benefit Return

Identification

8

Attach your personal label here. Correct any wrong information. If you are not attaching a label, print your name and address below.

First name and initial _____

Last name _____

Mailing address: Apt. No. – Street No. Street name _____

P.O. Box, R.R. _____

City _____ Prov./Terr. _____ Postal code _____

Information about you

Enter your social insurance number (SIN) if it is not on the label, or if you are not attaching a label: _____

Enter your date of birth: _____
Year Month Day

Your language of correspondence: English Français
 Votre langue de correspondance :

Check the box that applies to your marital status on December 31, 2001: (see the "Marital status" section in the guide for details)

1 Married 2 Living common law 3 Widowed
 4 Divorced 5 Separated 6 Single

Information about your residence

Enter your province or territory of residence on **December 31, 2001**: _____

Enter the province or territory where you **currently** reside if it is not the same as that shown above for your mailing address: _____

If you were self-employed in 2001, enter the province or territory of self-employment: _____

If you became or ceased to be a resident of Canada **in 2001**, give the date of: _____
Month Day entry or Month Day departure

Information about your spouse or common-law partner (if you checked box 1 or 2 above)

Enter his or her SIN if it is not on the label, or if you are not attaching a label: _____

Enter his or her first name: _____

Enter his or her net income for 2001 to claim certain credits: (see the guide for details) _____

Check this box if he or she was self-employed in 2001: 1

If this return is for a deceased person, enter the date of death: _____
Year Month Day

Do not use this area _____

Elections Canada (Canadian citizens only; see the guide for details)

Do you authorize the Canada Customs and Revenue Agency to provide your name, address, and date of birth to Elections Canada for the **National Register of Electors**? Yes 1 No 2

Your authorization is needed each year. This information will be used for electoral purposes only.

Goods and services tax / Harmonized sales tax (GST/HST) credit application

Are you applying for the GST/HST credit? (see the guide for details) Yes 1 No 2

If yes, we will now get the number of children for purposes of this credit from the Canada Child Tax Benefit information we have on file.

Your guide contains valuable information to help you complete your return.

When you come to a line on the return that applies to you, look up the line number in the guide for more information.

Do not use this area	172					171				
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[Canada.ca \(http://www.canada.ca/en/index.html\)](http://www.canada.ca/en/index.html)
[Services \(http://www.canada.ca/en/services/index.html\)](http://www.canada.ca/en/services/index.html)
[Departments \(http://www.canada.ca/en/gov/dept/index.html\)](http://www.canada.ca/en/gov/dept/index.html)
[Français \(/tx/bsnss/glssry/s-gn-fra.html\)](/tx/bsnss/glssry/s-gn-fra.html)



[Canada Revenue Agency \(/menu-eng.html\)](/menu-eng.html)
[Home \(/menu-eng.html\)](/menu-eng.html) / [Definitions for letter S \(Business\)](#)

Definitions for letter S (Business)

Social Insurance Number (SIN)

A number given to each contributor to the [Canada Pension Plan \(CPP\) \(/tx/bsnss/glssry/c-gn-eng.html#Cnd_pnsn_pln\)](/tx/bsnss/glssry/c-gn-eng.html#Cnd_pnsn_pln), [Quebec Pension Plan \(QPP\) \(/tx/bsnss/glssry/q-gn-eng.html#QPP\)](/tx/bsnss/glssry/q-gn-eng.html#QPP), and [Employment Insurance \(EI\) \(/tx/bsnss/glssry/e-gen-eng.html#Emplymnt_nsrnc\)](/tx/bsnss/glssry/e-gen-eng.html#Emplymnt_nsrnc). It helps record the contributions and premiums paid into and the benefits paid out of the plans. Since these social insurance programs are connected to the tax system, the SIN (social insurance number) is also used as an identifier for federal income tax purposes. Everyone who files an income tax and benefit return must provide a SIN (social insurance number).

Date modified:
2014-01-13

Social Insurance Number (SIN)

A number given to each contributor to the [Canada Pension Plan \(CPP\) \(/tx/bsnss/glssry/c-gn-eng.html#Cnd_pnsn_pln\)](/tx/bsnss/glssry/c-gn-eng.html#Cnd_pnsn_pln), [Quebec Pension Plan \(QPP\) \(/tx/bsnss/glssry/q-gn-eng.html#QPP\)](/tx/bsnss/glssry/q-gn-eng.html#QPP), and [Employment Insurance \(EI\) \(/tx/bsnss/glssry/e-gen-eng.html#Emplymnt_nsrnc\)](/tx/bsnss/glssry/e-gen-eng.html#Emplymnt_nsrnc). It helps record the contributions and premiums paid into and the benefits paid out of the plans. Since these social insurance programs are connected to the tax system, the SIN (**social insurance number**) is also used as an identifier for federal income tax purposes. Everyone who files an income tax and benefit return must provide a SIN (**social insurance number**).

CRA: Uses of ‘social insurance number’ Signifying Capacity as “Beneficiary”/ “Officer”

Act	Form	Form Name	Use
CPP Act EI Act	CPT100	Appeal of Ruling Under CPP Act or EI Act	Appeal of ruling applied for with CPT1. Worker has been ruled to be a CPP officer and/or EI insured person (same office with Her Majesty).
ITA	T2125	Statement of Professional or Business Activities	For individuals running a business or a professional activity as an officer for “ office profit ” (see definition in the Appendix).
ITA	T2091 (IND)	Designation of Principal Residence by an Individual	To calculate capital gain exemption (property held for “ office profit ”) of an officer . Signed by individual as beneficiary since applying for a benefit .
ITA	T5018	Contract Payment Reporting System	An individual that is a subcontractor: ‘ social insurance number ’ (officer) <i>presumed</i> and filled out by the payer, who sends a copy to CRA.
ITA	Schedule 50	Shareholder Information	Lists shareholders and their ‘ social insurance numbers ’. Shareholder dividends can only be “ office profit ” for an officer .
ITA	T2154	Designation of Forgiven Amount by Debtor	When a commercial obligation is settled for less than its principal amount. Debtor has ‘ social insurance number ’. Compare with T2047.
ITA	TD1	Personal Tax Credits Return	Benefits claimed establishes beneficiary holding an office of profit in the federal jurisdiction, even if payer is not an employer .
ITA	T1	Income Tax and Benefit Return	Various persons’ income are all to be reported, including all benefits , to ascertain the tax liability of Her Majesty’s office .
ITA	T1-ADJ	T1 Adjustment Request	Request for reassessment of an officer’s income tax return.
ITA	T1-DD	Direct Deposit Request	For individual benefits: refunds, CCTB, UCCB , for Her Majesty’s office .

Version 2.4

The definition of “**office profit**” is in the **Appendix**.

CRA says the all-lower-case ‘social insurance number’ “*is also used as an identifier for federal income tax purposes. Everyone who files an income tax and benefit return must provide a SIN (social insurance number)*”. We started this chapter by noting that CRA’s TD1 form asks for the all-lower-case ‘social insurance number’ that is not defined in the ITA. This is not a one-form anomaly; the all-lower-case ‘social insurance number’ is also used on many other CRA forms, such as, but not limited to: (see list, “**Uses of ‘social insurance number’ Signifying Capacity as “Beneficiary”/“Officer”**”).

In contrast to the above, all the CRA forms on the next page ask for the upper-and-lower case Social Insurance Number (see list, **Uses of Social Insurance Number Signifying Capacity as ITA “Legal Representative”**) such as, but not limited to:

CRA Uses of “Social Insurance Number” Signifying Capacity as ITA “Legal Representative”

Act	Form	Form Name	Use
CPP Act EI Act	CPT1	Request for Ruling for Status of a Worker for CPP and/or EI	Request by “legal representative” . No relationship yet to an “officer” .
OAS	ISP-3000	Old Age Security Application	Application for optional OAS, GIS, allowance, survivor.
CPP Act OAS		Request for Voluntary Income Tax Deductions off CPP/OAS	Application by individual for voluntary tax deductions off CPP and/or OAS, both of which are taxable income.
EI Act	INS3166	Request for Record of Employment (ROE)	Legal representative agrees to pay back any overpayments.
ITA	RC199	Voluntary Disclosure Program Taxpayer Agreement	In this form, legal representative hands over income (which could be ITA “exempt income”) over to the taxpayer as taxable income
ITA	T1162	Pre-Authorized Payment Plan	Individual (family name) as LR of taxpayer pre- authorizes payments
ITA	T600	Ownership Certificate	Financial company fills out individual’s surname as owner of security (1999)
ITA	T2029	Waiver of Reassessment Period	Signed by legal representative of individual taxpayer. Revoked by Form T652
ITA	T2047	Agreement Unpaid Amounts	Use by debtor and creditor ITA 78(1)(b). To be filled out and signed by both individuals before filing of both T1 returns. Form authorized by MNR.
ITA	T1287	Non-resident (individual) tax reduction for acting	Non-resident individual applies for reduction in withholding of non-resident tax from acting or video production. Takes liability.
ITA	NR5	Non-resident Reduction of tax	Non-resident individual applies for reduction in withholding of non-resident tax (fill out every 5 years). Takes liability.
CPP Act ITA	NAS-2120	Social Insurance Number Application	“The information may be shared ... for administration and enforcement of the legislation responsible...”

Version 2.1

It is obvious that CRA’s use of the all-lower-case ‘social insurance number’ on many of its forms, and use of the upper-and-lower case Social Insurance Number on many of its other forms, is deliberate. This above (incomplete) list of forms using the Social Insurance Number seems to share something in common: **being liable** upon signing of these forms. This corroborates with the Services Canada online application⁴⁷ for a Social Insurance Number (see from earlier, ‘**SOCIAL INSURANCE NUMBER APPLICATION**’), which has this warning on the application:

*“The personal information... is collected... for the purpose of assigning a **Social Insurance Number (SIN)**... **Participation is voluntary**. However refusal to provide your personal information will result in you or your child not receiving a SIN. The information may also be shared with provincial departments and agencies for the administration of benefits and services and/or federal and provincial departments for the **administration** and **enforcement** of the legislation for which they are responsible.”*

One could conclude that the upper-and-lower case Social Insurance Number, which makes one liable to “*enforcement*”, is to identify an individual as an ITA “legal representative”:

⁴⁷ Social Insurance Number application: <http://www.servicecanada.gc.ca/eng/sin/forms.shtml>

248(1) “**legal representative**” of a taxpayer means a trustee in bankruptcy, an assignee, a liquidator, a curator, **a receiver of any kind**, a trustee, an heir, an administrator, an executor, a liquidator of a succession, a committee, or any other like person, administering, winding up, controlling or otherwise **dealing in a representative or fiduciary capacity** with the property that belongs or belonged to, or that is or was held for the benefit of, the taxpayer or taxpayer’s estate;

as the liability of an *ITA* “legal representative” is in *ITA* s.159(1):

159(1) For the purposes of this Act, where a person is a **legal representative** of a taxpayer at any time,

(a) the **legal representative** is jointly and severally liable with the taxpayer

(i) to pay each amount payable under this Act by the taxpayer at or before that time and that remains unpaid, to the extent that the **legal representative** is at that time in possession or control, in the capacity of **legal representative**, of property that belongs or belonged to, or that is or was held for the benefit of, the taxpayer or the taxpayer’s estate, and

(ii) to perform any obligation or duty imposed under this Act on the taxpayer at or before that time and that remains outstanding, to the extent that the obligation or duty can reasonably be considered to relate to the responsibilities of the **legal representative** acting in that capacity; and

(b) any action or proceeding in respect of the taxpayer taken under this Act at or after that time by the Minister may be so taken in the name of the **legal representative** acting in that capacity and, when so taken, has the same effect as if it had been taken directly against the taxpayer and, if the taxpayer no longer exists, as if the taxpayer continued to exist.

If the upper-and-lower case Social Insurance Number is to identify an individual as an *ITA* “legal representative”, it then corroborates with why one cannot fill out a TD1 form and receive CPP before receiving that upper-and-lower case Social Insurance Number from Services Canada, since Canada wants to ensure that the individual has first agreed to be legally liable for filing accurately, on time, and for any overpayments.

Two CRA forms that illustrate very well the deliberate use of the upper-and-lower case Social Insurance Number versus the all-lower-case ‘social insurance number’ are (see attached forms) CPT1⁴⁸, **Request for Ruling for Status of a Worker for CPP and/or EI** and CPT100⁴⁹, **Appeal of Ruling Under CPP Act or EI Act**. A worker first files a CPT1 to ask CRA to determine whether it is doing pensionable employment and/or insurable employment. If CRA deems the worker to be doing pensionable employment and/or insurable employment, the deemed officer can appeal that ruling by filing Form CPT100. Some of the differences between the CPT1 and the CPT100 are:

<u>Form</u>	<u>SIN</u>	<u>Name</u>	<u>Status</u>
CPT1	Social Insurance Number	Surname	ITA “legal representative”
CPT100	social insurance number	Last Name	deemed as beneficiary (officer)

⁴⁸ CRA Form CPT1, Request for a Ruling as to the Status of a Worker under the Canada Pension Plan and/or the Employment Insurance Act: <http://www.cra-arc.gc.ca/E/pbg/tf/cpt1/README.html>

⁴⁹ CRA Form CPT100, Appeal of a Ruling Under the Canada Pension Plan and/or Employment Insurance Act: <http://www.cra-arc.gc.ca/E/pbg/tf/cpt100/README.html>

As these two forms are used sequentially, it is illogical to change the upper-and-lower case “Social Insurance Number” later to the all-lower-case ‘social insurance number’, and “Surname” later to “Last Name” unless, perhaps, the status of the person *changed* from first being liable for the ruling as an *ITA* “legal representative”, then later appealing in another capacity, such as an officer with the all-lower-case ‘social insurance number’?

From Chapter 5 earlier, recall that Justice Kovatch in *HMTQ v. Doug Amell et al*⁵⁰ said an officer of Her Majesty for income tax is a “*statutory agent identified with a social insurance number*”. Based on all of the above, one could conclude that the all-lower-case ‘social insurance number’ identifies Her Majesty’s office and/or the officer/agent that represents it, as all income tax goes into and many benefits come out of Her Majesty’s CRF. The following CRA forms, when filed with the all-lower-case ‘social insurance number’, could then indicate for Her Majesty (“HM”):

<u>CRA Form</u>	<u>Title of Form</u>	<u>Purpose</u>
CPT100	Appeal of Ruling Under CPP or EI Act	By HM’s officer/agent
T2125	Statement of Professional or Business Activities	‘Income’ of HM’s office
T2091 (IND)	Designation of Principal Residence by an Individual	By HM’s officer/agent
T5018	Contract Payment Reporting System	Payer deems payee: HM officer
Schedule 50	List of Shareholder Information	Shareholder is HM’s officer
T2154	Designation of Forgiven Amount by Debtor	By HM’s officer
TD1	Personal Tax Credits Return	Individual fills HM’s office
T1	Income Tax and Benefit Return	‘Income’ of HM’s office
T1-ADJ	T1 Adjustment Request	‘Income’ of HM’s office
T1-DD	Direct Deposit Request	For ‘Income’ of HM’s office

10 Creating Her Majesty’s Office

Having made a reasonable conclusion that the all-lower-case ‘social insurance number’ is used to identify Her Majesty’s office related to income tax filings, I next propose an individual can create such an office, as Sir Edward Coke said⁵¹, by “*filling an office*”:

- TD1 Signs & files form – consents to “*fill an office*” related to ‘social insurance number’
- T1 Signs & files form – consents to “*fill an office*” related to ‘social insurance number’
- T2125 Signs & files form – consents to “*fill an office*” related to ‘social insurance number’
- T5018 Payer signs & files form – Payer *presumes* subcontractor consents to “*fill an office*”

I propose that most individuals become an officer⁵² of Her Majesty by either applying via a TD1 with the all-lower-case ‘social insurance number’⁵³ for “pensionable employment”⁵⁴

⁵⁰ *HMTQ v. Doug Amell et al* 2010 SKPC 107, at [50], www.canlii.ca/t/2c05t

⁵¹ *Institutes of the Lawes of England, Coke on Littleton*, Sir Edward Coke: Co. Lit. 2a

⁵² *CPP*, R.S.C., 1985, c. C-8, s.2(1), within the definition of “office”

⁵³ In addition to being used in many CRA forms, the ‘social insurance number’ is also used in some CRA Information Circulars, such as IC82-2R2: <http://www.cra-arc.gc.ca/E/pub/tp/ic82-2r2/README.html>

⁵⁴ *CPP*, R.S.C., 1985, c. C-8, s.2.(1)



Canada Revenue Agency / Agence du revenu du Canada

REQUEST FOR A RULING AS TO THE STATUS OF A WORKER UNDER THE CANADA PENSION PLAN AND/OR THE EMPLOYMENT INSURANCE ACT

DEMANDE DE DÉCISION QUANT AU STATUT D'UN TRAVAILLEUR AUX FINS DU RÉGIME DE PENSIONS DU CANADA ET/OU DE LA LOI SUR L'ASSURANCE-EMPLOI

Please complete all sections to the best of your ability – Veuillez remplir toutes les sections au meilleur de votre connaissance

<p>Who is completing this application?</p> <p><input type="checkbox"/> Worker <input type="checkbox"/> Payer <input type="checkbox"/> Representative</p> <p>(Indicate whether you are representing the worker or the payer and attach your client's consent form (T1013 or RC59) or a letter that authorizes the CRA to discuss confidential issues with you.)</p>	<p>Qui remplit cette demande?</p> <p><input type="checkbox"/> Travailleur <input type="checkbox"/> Payeur <input type="checkbox"/> Représentant(e)</p> <p>(Veuillez indiquer si vous représentez le travailleur ou le payeur et joindre le formulaire d'autorisation de votre client (T1013 ou RC59) ou une lettre autorisant l'ARC à discuter de questions confidentielles avec vous.)</p>
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<p>Is this an employer restructuring request? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Est-ce une demande succession d'employeur? <input type="checkbox"/> Oui <input type="checkbox"/> Non</p>
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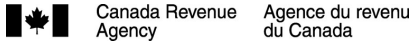
The Payer – Le payeur

Name of Corporate Entity, Operating Name or Partnership Name – Nom de la société par actions ou de la société de personnes ou nom de l'entreprise	
Name of Proprietor, Partner or Corporate Officer (if applicable) Nom du propriétaire, sociétaire, cadre corporatif (s'il y a lieu)	CRA Business Number (applicable, if known) Numéro d'entreprise de l'ARC (applicable, si connu) _____ RP _____
Address – Adresse	Telephone Number – Numéro de téléphone () _____
Nature of Business – Genre d'entreprise	Province in which the work was performed Province où l'emploi a été effectué

The Worker – Le travailleur

Surname of Worker – Nom de famille du travailleur	Usual first name and initials – Prénom usuel et initiales																				
Address – Adresse	Telephone Number – Numéro de téléphone (Home – à la maison) () (Work – au travail) ()																				
Social Insurance Number – Numéro d'assurance sociale	Worker's Job Title/Position Titre de l'emploi ou du poste du travailleur																				
Date on which employment started – Date à laquelle l'emploi a débuté <table style="margin-left: auto; margin-right: auto;"> <tr> <td>Y</td><td>A</td> <td>M</td> <td>D</td><td>J</td> </tr> <tr> <td> </td><td> </td> <td> </td> <td> </td><td> </td> </tr> </table>	Y	A	M	D	J						Date on which employment terminated (if applicable) Date à laquelle l'emploi a cessé (s'il y a lieu) <table style="margin-left: auto; margin-right: auto;"> <tr> <td>Y</td><td>A</td> <td>M</td> <td>D</td><td>J</td> </tr> <tr> <td> </td><td> </td> <td> </td> <td> </td><td> </td> </tr> </table>	Y	A	M	D	J					
Y	A	M	D	J																	
Y	A	M	D	J																	

<p>I hereby certify that, to the best of my knowledge, the information contained in this request and in the attached documents is accurate and complete.</p> <p>Date: <table style="margin-left: auto; margin-right: auto;"> <tr> <td>Y</td><td>M</td><td>D</td> </tr> <tr> <td> </td><td> </td><td> </td> </tr> </table></p> <p>_____</p> <p style="text-align: center;">Please print your name and title (if applicable)</p> <p>_____</p> <p style="text-align: center;">Signature</p>	Y	M	D				<p>Par la présente, j'atteste qu'au meilleur de mes connaissances, les renseignements fournis dans la présente demande et dans les documents annexés sont exacts et complets.</p> <p>Date: <table style="margin-left: auto; margin-right: auto;"> <tr> <td>A</td><td>M</td><td>J</td> </tr> <tr> <td> </td><td> </td><td> </td> </tr> </table></p> <p>_____</p> <p style="text-align: center;">Veuillez écrire votre nom et votre titre (s'il y a lieu) en lettres moulées</p> <p>_____</p> <p style="text-align: center;">Signature</p>	A	M	J			
Y	M	D											
A	M	J											



APPEAL OF A RULING UNDER THE CANADA PENSION PLAN AND/OR EMPLOYMENT INSURANCE ACT

Please read the instructions on the back before completing this form.

APPELLANT IDENTIFICATION			
Indicate whether you are: <input type="checkbox"/> Employer/Payer <input type="checkbox"/> Worker			
Appellant's last name, first name/Business name (print)			Mailing address
Social insurance number (SIN) or Business number (BN)	Telephone	Fax	
Please check applicable boxes			
<input type="checkbox"/> I have filed other appeals and/or objections of:		<input type="checkbox"/> an assessment of CPP and/or EI for this same period/employment relationship – EMPLOYERS ONLY (Form CPT101) <input type="checkbox"/> a notice of assessment/determination under the <i>Income Tax Act</i> relating to this same issue/year (Form T400A) <input type="checkbox"/> a notice of objection GST/HST (Form GST159)	
DETAILS OF RULING (Attach a copy of the ruling decision letter with this form.)			
Ruling date	Applicable legislation(s) <input type="checkbox"/> Canada Pension Plan (CPP) <input type="checkbox"/> <i>Employment Insurance Act</i> (EIA)		
Ruling reference number	From:	Period(s) under appeal	To:
Issue(s) under appeal (tick one or more boxes)			
<input type="checkbox"/> Whether the worker(s) is/are employee(s) or self-employed		<input type="checkbox"/> The number of insurable hours	
<input type="checkbox"/> Whether the worker(s) is/are dealing at arm's length with the payer		<input type="checkbox"/> The amount of insurable earnings	
		<input type="checkbox"/> Other: _____	
OTHER PARTY			
If you are the worker, list the name, address and telephone number of the payer. If you are the payer, list the name, address, telephone number and social insurance number (SIN) of the worker(s) to which the ruling(s) applies. (Attach separate sheet(s) if necessary.)			
Name	Address	Telephone	SIN
Please state all the facts about the working relationship and the reason(s) for your appeal. For more information, see the back of this form. (Attach separate sheet(s) if necessary.)			
AUTHORIZED REPRESENTATIVE (Please complete this section to authorize a representative for this appeal.)			
Representative's name (print)	Address	Telephone	
SIGNATURE OF THE APPELLANT OR AUTHORIZED OFFICER OF THE CORPORATION			
Signature	Print name/Title	Date YYYY-MM-DD	

under the *CPP*, which is only payable to the *CPP* “officer” holding such an office⁵⁵, or via the *ITA* by being “*appointed in a representative capacity*”⁵⁶ as an officer⁵⁷ to the *ITA* “office”⁵⁸ through failure to rebut the deeming⁵⁹ in the *ITA* of an individual to be such an officer, or by filing a T1 or T2125 with the all-lower-case ‘social insurance number’.

If this theory is correct, most Canadians with a job “*appoint themselves in a representative capacity*”⁶⁰ as an officer of Her Majesty’s office by voluntarily filling out a TD1 with the all-lower-case ‘social insurance number’ and signing the form. This evidence of consenting to working as such an officer for Her Majesty’s office allows the payer to deduct CPP, EI, and income tax from the officer’s paycheque (more in Chapters 19-21). At the end of the year CRA directs the individual to file the income of Her Majesty’s office on a T1⁶¹, which also uses⁶² the all-lower-case ‘social insurance number’.

If the individual works for himself, CRA helpfully directs such a worker to file a T2125⁶³, and so creates evidence that the individual filled Her Majesty’s office identified by the all-lower-case ‘social insurance number’ on that T2125.

Subcontractors in the construction industry are *presumed* by their payers through the Contract Payment Reporting System (CPRS) form T5018⁶⁴ with the all-lower-case ‘social insurance number’ to be working for Her Majesty’s office; did any of the payers ask the subcontractors whether they wanted to work for Her Majesty’s office as its officer?

A quick look (more in Chapters 19-21) at the statutory definitions below show that Her Majesty’s **office**, and the **officer** that represents it, are **pivotal** to the *CPP*, for GST in the *Excise Tax Act*, and to the *ITA*. First, here are some definitions from the *CPP* s.2(1):

“**pensionable employment**” means employment specified in subsection 6(1);

“**employment**” means the state of being employed under an express or implied contract of service or apprenticeship, and includes the tenure of an **office**;

“**office**” means the position of an individual entitling him to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a minister of the Crown, the office of a lieutenant governor, the office of a member of the Senate or House of Commons, a member of a legislative assembly or a member of a legislative or executive council **and any other office** the

⁵⁵ *CPP*, R.S.C., 1985, c. C-8, s.2.(1)

⁵⁶ *ITA*, R.S.C. 1985, c. 1 (5th Supp.), s.248(1), within the definition of “office”

⁵⁷ *ITA*, R.S.C. 1985, c. 1 (5th Supp.), s.248(1), within the definition of “office”

⁵⁸ *ITA*, R.S.C. 1985, c. 1 (5th Supp.), s.248(1), definition of “office”

⁵⁹ *ITA*, R.S.C. 1985, c. 1 (5th Supp.), s.6(3) and s.9(1)

⁶⁰ *ITA*, R.S.C. 1985, c. 1 (5th Supp.), s.248(1), within the definition of “office”

⁶¹ Although it seems to be CRA policy to demand taxpayers file a T1, there is no requirement in the *ITA* to file on a T1. A possible reason why CRA does this is discussed in Chapter 46, “Conclusions”.

⁶² Recall that the T1 used the upper-and-lower-case ‘Social Insurance Number’ until 1990 (see the attached 1990 T1 and 1991 T1 forms). If it makes no difference, then why was it changed?

⁶³ CRA’s T2125 form: <http://www.cra-arc.gc.ca/E/pbg/tf/t2125/README.html>. There is also no statutory requirement in the *ITA* to file on a T2125 either.

⁶⁴ CRA’s T5018 form: <http://www.cra-arc.gc.ca/E/pbg/tf/t5018/README.html>

incumbent of which is elected by popular vote or is elected **or appointed in a representative capacity**, and also includes the position of a corporation director, and **“officer” means a person holding such an office**;

From the *Excise Tax Act* (“ETA”), Part IX (GST), s. 123.(1):

“office” has the meaning assigned by subsection 248(1) of the *Income Tax Act*, ...

“officer” means a person who holds an **office**

The *ITA* s.6(3) deems amounts received by a person from a payer is as an officer:

An amount received by one person from another

- (a) during a period while the payee was an **officer** of, or in the **employment** of, the payer, or
- (b) on account, in lieu of payment or in satisfaction of an obligation arising out of an agreement made by the payer with the payee immediately prior to, during or immediately after a period that the payee was an **officer** of, or in the employment of, the payer,

shall be deemed, for the purposes of section 5, to be remuneration for the payee’s services rendered as an **officer** or during the period of employment, unless it is established that, irrespective of when the agreement, if any, under which the amount was received was made or the form or legal effect thereof, it cannot reasonably be regarded as having been received

- (c) as consideration or partial consideration for accepting the **office** or entering into the contract of employment,
- (d) as remuneration or partial remuneration for services as an **officer** or under the contract of employment, or
- (e) in consideration or partial consideration for a covenant with reference to what the **officer** or employee is, or is not, to do before or after the termination of the employment.

From *ITA* s.248(1), definition of certain words used in the *Income Tax Act*:

“employed” means performing the duties of an **office** or employment;

“employee” includes **officer**;

“employment” means the position of an individual in the service of some other person (**including Her Majesty** or a foreign state or sovereign) and “servant” or “employee” means a person holding such a position;

“office” means the **position** of an individual entitling the individual to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a minister of the Crown, the office of a member of the Senate or House of Commons of Canada, a member of a legislative assembly or a member of a legislative or executive council **and any other office**, the incumbent of which is elected by popular vote or is elected **or appointed in a representative capacity** and also includes the position of a corporation director, and **“officer” means a person holding such an office**;

11 Sole Office with Her Majesty

From Chapter 10, the definition of “office”⁶⁵ under the *CPP* is nearly identical⁶⁶ with the definition of office⁶⁷ under the *ITA*. The definition of “office”⁶⁸ under Part IX (GST/HST) of the *ETA* is that it is the same as the definition of the *ITA* “office”. Since all three offices are virtually defined as the same office, and all three use the same all-lower-case ‘social insurance number’, one could conclude that an individual, as a *CPP/ITA/ETA* officer, deals with only one office of Her Majesty. Corroborating that there is a sole office with Her Majesty is the right of set-off⁶⁹ in the *ITA*, which allows Her Majesty to deduct any outstanding debt to Her Majesty from any refund:

224.1 Where a person is indebted to Her Majesty under this Act or under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of the taxes payable to the province under that Act, the Minister may require the retention by way of deduction or set-off of such amount as the Minister may specify out of any amount that may be or become payable to the person by Her Majesty in right of Canada.

Further corroboration is that there was no right of set-off under the old *Unemployment Insurance Act* as those funds were held in a separate account from the CRF. With the current *Employment Insurance Act*, since June 20, 1996 EI contributions and payments deal with the CRF, so Her Majesty now has the right of set-off also with the *EI Act*⁷⁰.

12 ITA Office: a Position to Receive Public Money as Taxable “Office Profit”

These two court cases confirm that an office is a position to receive all income as profit for that office, or what I have defined as “office profit” (see **Appendix**). The first case says:

*“A payment to the holder of an **office** or employment is a **profit** of the **office** or employment if it accrues to the holder in virtue of his office or employment...”*

- **Mr. C. v. Minister of National Revenue**⁷¹

In the second case, the Supreme Court of Canada confirmed on February 23, 1953 that holding an office is also a position to receive income as “office profit”:

⁶⁵ *CPP*, s.2(1)

⁶⁶ *Real Estate Council of Alberta v. M.N.R.*, 2011 TCC 5 (CanLII), <http://canlii.ca/t/2f7p9>: [21] “The definition of “office” found in the 1948 Income Tax Act was nearly identical to the current one in the Canada Pension Plan except it includes “the office of a lieutenant-governor”.

⁶⁷ *ITA*, R.S.C. 1985, c. 1 (5th Supp.), s.248(1)

⁶⁸ *Excise Tax Act*, s.123.(1)

⁶⁹ *ITA*, R.S.C. 1985, c. 1 (5th Supp.), s.224.1

⁷⁰ *The Tax Collector’s Bible*, Alan Baggett, page 149: “In recent years the tax collector has also begun capturing set-offs derived from EI payments. In the past the attachments to these types of monies were also considered taboo, but no longer”: <http://www.taxcollectorsbible.com>, ISBN 978-1-55483-913-1.

⁷¹ *Mr. C. v. Minister of National Revenue*, 50 DTC 206. Mr. C was a judge that did not want to pay income tax on his earnings for serving as Commissioner on a Royal Commission.

“The question is whether the money so paid is within the provisions of the Income Tax Act, Sec. 3: ‘Income’ means the annual net profit or gain or gratuity, whether ascertained and capable of computation as being wages, salary, or other fixed amount, or unascertained as being fees or emoluments ... directly or indirectly received by a person from any office or employment ... and also the annual profit or gain from any other source including ...”

- **Goldman v. Minister of National Revenue**⁷²

Only 81 days after this 1953 Supreme Court of Canada ruling, the Government on May 14, 1953 amended⁷³ the *ITA*⁷⁴ **retroactively back to 1952** (see attached, **1-2 ELIZABETH II, CHAP. 40**) by adding the following definitions, which are still used today in the current *ITA*:

“**employee**” includes **officer**;

“**employer**”, in relation to an officer, means the person from whom the officer receives the officer’s remuneration;

One meaning of “includes” in *The Composition of Legislation*⁷⁵, as used by Canada’s Department of Justice, is to “*retain the ordinary meaning of a word and add a meaning it does not normally have*”. According to this Department of Justice reference book, an *ITA* “employee” can be someone who works for somebody else (not as an officer) or it can be someone who works for somebody else as an *ITA* “officer”. This corroborates with the *ITA* meaning of “employer”, which is someone who may or may not have a relation to an officer.

Canadians do not have the mindset to make profit at their jobs, but this 1953 amendment allows the *ITA* to tax *ITA* “employees” who consent to being deemed by the *ITA* to work as officers since they are earning “**office profit**”. The power of an office to convert any consideration into “**office profit**” contrasts with an individual who lacks the legal power to convert or receive any consideration as “**office profit**”. Moreover, this *CPP/EIA/ETA/ITA* office deals with Canada’s public money that is distinct from private property.

The **legal fact** is, one who consents the *ITA*’s deeming to be such an officer receives income as Canada’s public money that is **taxable** as “**office profit**”, **regardless of what the ‘income’ is called by the officer, whether the officer has an intent to profit or not, and even if the “accounting profit”** (see **Appendix**) **is equal to zero**. This could be why Crown *assumes* and does not want to have to prove in court the two missing essential elements of tax evasion from Chapter 4: how an individual *becomes* an officer identified with the all-lower-case ‘social insurance number’, and how that office *converts* private property into public money that is also “**office profit**” which then is legally taxable by the *ITA* without violating any human rights (theft) to private property ownership.

⁷² *Goldman v. Minister of National Revenue*, [1953] 1 S.C.R. 211, decided on February 23, 1953

⁷³ *An Act to amend The Income Tax Act*, 1-2 Elizabeth II, Chapter 40, assented May 14, 1953

⁷⁴ *ITA*, 1952, amended in 1953 retroactive to 1952 Statutes of Canada

⁷⁵ *The Composition of Legislation*, Driedger, 2nd Ed., 1976, The Department of Justice Ottawa, p. 46

1 - 2 ELIZABETH II.

CHAP. 40.

An Act to amend The Income Tax Act.

[Assented to 14th May, 1953.]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

PART I.

1. (1) Paragraph (g) of section 6 of *The Income Tax Act*, chapter 52 of the statutes of 1947-48, is repealed and the following substituted therefor,:

“(g) amounts received by the taxpayer in the year as premiums paid by a corporation on the redemption before April 30, 1953 of any of its shares,”

Premium on redemption of shares.

(2) This section is applicable to the 1949 and subsequent taxation years.

2. (1) Section 10 of the said Act is amended by adding the following subsection thereto:

“(3) Where an elected officer of an incorporated municipality has been paid by the municipal corporation an amount as an allowance in a taxation year for expenses incident to the discharge of his duties as an elected officer of the corporation, the allowance shall not be included in computing his income for the year unless it exceeds one-half of the amount that was paid to him in the year by the municipal corporation as salary or other remuneration as an elected officer of the corporation, in which event there shall be included in computing his income for the year only the amount by which the allowance exceeds one-half of the amount so paid to him by way of salary or remuneration.”

Municipal officers expense allowance.

(2) This section is applicable to the 1949 and subsequent taxation years.

(3) Subsection (3) of section 10 of *The Income Tax Act* as enacted by subsection (1) of this section is applicable *mutatis mutandis* in the computation of the income of an

PART I—15

225

elected

be deemed, for the purposes of this Part, to have been paid as a dividend.”

(2) Subsection (4) of the said section 108 as enacted by this section is applicable to amounts paid or credited after 1952.

S3. (1) Section 115 of the said Act is repealed and the following substituted therefor:

“**115.** The provisions of Division F of Part I, except sections 47 to 51 and sections 53 and 54, are applicable *mutatis mutandis* to this Part.”

(2) This section is applicable to the 1953 and subsequent taxation years.

S4. Subsection (1) of section 119 of the said Act is repealed and the following substituted therefor:

“**119.** (1) An amount payable under this Act that has not been paid or such part of an amount payable under this Act as has not been paid may be certified by the Minister

(a) where there has been a direction by the Minister under subsection (2) of section 51, forthwith after such direction, and

(b) otherwise, upon the expiration of 30 days after the default.”

S5. Subsection (9) of section 123 of the said Act is repealed and the following substituted therefor:

“(9) Every person who has failed to remit or pay

(a) an amount deducted or withheld as required by this Act or a regulation, or

(b) an amount of tax that he is, by a regulation made under subsection (4) of section 109, required to pay, is liable to a penalty of 10% of that amount or \$10, whichever is the greater, in addition to the amount itself, together with interest on the amount at the rate of 10% per annum.”

S6. Subsection (1) of section 129 of the said Act is repealed and the following substituted therefor:

“**129.** (1) Every person who has failed to make a return as and when required by regulation under subsection (4) of section 109, by regulation under section 117 or by subsection (2) of section 123 is liable to a penalty of \$10 a day for each day of default but not exceeding in all \$2,500.”

S7. (1) Paragraph (f) of subsection (1) of section 139 of the said Act is repealed and the following substituted therefor:

“(f) ‘child qualified for family allowance’ means a child who, in the last month of the taxation year in respect

of which the expression is being applied, was or might have been qualified by registration under the *Family Allowances Act*, so that an allowance under the said Act was or might have been payable in respect of that child for the immediately following month.”

(2) The said subsection (1) is further amended by adding thereto immediately following paragraph (l) thereof the following paragraphs:

“(la) ‘employee’ includes officer;

(lb) ‘employer’, in relation to an officer, means the person from whom the officer receives his remuneration.”

(3) The said section 139 is further amended by adding thereto the following subsection:

“(10) For greater certainty it is hereby declared that, where a document has been issued or a contract entered into (either before or after the coming into force of this subsection) purporting to create, to establish, to extinguish or to be in substitution for, a taxpayer’s right to an amount or amounts, immediately or in the future, out of or under a superannuation or pension fund or plan,

(a) if the rights provided for in the document or contract are rights provided for by the superannuation or pension plan or are rights to a payment or payments out of the superannuation or pension fund, any payment under the document or contract is a payment out of or under the superannuation or pension fund or plan and the taxpayer shall be deemed not to have received, by the issuance of the document or entering into the contract, an amount out of or under the superannuation or pension fund or plan, and

(b) if the rights created or established by the document or contract are not rights provided for by the superannuation or pension plan or a right to payments out of the superannuation or pension fund, an amount equal to the value of the rights created or established by the document or contract shall be deemed to have been received by the taxpayer out of or under the superannuation or pension fund or plan when the document was issued or the contract was entered into.”

(4) Subsections (1) and (2) are applicable to the 1953 and subsequent taxation years.

(5) Nothing in subsection (10) of section 139 of the said Act as enacted by this section is applicable in respect of any matter in respect of which an appeal is pending before the Income Tax Appeal Board or a court when section 42 of this Act comes into force.

S8. Section 141 of the said Act is amended by adding the following subsections thereto:

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This **legal fact** corroborates with the Department of Finance's *Notes on Proposed Amendments to the ITA*⁷⁶ (ITA s.3 to s.3.1) that it is not up to the taxpayer (if he consents to being deemed an officer) "to prove the unreasonableness of their profit expectations":

Asymmetrical: No Rule on Income

Proposed subsection 3.1(1) is not symmetrical, in that it does not address the circumstances under which income will be considered to be from a source. This is intentional, and the provision should not be construed as suggesting that a taxpayer has a source of income only where the taxpayer has a reasonable expectation of profit from that source. A system that allowed taxpayers **to prove the unreasonableness of their profit expectations** in an effort to have, on that basis, **untaxed income, would be inappropriate.**

Individuals of full capacity lack the legal power to convert private property into or to receive it as "**office profit**" that is also public money; they just pay themselves what is left over after other expenses are paid⁷⁷. Such a taxpayer can then argue⁷⁸ that there is no "**accounting profit**" (See **Appendix**) left after paying expenses and oneself and then have, as the Department of Finance says, "*untaxed income (which) would be inappropriate*".

To prevent this "*untaxed income*", the *ITA* deems an individual taxpayer to be an *ITA* "officer" and disallows expenses for earning *ITA* "exempt income" (see **Appendix**). In ***Canderel Ltd. v. Canada***⁷⁹ the Supreme Court of Canada ruled that 'profit' for the *ITA* can be, but is not limited to the accounting definition of profit. "**Office profit**" could be what the Supreme Court of Canada said could be other than "**accounting profit**". *ITA* 'income' for individuals *could* then be (see **Appendix** for sample calculations):

$$\begin{aligned} & \text{ITA 'income' for an individual taxpayer =} \\ & \quad \text{"office profit" (Canada's public money)} \\ & \quad \quad \quad + \\ & \quad \text{private property income (the individual's private property)} \end{aligned}$$

13 'Sources' of 'Income': Deemed to be "Office Profit" for Her Majesty's Office

The words 'source' and 'income' are not defined in the *ITA*, so three 'sources' of 'income' listed in *ITA* s.3 (a) - **employment, business, and property** could be *either* for Her Majesty's office, or for an individual not as an officer. From Chapter 10 earlier, *ITA* 6(3)

⁷⁶ *Notes on Proposed Amendments to the Income Tax Act*, Proposed section 3.1, Department of Finance Canada, http://www.collectionscanada.gc.ca/webarchives/20071124194314/http://www.fin.gc.ca/news03/d_ata/03-055_2e.html, published October 31, 2003

⁷⁷ *Liberum corpus aestimationem non recipit* – "The body of a freeman does not admit of valuation."

⁷⁸ *HMTQ v. Doug Amell et al* 2010 SKPC 107, at [119]: www.canlii.ca/t/2c05t. Amell gave evidence that he had 'non-taxable income', an undefined term but used by CRA and the courts to mean "office profit", and he did not testify that he was not an *ITA* "officer", although his private contract stated as such.

⁷⁹ *Canderel Ltd. v. Canada*, [1998] 1 SCR 147, <http://canlii.ca/t/1fqv8>

deems **office** and **employment** ‘sources’ of ‘income’ to be as an officer. (See diagram, “**Individual Deemed as Officer**”). For the other two ‘sources’ of ‘income’, *ITA* s.9(1) says:

9 (1) Subject to this Part, a taxpayer’s income for a taxation year from a **business** or **property** is the taxpayer’s **profit** from that **business** or **property** for the year.

Since an individual lacks the legal power to turn consideration into or to receive it as “**office profit**”, it is logical to conclude that a **business** individual for ‘profit’ in *ITA* s.9(1) is an officer. This corroborates with CRA’s T2125 form⁸⁰, “Statement of Business Income” which uses the all-lower-case ‘social insurance number’ that identifies Her Majesty’s office.

A **property** ‘source’ of ‘income’ could be shareholder dividends, which can only be “**office profit**”. As an individual lacks the legal power to turn any consideration into or to receive it as “**office profit**”, one could conclude that a shareholder must be an officer. This corroborates with CRA’s T2SCH50 (Schedule 50)⁸¹ “Shareholder Information”, which uses the all-lower-case ‘social insurance number’ that identifies Her Majesty’s office.

14 Office/Officer: Conceptually Divisible But Legally Indivisible

With Her Majesty, as in any corporation sole, the office (the Crown) and the officer (the monarch) are “*conceptually divisible but legally indivisible... the office cannot exist without the office-holder*”⁸². From Chapter 8 earlier, Industry Canada’s website⁸³ says, “*Once the corporation (sole) is established, there is no distinction between the person who holds the office and the office itself.*” Therefore, an individual that forms a corporation sole as an officer of Her Majesty’s office is, in the eyes of the law, “*conceptually divisible but legally indivisible*” since “*there is no distinction between the person who holds the office and the office itself.*” The all-lower-case ‘social insurance number’ can then identify Her Majesty’s office and/or the individual as an officer that represents that office.

15 Office/Officer: Has Power to Convert ‘Income’ Into Taxable “Office Profit”

The 1967 Tax Appeal Board decision **Rossman et al v. MNR**⁸⁴, at page 274, said:

...income that had attached to the money that came into the appellants’ hands.

Jesus changed water into wine⁸⁵; how do mere mortals change money “*in its hands*” to “office profit”? If the individual is (as in the case of **Arnegard**⁸⁶ in Chapter 7), “*clothed with all the powers*” of Her Majesty’s office as a *CPP/ITA* “officer”, and since an office is a

⁸⁰ CRA’s T2125 form: <http://www.cra-arc.gc.ca/E/pbg/tf/t2125/README.html>.

⁸¹ CRA’s T2 Schedule 50: <http://www.cra-arc.gc.ca/E/pbg/tf/t2sch50/t2sch50-06e.pdf>

⁸² *The Queen’s Other Realms*, Peter Boyce (2008a), Canberra: Federation Press, page 5

⁸³ Industry Canada website, <http://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/cl00384.html>

⁸⁴ *Rossman et al v. MNR*, 67 DTC 273, page 274

⁸⁵ *The Holy Bible*, John 2:1-25

⁸⁶ *Arnegard v. Board of Trustees of the Barons Consolidated School District*, Alberta, 1917, page 306

corporation sole, and all corporations are created initially for profit, and any office has the legal power to convert all 'income' into "**office profit**", and since in a corporation sole the office and officer are "*conceptually divisible but legally indivisible*⁸⁷", then that individual holding such a position as that officer also has the legal power to convert any 'income' into net taxable "**office profit**" (after allowable expenses are deducted) for Her Majesty's office.

16 Quality of 'Income'

In the case of ***Shiu Keung Franklin Wong v. MNR***⁸⁸, the Tax Court stated:

[19] A determination of the nature of these payments is a **question of fact**. In the 1949 Tax Appeal Board decision in the *Reference Re Income War Tax Act and Walter Crassweller* (1949), 1 Tax A.B.C. 1, 1949 Carswell Nat 20, the principle was advanced that the true character and taxability of a payment is determined **not by the payer's own description** of that character but, rather, by reference to **the substance of the facts** and the provisions in the IT Act. In the 1967 Tax Appeal Board decision in *Rossmann et al v. M.N.R.*, 67 D.T.C. 273, the same principle was applied and, at page 274, the following was stated:

...no process of accounting subsequently employed by the company's auditors could change the **quality of income** that had **attached to the money that came into the appellants' hands**.

[20] In *Farm Business Consultants Inc. v. The Queen*, 95 D.T.C. 200, Bowman J., as he was then, reiterated that the true nature of a payment is determined not by an assigned description but, rather, **by the totality of the facts and by the underlying legal relationships of the parties**. At page 203, he stated:

... The essential nature of a transaction cannot be altered for income tax purposes by calling it by a different name. **It is the true legal relationship**, not its nomenclature, **that governs**.

If the individual is "*clothed with all the powers*" of Her Majesty's office as that officer, then its 'income' is "**office profit**" and is public money that is taxable by the *ITA*, irrespective of its description by the taxpayer, and irrespective of what 'profit' is for the *ITA*, as that quality of 'income' had attached to the money in the individual's hands as such an officer. If the individual is not working for Her Majesty's office, but as an individual of full capacity, then the quality of 'income' attached to the money in that individual's hands while not as such an officer is not "**office profit**" and stays as private property.

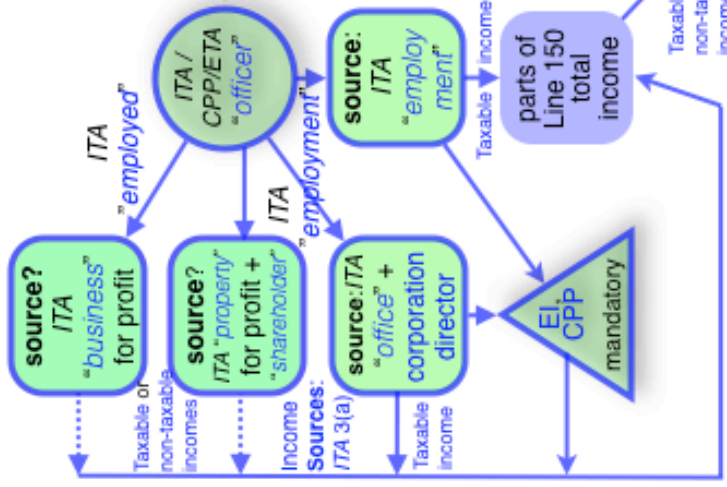
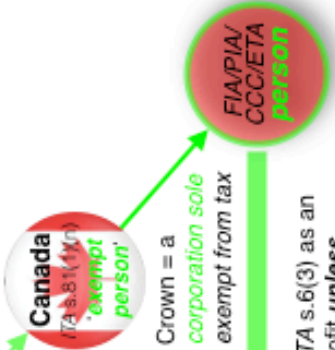
⁸⁷ *The Queen's Other Realms*, Peter Boyce (2008), Canberra: Federation Press, page 5.

⁸⁸ *Shiu Keung Franklin Wong v. MNR*, 2011 TCC 30, www.canlii.ca/t/2flrd

Individual Deemed as Officer Version 2.8

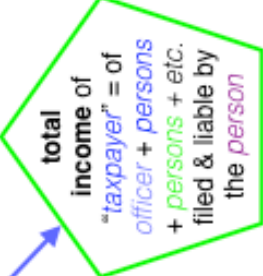
Red: human / private person
 Green: various "persons"
 Blue: for profit or is a benefit
 Purple: liable, or ITA "legal representative"

CCC = Criminal Code of Canada
 ETA = Excise Tax Act
 FIA = Federal Interpretation Act
 FAA - Financial Administration Act
 GIS = Guaranteed Income Supplement
 PIA = Provincial Interpretation Act(s)



"Person" is deemed by ITA s.6(3) as an "officer" in an "office" of profit unless contrary intention exists; also as an corporation director and/or shareholder (same "officer"). "Office profit" is profit for Her Majesty's office with a "social insurance number" (SIN) and is FAA s.2 "public money" so is not private property.

Individual is deemed to hold an office of profit as an CPP/ITA/ETA "officer". All compensation from all 'sources' is converted to "office profit" (see Appendix): office, employment, and, (if 'sufficiently commercial'), business or property.



For discussion only. Not meant to be a reference
 Borders = personifications
 Dashed line = optional actions
 Triangles = optional benefits (unless indicated)
 Yellow Squares = optional decisions
 Note: Subject to change & is incomplete. E&OE.
 Excludes Quebec © knosin 2005-2015

17 Office/Officer's Legal Indivisibility: Legal Basis for Worldwide Taxation?

Further corroborating this theory is that the legal indivisibility between the person who holds the office and the office itself could be the legal basis for taxation of worldwide 'income' of Canadians. Both Her Majesty's office and the officer are domiciled⁸⁹ in Canada. Her Majesty's officer is the "res" (thing) that is *res-ident* (resident), or "thing identified". Being "*conceptually divisible*" from Her Majesty's office, the officer⁹⁰ can hold or perform duties of Her Majesty's office anywhere in the world. The "**office profit**" and public money generated by the officer from anywhere in the world, however, is "*legally indivisible*" from Her Majesty's office that remains domiciled in Canada. One could conclude this is how the *ITA* taxes the worldwide 'income' of Her Majesty's office.

18 Office/Officer: Also Determines CPP, GST, EI

To further corroborate the theory that the *ITA* deems an individual to be an officer of Her Majesty who receives public money, we next analyze when one has to pay CPP, GST, and EI, as it involves Her Majesty's office/officer identified with the social insurance number.

19 Office/Officer: CPP Mandatory

From Chapter 11 earlier, the definitions of both "office" and "officer" in the *ITA* s.248(1) and the *CPP* s.2(1) are almost identical⁹¹. As both use the same all lower case 'social insurance number' and both deal with the CRF, one would conclude that an individual, whether as an *ITA* or *CPP* officer, deals with only one office with Her Majesty.

From *ITA* s.248(1):

"employed" means performing the duties of an **office** or **employment**;

An officer performs the duties of an office. But what is "employment" as defined in the *ITA*?

"employment" means the **position** of an individual in the service of some other person (including **Her Majesty ...**) ...

From Chapter 11 earlier, the definition of *ITA* "officer" is "*the position of an individual*" in the service of Her Majesty in "*any other office*". The definition of *ITA* "employment" is "*the position of an individual in the service of some other person (including Her Majesty...)*". One could conclude that *ITA* "employment" then could be the position of an individual in the

⁸⁹ Any corporation, as a creation of law, is domiciled in the place of its creator. Since the office and the officer are "*legally indivisible*" in a corporation sole, both are domiciled in the same place of its creator.

⁹⁰ A corporation is resident where its central management and control lies: *De Beers Consolidated Mines Ltd. v. Howe*, [1906] A.C. 455, (House of Lords).

⁹¹ *Real Estate Council of Alberta v. M.N.R.*, 2011 TCC 5 (CanLII), <http://canlii.ca/t/2f7p9>: [21] "*The definition of "office" found in the 1948 Income Tax Act was nearly identical to the current one in the Canada Pension Plan except it includes "the office of a lieutenant-governor"*."

service of Her Majesty as an **officer**. A possible interpretation of “employed” is: performing the duties of an *ITA* “office” by an *ITA* “officer” (see diagram, “**Individual with *ITA* “Employment” Source Determines CPP, EI, GST**”) or *ITA* “employment” by the same officer (see diagram, “**Individual with *ITA* “Office” Source Determines CPP, EI, GST**”).

Simplifying, *ITA* “employed” means the performance of duties, whether of an *ITA* “office” or “employment”, are both could be an officer for Her Majesty’s office related to a ‘social insurance number’ (see diagram, **ITA “Officer”= *ITA* “Employment” Still Determines CPP, EI, GST**”). This is corroborated by the definition of *ITA* “employee” that we analyzed in Chapter 12: an *ITA* “employee” could be an *ITA* “officer”.

As *CPP* “pensionable employment” is paid to the **same officer**, if that officer is *ITA* “employed” (performing the duties of an office), then *CPP* is mandatory, whether the officer is *ITA* “employed” in his own business (files a T2125), performing the duties of an office (files a T1), or performing *ITA* “employment” (files a T1). (It is helpful to also refer to the diagram, “**Summary: Individual as *ITA* “Officer” Determines CPP, EI, GST**”).

20 Office/Officer: Determines GST

Part IX of the *Excise Tax Act*⁹² deals with GST; the *ETA*, Section 123.(1) says:

“**office**” has the meaning assigned by subsection 248(1) of the *Income Tax Act*,...

“**officer**” means a person who holds an **office**;

Clearly, the definition of “office” and “officer” for GST is **identical** to their definitions in the *ITA*, and which, we concluded earlier, is the same as “office” and “officer” for *CPP*.

If the individual is *ITA* “**employed**” in his own business and “*performing the duties of an office*”, GST is payable, since the individual is performing duties, as a service has been provided.

If the individual has an “**office**” ‘source’ of ‘income’, since *ITA* “office” is defined as “the position of an individual (as an officer)”, no GST is payable as no service was provided nor any goods made.

If the individual has an “**employment**” ‘source’ of ‘income’, since *ITA* “employment” is defined as could be the position of an individual in the service of Her Majesty as an officer, then no GST is payable as no service was provided nor any goods made.

⁹² *Excise Tax Act*, RSC 1985, c E-15, <http://canlii.ca/t/527q8>

Individual with ITA "Employment" Source Determines CPP, EI, GST Version 2.0

CPP = Canada Pension Plan Act
 EI = Employment Insurance Act
 ETA = Excise Tax Act
 FAA = Financial Administration Act
 ITA = Income Tax Act

Red: human / private person
 Green: various "persons"
 Blue: for profit or is a benefit

CPP "officer" = ETA "officer" = ITA "officer"
 Her Majesty's "office" is a position that converts money into "office profit" (see Appendix); also Mr. C. v MNR 50 DTC 206; Goldman v. MNR [1953] 1 SCR 211

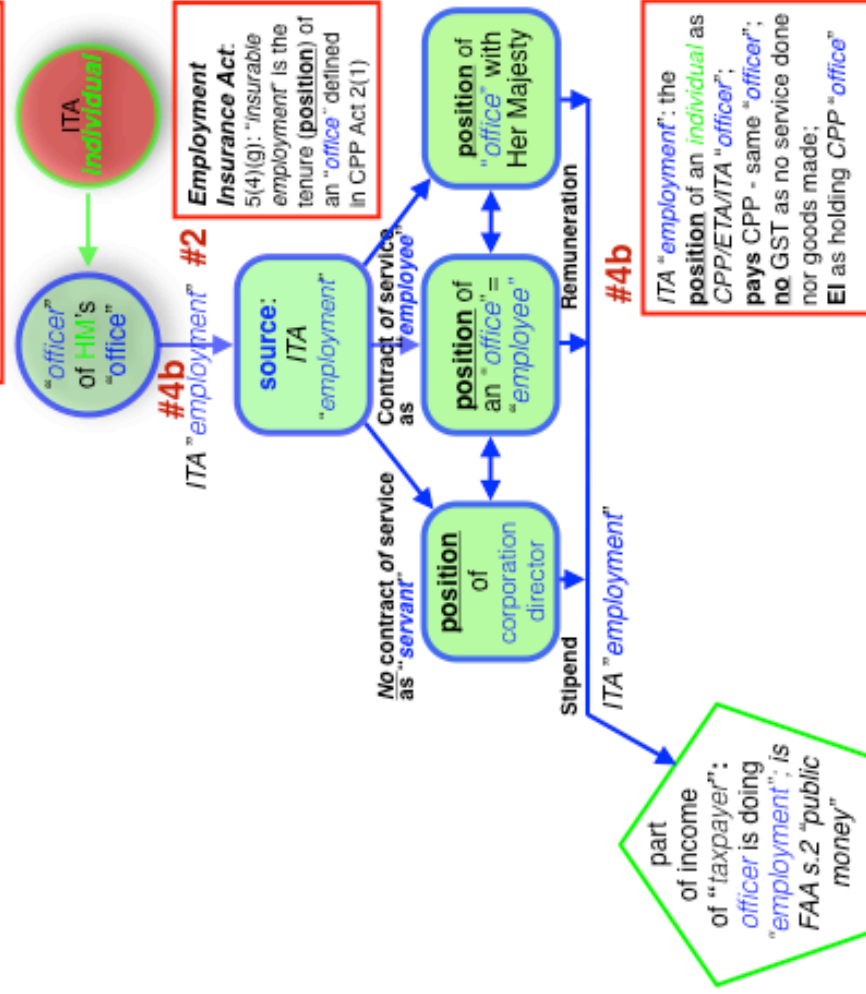
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"individual" deemed by ITA s. 6(3) as "officer" in an "office" with a social insurance number (SIN), unless contrary intention exists. Income = taxable + non-taxable.

#3

NOTES

- 1) Employee was a neutral word until the 1952 ITA defined employee = officer and ITA s.6(3) deems one to be an officer.
- 2) However, individual can choose not to be in such a position as officer unless it is holding an office with Her Majesty, or as a corporation director.
- 3) This is why ITA 6(3) deems ITA "employment" to be as an officer so that Her Majesty can then deem it has federal jurisdiction over someone working in the provinces.



For discussion only... Not meant to be a reference

Borders = personifications
 Dotted line = options
 Triangles = optional benefits (unless indicated)
 Yellow Squares = intention of individual
 Note: Subject to change & is incomplete. E. & O.E.
 Excludes Quebec © knosin 2005-2016

Individual with ITA "Office" Source Determines CPP, EI, GST Version 2.0

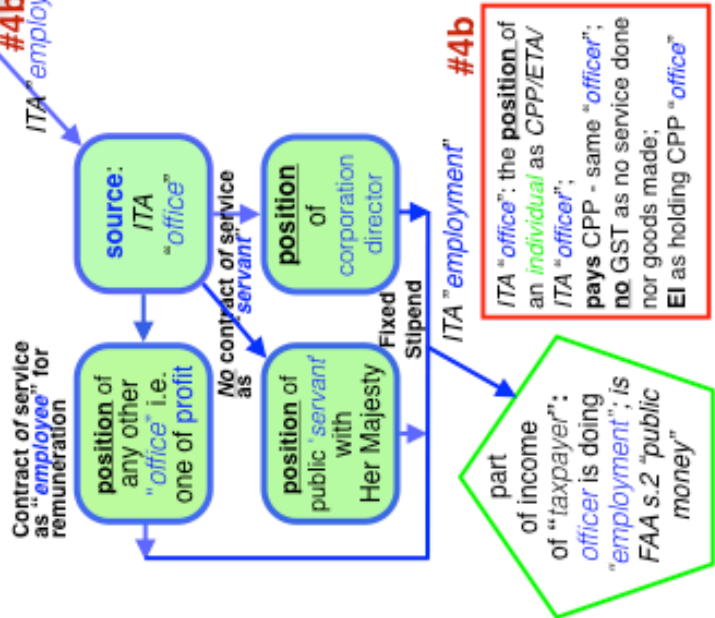
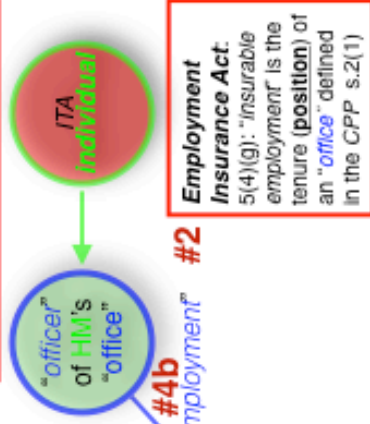
CPP "officer" = ETA "officer" = ITA "officer"
 Her Majesty's "office" is a position that converts income into "office profit" (see Appendix): *Mr. C. v MNR 50 DTC 206; Goldman v. MNR [1953] 1 SCR 211*

#1

CPP = Canada Pension Plan Act
 EI = Employment Insurance Act
 ETA = Excise Tax Act
 FAA = Financial Administration Act
 ITA = Income Tax Act

Red: human / private person
 Green: various "persons"
 Blue: for profit or is a benefit

#3
 "individual" deemed by ITA s. 6(3) as "officer" in an "office" with a social insurance number (SIN), unless contrary intention exists.
 Income = taxable + non-taxable.



NOTES
 Office is only a position of profit; see #1
 However, individual can choose not to be in such a position as such an officer unless it is holding an office with Her Majesty, and/or is a corporation director.

For discussion only. Not meant to be a reference
 Borders = personifications
 Dotted line = options
 Triangles = optional benefits (unless indicated)
 Yellow Squares = intention of individual
 Note: Subject to change & is incomplete. E & O.E.
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If ITA "Office" = ITA "Employment" Still Determines CPP, EI, GST Version 2.0

CPP "officer" = ETA "officer" = ITA "officer"
Her Majesty's "office" is a position that converts compensation to office profit: *Mr. C. v MNR 50 DTC 206; Goldman v. MNR [1953] 1 SCR 211*

CPP = Canada Pension Plan Act
 EI = Employment Insurance Act
 ETA = Excise Tax Act
 FAA = Financial Administration Act
 ITA = Income Tax Act

Red: human / private person
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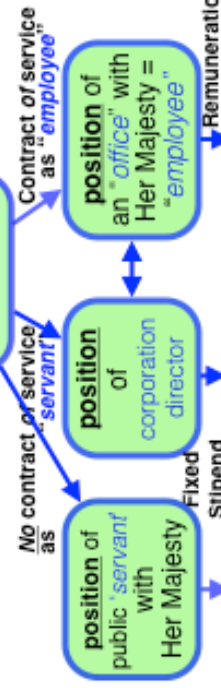
#3
 "individual" deemed by ITA s.6(3) as "officer" in an "office" with a social insurance number (SIN), **unless** contrary intention exists. 'Income' = office profit = taxable + non-taxable



#2
Employment Insurance Act.
 5(4)(g): "insurable employment" is the tenure (position) of an "office" defined in CPP s.2(1)

#4b
 ITA "employment"

source:
 ITA "office"/
 "employment"



#4b
 ITA "employment"

ITA "office": this is the position of an individual as CPP/ETA/ITA "officer"; pays CPP - same "officer"; no GST as no service done nor goods made; EI as holding CPP "office"

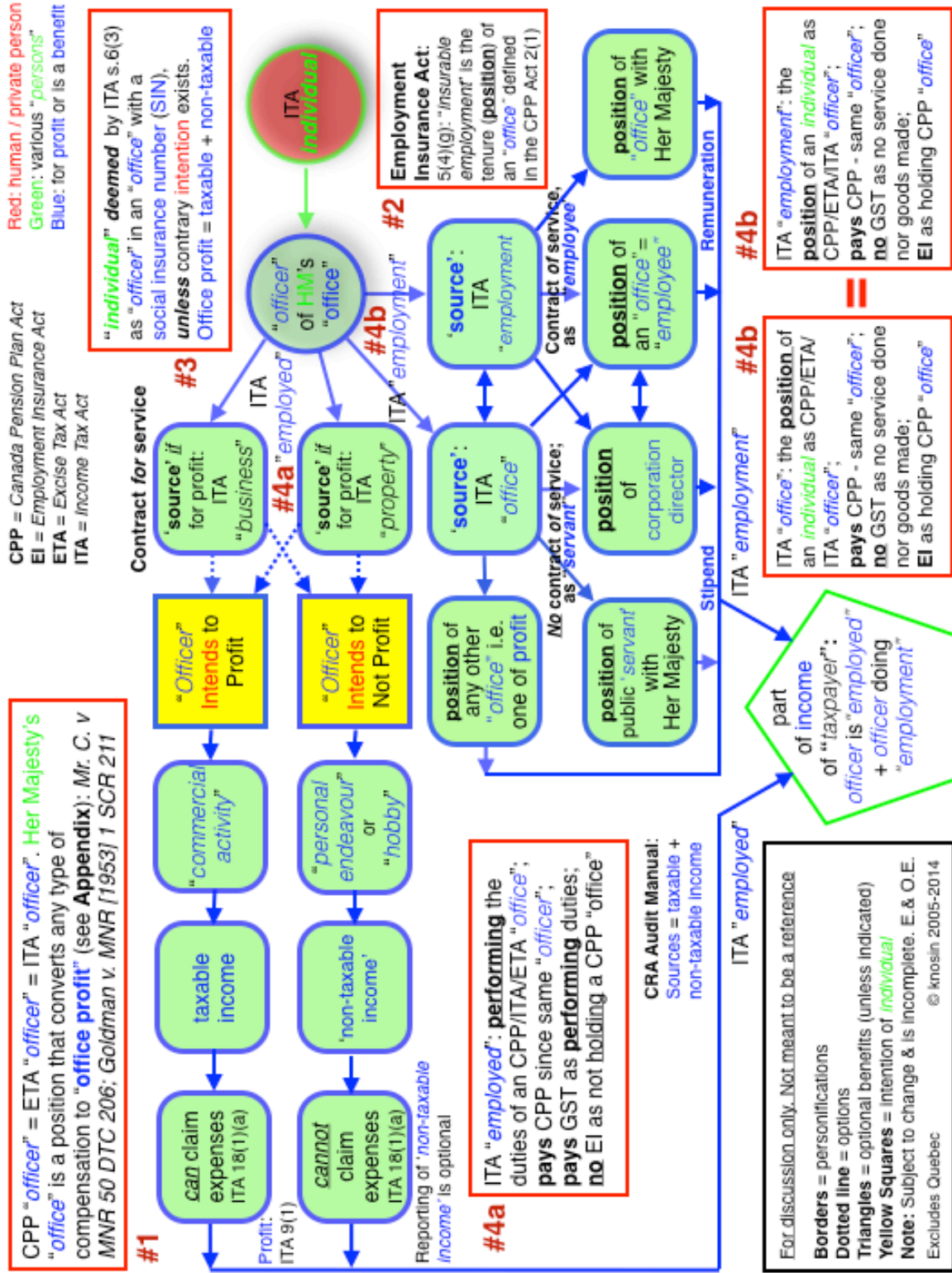
ITA "employment": the position of an individual as CPP/ETA/ITA "officer"; pays CPP - same "officer"; no GST as no service done nor goods made; EI as holding CPP "office"

part of income of "taxpayer"; officer is doing "employment" as FAA s.2 "public money"

NOTES
 Comparing the two previous slides for "office" and "employment" sources of income seems to show that they are synonymous if ITA "employee" = ITA "officer" (compare the two red boxes #4b in the lower right corner). Perhaps the previous two slides can be combined into this diagram. Check out this theory by comparing this diagram with the ITA definitions of "office" and "employment".

For discussion only. Not meant to be a reference
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 Dotted line = options
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 Yellow Squares = intention of individual
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Summary: Individual as ITA "Officer" Determines CPP, EI, GST Version 1.9



Office/Officer: Determines Employment Insurance

This **office** also determines whether *EI* must be paid. From *Employment Insurance Act*⁹³:

5(4)(g) “**insurable employment**”: the **tenure** of an **office** as defined in subsection 2(1) of the *Canada Pension Plan*.

“**office**” has the meaning assigned by subsection 248(1) of the *Income Tax Act* ...

Tenure is defined as a position held by an individual. If the individual is *ITA* “employed” in his own business (performing the duties of an office), no *EI* is payable, as the individual is performing the duties of, but not holding an office needed to have insurable employment.

If the individual has an **office** ‘source’ of ‘income’, since *ITA* “office” is defined as the position of an individual as an officer, *EI* is payable as the individual is holding that office. If the individual has an **employment** ‘source’ of ‘income’, since *ITA* “employment” could be the position of an individual in the service of Her Majesty as an officer, *EI* is payable if the individual is holding that office.

22 Employment Insurance Act: Recognizes Employment Not As an Officer

The *EIA* and the *ITA* definitions of “employer” and “employment” are different:

Employment Insurance Act s.2(1)

“**employer**” includes a person who has been an employer and, in respect of remuneration of an individual referred to as sponsor or coordinator of a project in paragraph 5(1)(e), it includes that individual;

“**employment**” means the act of employing or the state of being employed;

Income Tax Act s.248(1)

“**employer**”, in relation to an **officer**, means the person from whom the **officer** receives the **officer’s** remuneration;

“**employment**” means the position of an individual in the service of some other person (including **Her Majesty**...”

The *EIA*’s definitions of “employer” and “employment” lack reference to any officer, while *ITA* “employment” means the position of an individual in the service of some other person, including Her Majesty (as an **officer**). Recall *ITA* “employee” is defined as someone who works for somebody else either as an officer or not (there is no definition of “employee” in the *EIA*). Furthermore, the *ITA* definition of “employer” has two meanings; its ordinary meaning, and, “*in relation to an officer, means the person from whom the officer receives*

⁹³ *Employment Insurance Act*, SC 1996, c 23, <http://canlii.ca/t/52664>

the officer's remuneration". Is this because it is the payee's freewill choice to work as an officer or not as an officer, and not the employer's choice?

The fact that the *EIA*'s definition of "employer" and "employment" have no reference to any officer, and that an *ITA* "employer" is someone paying a payee as an officer (or not), and the dual meaning of *ITA* "employment" all suggest it is possible under the *ITA* to work as a payee who is not an officer, i.e. an individual of full capacity. One could conclude that an individual can have dual individual capacity – not as an officer, and as an officer identified with the all-lower-case 'social insurance number'.

23 Income Tax Act: Individual Deemed to Have Dual Legal Capacity

One way to have a dual legal capacity is by being a trustee. *Jurisprudence*⁹⁴ says:

"It often happens that a single human being possesses a double personality. He is one man, **but two persons.** Every contract, debt, obligation, or assignment requires two persons; **but these two persons may be the same human being.** This double personality exists chiefly in the case of trusteeship. A trustee, therefore, is for many purposes two persons in the eye of the law."

Another way an individual can have a dual legal capacity by forming a corporation sole by "filling an office"⁹⁵. Recall from Chapter 7 **Canadian Broadcasting Corporation**⁹⁶:

35 ...When Parliament names Her Majesty in a statute means Her Majesty, not in her capacity as a natural person but in her capacity as a corporation sole, a persona ficta (artificial person). In *Salmond on Jurisprudence, 9th ed. at p. 444, the author refers to this dual capacity as follows:*

"He (the King) has a double capacity, being not only a natural person but a body politic, that is to say, a corporation sole. The visible wearer of the crown is merely the living representative and agent for the time being of this invisible and underlying persona ficta, in whom the powers and prerogatives of the government of this realm are vested."

The (UK) Law Commission in its paper, *The Execution of Deeds and Documents by or on Behalf of Bodies Corporate* also concurs that a corporation sole has a dual capacity⁹⁷:

Corporations sole

4.25 A corporation sole consists of one person and his or her successors in some particular **office** or station, who are incorporated by law in order to give them certain legal capacities and advantages which they would not have in their natural person. Unlike a corporation aggregate, **a corporation sole has a dual capacity**, namely its **corporate capacity, and its individual or natural capacity**.

⁹⁴ *Jurisprudence*, Sir John Salmond, 9th Ed. By J.L. Parker, M.A., p. 424

⁹⁵ *Institutes of the Lawes of England, Coke on Littleton*, Sir Edward Coke: Co. Lit. 2a

⁹⁶ *The Queen v. The Canadian Broadcasting Corporation*, [1957] O.J. No. 655

⁹⁷ *The Execution of Deeds and Documents by or on Behalf of Bodies Corporate*, The Law Commission, http://lawcommission.justice.gov.uk/docs/cp143_Execution_of_Deeds_and_Documents_Consultation.pdf
The United Kingdom's Law Commission is a statutory independent body created by the Law Commissions Act of 1965 to keep the law under review and to recommend reform where it is needed.

The formation of a corporation sole by “*filling an office*” is one way an individual can have dual legal capacity. By creating a corporation sole, such an individual, while an officer of her Majesty’s office associated with the all-lower-case ‘social insurance number’, is in the eyes of the law not only “*conceptually divisible but legally indivisible*”, but also “*has a dual capacity, namely its corporate capacity (officer/office), and its individual or natural capacity*”. Both persons are also, per **Stanchfield**⁹⁸, “[28]...*directly included in the definition of “person” contained at subsection 248(1) of the Act*”, because such an individual is *deemed* by the *ITA* (from Chapter 13 earlier) to have a dual capacity. This is also expressed by the legal maxim:

“Quando duo juro concurrunt in und persons, aequum est as si essent in diversis”
- **Bouvier’s Maxim of Law, 1856 4 Co. 118**

“When two rights concur in one person, it is the same as if they were two separate persons”

Finally, HER MAJESTY lays charges in court as an officer - a corporation sole. It will be ironic for agent for Crown (as Crown Prosecutor) to argue that an individual deemed by the *ITA* as an officer cannot have dual capacity, while that same agent for Crown, the judge, and HER MAJESTY are all in court with their respective dual individual capacities!

24 *Income Tax Act*: Jurisdiction Over Both Individual Capacities

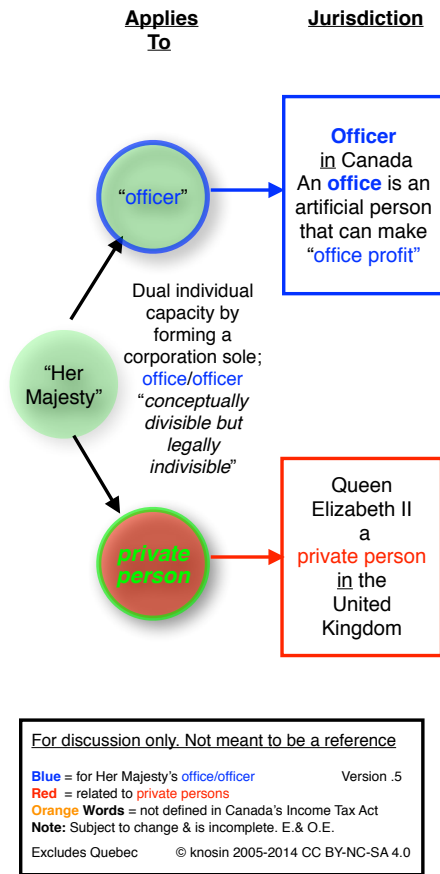
In ***MNR v. Cory Stanchfield***, the Federal Court also said:

*“[27] If (the difficulty of meeting the legal requirements for creation) is true for a corporation, purportedly created by a legislature, it even more so for a natural person. Cory Stanchfield’s attempt to argue before this Court that his body comprises two persons which act in different capacities is of one of two things: (1) an inadmissible division of his **indivisible entity**, or (2) **an attempted creation of a second entity in a fashion which is not recognized by law**, the result of which amounts to nothing in the eyes of the law.*

[28] Thus, natural persons, whether described as acting in their own private capacity for their own private benefit or not, are directly included in the definition of “person” contained at subsection 248(1) of the Act.”

The dual capacity of an individual through a corporation sole means the *ITA* protects the right of a individual to his private property that is not “**office profit**”, while income for Her Majesty’s office is “**public money**” and is “**office profit**”. The *ITA* has jurisdiction over both individual capacities as *ITA* “persons”.

⁹⁸ *Canada (National Revenue) v. Stanchfield*, 2009 FC 99 (CanLII), <http://canlii.ca/t/22g7x> Ironically, the judge could only make the ruling as an officer of the court and not in his private capacity!



As a corporation sole Her Majesty has a dual capacity and so can have **offices** in Canada, which are represented by Her constitutional agents (Lieutenant-Governors and the Governor-General)

As a **natural** or **private person** Her Majesty stays mostly in the United Kingdom. Her Majesty has to be legally in Canada at all times to have jurisdiction, as HM is the legal equivalent of all Canadians

25 Dual Legal Capacities: Explains Why Partnerships Are Not an ITA “Person”?

Although a partnership is a person in law, and many provinces have partnership Acts, a partnership is not recognized as a person⁹⁹ in the ITA. From the CRA website¹⁰⁰:

“Generally, a Partnership **does not pay** income tax on its income and **does not file** an income tax return. Instead, each partner files an income tax return to report their share of the partnership's net income or loss.”

If each partner has dual capacity and can work as an officer or not as an officer, one could conclude the ITA **cannot** tax a partnership because to do so forces all such partners to work only for Her Majesty's office and for public money, in contravention to their right to freewill choice, and so could put Her Majesty into a position of dishonour by not protecting individual private property and liberty rights.

⁹⁹ ITA, R.S.C. 1985, c. 1 (5th Supp.), s.248(1), definition of “person”

¹⁰⁰ CRA website, <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/slprtnr/prtrng-eng.html>

26 Property Rights Between Persons

Property rights are between persons and other persons, and not between persons and things¹⁰¹. Just as an individual is distinct from an officer, private property is distinct from public money. A brief summary of persons, property, 'income' and 'profit' then is:

ITA/CPP Officer

Public money
'Income' for office = "**office profit**"
"**Office profit**" is taxable by *ITA*

Individual not as *ITA/CPP* officer

Private property
'Income' **cannot** be "**office profit**"
\$0 "**office profit**" to tax (see **Appendix**)

27 Private Property could be *ITA* "Exempt Income"

An individual of full capacity is one that is not claiming to be a person exempt¹⁰² from tax nor claiming to have income that is tax-exempt¹⁰³, or have *ITA* s.126.(1.1) "tax-exempt income", but instead to have *ITA* "exempt income":

248(1) "**exempt income**" means property received or acquired by a person in such circumstances that it is, because of any provision of Part I, not included in computing the person's income, but does not include a dividend on a share or a support amount (as defined in subsection 56.1(4));

By substituting "private property" for property, and "individual" for person, private property made by a individual could be *ITA* "exempt income" since it fits into the definition:

"**exempt income**" means (*private*) property received or acquired by a (*individual*) in such circumstances (*declined to be converted into public money*) that it is, because of any provision of Part I (*Sections 6(3) and 9(1)*), not included in computing the income (*of Her Majesty's office and/or of the individual*), but does not include a dividend on a share (*as can only be received by the officer for Her Majesty's office*) or a support amount as defined in subsection 56.1(4) (*being deductible, such a payee can only be by an officer*¹⁰⁴).

28 *ITA*: Protecting Private Property = Upholding the Honour of the Crown

Since the *ITA* has jurisdiction over the private property of an individual of full capacity made while the individual was not "*clothed with the powers*" of Her Majesty's office, such private property **must** be protected by the *ITA*, or it would otherwise be illegally converted into public money without the owner's consent and put Her Majesty in dishonour¹⁰⁵. *ITA* states,

¹⁰¹ *The Right to Private Property*, Jeremy Waldron, (Oxford: Clarendon Press, 1988), page 267

¹⁰² *ITA*, R.S.C. 1985, c. 1 (5th Supp.), s. 149.(1)

¹⁰³ *ITA*, R.S.C. 1985, c. 1 (5th Supp.), s. 81.(1). The term "tax-exempt" is used by *HTG-54*

Types of exempt income, Halsbury's Laws of Canada - Income Tax (2012 Reissue), Vern Krishna

¹⁰⁴ *ITA* s.18(1)(c): Cannot deduct an outlay or expense if used to produce exempt income (see **Appendix**)

¹⁰⁵ *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14 highlighted the concept of "honour of the Crown": <http://canlii.ca/t/fwff>

3. The income of a taxpayer for a taxation year for the purposes of this Part is the taxpayer's income for the year determined by the following rules:

- (a) determine the total of all amounts each of which is the taxpayer's income for the year (other than a taxable **capital gain** from the disposition of a property) from a source inside or outside Canada, including, without restricting the generality of the foregoing, the taxpayer's income for the year from each office, employment, business and property,
- (b) determine the amount, if any, by which
 - (i) the total of
 - (A) all of the taxpayer's taxable **capital gains** for the year from dispositions of property other than listed **personal property**, and
 - (B) the taxpayer's taxable **net gain** for the year from dispositions of listed **personal property**,exceeds
 - (ii) the amount, if any, by which the taxpayer's allowable **capital losses** for the year from dispositions of property other than listed **personal property** exceed the taxpayer's allowable **business investment losses** for the year,
- (c) determine the amount, if any, by which the total determined under paragraph (a) plus the amount determined under paragraph (b) exceeds the total of the **deductions permitted** by subdivision e in computing the taxpayer's income for the year (except to the extent that those **deductions**, if any, have been taken into account in determining the total referred to in paragraph (a), and
- (d) determine the amount, if any, by which the amount determined under paragraph (c) exceeds the total of all amounts each of which is the taxpayer's **loss** for the year from an office, employment, business or property or the taxpayer's **allowable business investment loss** for the year, and for the purposes of this Part,
- (e) where an amount is determined under paragraph (d) for the year in respect of the taxpayer, the taxpayer's income for the year is the amount so determined, and
- (f) **in any other case, the taxpayer shall be deemed to have income for the year in an amount equal to zero.**

An individual who is not an officer lacks the legal power to receive any capital gains (office profit) and also is not permitted, per *ITA* s.18(1)(c)¹⁰⁶ (see **Appendix**), to deduct any expenses, capital losses, or business investment losses since it receives *ITA* "exempt income". Note that *ITA* s.3 does not use the term private property but instead uses "personal property", obfuscating that it could be private property and/or public money.

For an individual not as an officer, after applying (a) to (e), then:

- (f) in any other case, the taxpayer shall be deemed to have income for the year in an amount equal to zero.

ITA s.3(f) prevents a individual's private property from being converted into public money on a T1, which, from earlier, seems to be for reporting only the income of Her Majesty's office as it uses the all-lower-case 'social insurance number'. The protection of private

¹⁰⁶ *ITA*, R.S.C. 1985, c. 1 (5th Supp.), s.18.(1)(c)

property in the *ITA*, made possible by the dual capacity of an individual as a corporation sole, corroborates with what was said about the *ITA* in **Stanchfield**¹⁰⁷:

*“[29] This in no way conflicts with the provisions of the Bill of Rights. Individuals in Canada are afforded human rights and fundamental freedoms by the Bill of Rights, one of which is the right to the enjoyment of property. However, this right is not unconditional, as individuals **may be deprived of this right by due process of law.**”*

By having a dual legal capacity through a corporation sole, such an individual, while in a representative capacity as an officer for Her Majesty’s office, “*may be deprived of this right (enjoyment of property) by due process of law* (accepting the deeming in the *ITA* that the individual is an officer earning “**office profit**” that is public money). The same individual, while of full capacity, has his right to enjoyment of private property recognized by the *Canadian Bill of Rights*¹⁰⁸ and earns private property that is not “**office profit**” that could be *ITA* “exempt income”¹⁰⁹”.

29 *ITA*: Unrebutted Deeming Consensually Converts Private Property to Public Money

An individual can consensually convert his private property into public money either by being “*clothed with all the powers*” of Her Majesty’s office as such an officer, or by donating it to the public. We saw earlier that it is a CCC offence to convert private property into public money without the property owner’s consent¹¹⁰; therefore, to not dishonour the Crown, the *ITA* has to *legitimize* the conversion by deeming¹¹¹ an individual to be such an officer; **if the deeming is not rebutted**, the *ITA* then legally converts private property into public money through the owner’s consent through silence.

30 *ITA*: Deeming Private Property to be Public Money must be Rebuttable

As we saw earlier how the *ITA* must protect private property rights, the *ITA*’s deeming that the individual receives public money as an officer **must** also be rebuttable.

Recall earlier from Chapter 19 that *ITA* “employment” could mean the position of an individual in the service of Her Majesty (as an officer), and *ITA* “employee” could mean officer. By replacing in *ITA* s.6(3), “in the employment” with “**as an officer**”, and “employee” with “**officer**”, *ITA* s.6(3) then becomes:

¹⁰⁷ *Canada (National Revenue) v. Stanchfield*, 2009 FC 99 (CanLII), <http://canlii.ca/t/22g7x>

¹⁰⁸ *Canadian Bill of Rights*, SC 1960, c.44 <http://canlii.ca/t/j05x>

¹⁰⁹ *ITA*, R.S.C. 1985, c. 1 (5th Supp.), s.248(1)

¹¹⁰ *373409 ALBERTA LTD. v. BANK OF MONTREAL*, 2002 SCC 81, para. [9]: “An owner’s right of possession includes the right to authorize others to deal with his chattel in any manner specified... No action lies in **conversion** or trespass to chattels for **consensual interferences** with goods...”

¹¹¹ *ITA*, R.S.C. 1985, c. 1 (5th Supp.), s.6(3) and 9(1)

- 6(3) An amount received by one person from another
- (a) during a period while the payee was an **officer** of, or ~~in the employment as an officer~~ of, the payer, or
 - (b) on account, in lieu of payment or in satisfaction of an obligation arising out of an agreement made by the payer with the payee immediately prior to, during or immediately after a period that the payee was an **officer** of, or ~~in the employment as an officer~~ of, the payer, **shall be deemed**, for the purposes of section 5, to be remuneration for the payee's services **rendered as an officer** or during the period of ~~employment as an officer~~, **unless it is established that, irrespective of when the agreement, if any**, under which the amount was received was made or the form or legal effect thereof, **it cannot reasonably be regarded as having been received**
 - (c) as consideration or partial consideration for accepting the **office** or entering into the contract ~~of employment as an officer~~,
 - (d) as remuneration or partial remuneration for services as an officer or under the contract ~~of employment as an officer~~, or
 - (e) in consideration or partial consideration for a covenant with reference to what the officer or ~~employee officer~~ is, or is not, to do before or after the termination ~~of the employment as an officer~~.

Removing the words that have been crossed out, *ITA* s.6(3) could then be simplified to:

- 6(3) An amount received by one person from another
- (a) during a period while the payee was an **officer** of, the payer, or
 - (b) on account, in lieu of payment or in satisfaction of an obligation arising out of an agreement made by the payer with the payee immediately prior to, during or immediately after a period that the payee was an **officer** of, the payer, **shall be deemed**, for the purposes of section 5, to be remuneration for the payee's services **rendered as an officer, unless it is established that, irrespective of when the agreement, if any**, under which the amount was received was made or the form or legal effect thereof, **it cannot reasonably be regarded as having been received**
 - (c) as consideration for accepting the **office** or entering into the contract *as an officer*,
 - (d) as remuneration for services as an officer or under the contract *as an officer*, or
 - (e) in consideration for a covenant with reference to what the officer is, or is not, to do before or after the termination *as an officer*.

In a nutshell, *ITA* s.6(3) says a payee is deemed to be an officer "*unless it is established... that it cannot reasonably be regarded as having been received*" as an officer.

When does the deeming have to be rebutted? It is irrelevant; *ITA* s.6(3) says, "*irrespective of when the agreement*" (is made). Does the rebuttal have to be in writing? No; *ITA* s.6(3) says the agreement is, "*if any*". Why does *ITA* s.6(3) say, "*if any*"? What if the payer does not want to hire a payee who does not wish to work as an officer? That could be a violation of the payee's right of liberty under s.8 of the Charter¹¹² to not work as an officer; therefore, *ITA* s.6(3) says "*if any*" to protect that right by stating that **no** agreement is needed between the payer and such a payee, so **a payer cannot force a payee to be an officer**. That corroborates with the dual meaning of the *ITA* definition of "employer":

248(1) "employer", in relation to an **officer**, means the person from whom the **officer** receives the **officer's** remuneration;

¹¹² *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11, <http://canlii.ca/t/ldsx>

Since there is a comma after “employer”, an *ITA* “employer” could be (if no relation to an officer) the person from whom the individual receives the individual’s consideration, or it could be (if relation to an officer) the person from whom the officer receives the officer’s remuneration. This **also** corroborates this theory that an individual for the *ITA* has a dual legal capacity - as an individual and as an officer for Her Majesty.

In addition, an employer may be fined \$100 per day for failing “*to try to get*”¹¹³ a worker’s all-lower-case ‘social insurance number’. I am unaware of any case law fining an employer for such an offence. Given the severity of penalties in the *ITA*, it is unusual that this *ITA* fine uses the word “may” and not the mandatory word “shall”. This also corroborates that a payer cannot force a payee to be such an officer.

CRA’s P-182R Policy Statement on determining whether an agency exists says:

Agency exists where one person (the principal) authorizes another person (the agent) to represent it and take certain actions on its behalf. The authority granted by the principal may be **express** or **implied**. In other words, an agency relationship may be created where one person **explicitly consents** to having another act on its behalf ***or behaves in such a way that consent is implied***.

It follows that the deeming in the *ITA* to be an officer/agent of Her Majesty **must** be rebuttable in case one does not “*explicitly consent*” to be Her Majesty’s officer/agent, per the legal maxim¹¹⁴, “It is to the intention that all law applies”.

In *The Motive, Not the Deed* Lionel Smith¹¹⁵ says a fiduciary relationship is best understood as premised on a voluntary undertaking to assume an office to which the law attaches fiduciary obligations, or, outside of that, on a voluntary undertaking to put another’s interests ahead of one’s own. It follows that an officer of Her Majesty owes a similar duty of loyalty to that office.

The Supreme Court of Canada says, just because a person owes a duty of loyalty in respect of some things which he does, it does not follow that he owes a duty of loyalty in respect of everything that he does¹¹⁶.

Taking all these into account, one could conclude that an individual has a right to receive income in some circumstances as his private property and *not* as Canada’s public money and, in other circumstances, receives income as public money as a *CPP/EIA/ETA/ITA* officer as “office profit”.

¹¹³ CRA website: <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/pyrll/hwpyrllwrks/pnlty/pnlts/sin-nas-eng.html>

¹¹⁴ “It is to the intention that all law applies”: *Animus ad se omne jus ducit*.

¹¹⁵ *The Motive, Not the Deed*, Lionel Smith, http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=118243; his biography is at <http://www.mcgill.ca/law/about/profs/smith-lionel>

¹¹⁶ *Hodgkinson v. Simms* [1994] 3 SCR 377, at page 464: “*not every act in a so-called fiduciary relationship is encumbered with a fiduciary obligation...*” <http://canlii.ca/t/1frpl>

31 Superior Title: The Third Missing Essential Element

In Canadian law, a claim of right (title) is *so predominant* that a private person can “use as much force as necessary” under the *Criminal Code* to defend his private property:

Criminal Code of Canada, s. 25. (1): Protection of Persons Acting Under Authority:

25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law (a) as a **private person**, is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do **and in using as much force as is necessary** for that purpose.

As the *ITA* protects private property rights, Canada’s income tax system must be based on **self-assessment**; it is up to the individual to state whether he wants to, or not to, work as an officer (and, consequently, whether his income is public money or his private property). If an individual states, verbally consents, or signs an agreement to decline the deeming in the *ITA* that he works as an officer for Her Majesty’s office, that individual has a superior claim to his income as his private property. Alternatively, if the individual accepts by silent acquiescence¹¹⁷ the deeming in the *ITA* or consents that he received income and/or benefits as an officer for Her Majesty’s office, then Canada establishes a superior title claim to that property as Canada’s public money. It is about who has a higher title claim (see attached diagram, “**Superior (Higher) Property Title**”).

32 ITA “Assessment”, “Re-Assessment”, and “(Re)Assessment”

Corroborating that it is up to the individual to decide whether to work as an officer or not are the CRA forms, “Notice of Assessment”, “Notice of Re-Assessment”, and “Notice of (Re)Assessment”. The *ITA* s.248(1) definition of “assessment” is:

248(1) “**assessment**” includes reassessment;

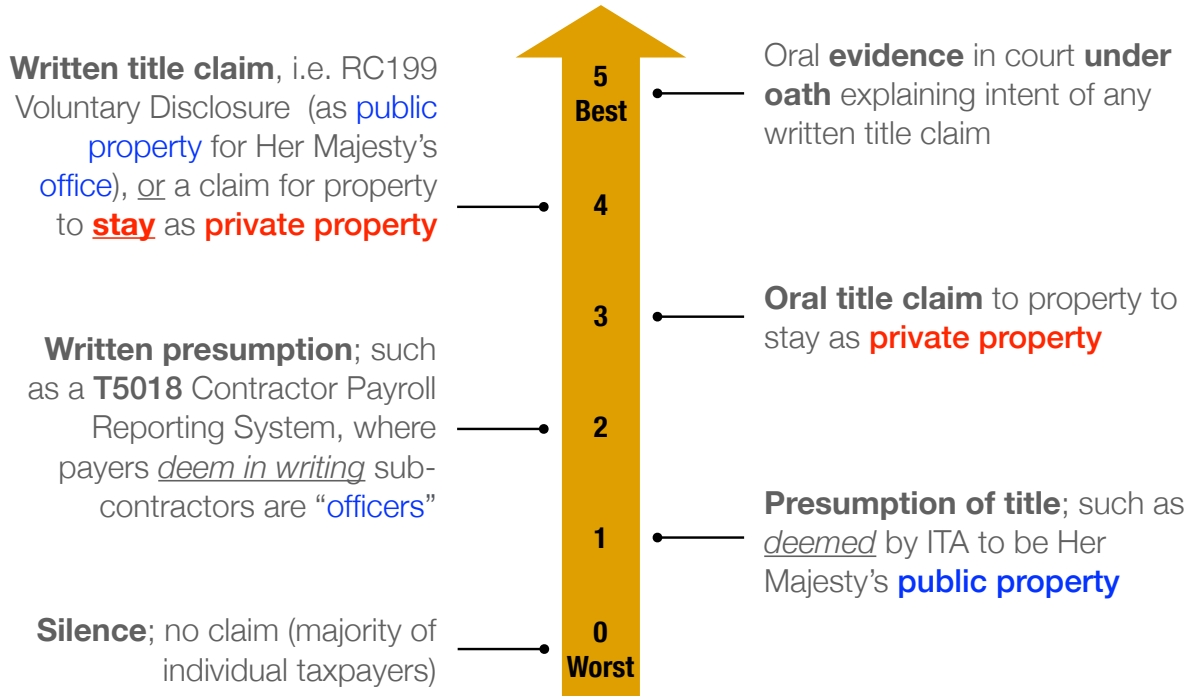
The second possible meaning of “includes” from *The Composition of Legislation*¹¹⁸ is, “rather than add a meaning, it serves to settle the doubt”. Therefore, according to this legal reference written for the Department of Justice, *ITA* “assessment” can mean only a reassessment, and not an initial assessment. If so, then a “Notice of Assessment” (“NOA”) issued by CRA is really a notice of a reassessment. Who then did the initial assessment? The individual taxpayer did when he or she filed. So a typical sequence with the *ITA*, which is administrative law, is: taxpayer’s initial assessment => CRA issues a reassessment titled “Notice of Assessment” => if audited, CRA re-issues a Notice of Re-Assessment (which is really a re-reassessment).

¹¹⁷ Her Majesty’s claim can be as weak as a *presumptive* declaration by a *third party*, i.e. a Contractor Payroll Reporting System T5018, but it is still a higher title (claim) if not rebutted by the contractor.

¹¹⁸ *The Composition of Legislation*, Driedger, 2nd Ed., 1976, The Department of Justice Ottawa, p. 46

Superior (Higher) Property Title

Any level is superior to all levels below it



Corroborating even further that the *ITA* definition of "assessment" means only a reassessment are CRA forms with the unusual heading, "Notice of (Re)Assessment". These are issued only when CRA has records that the individual has signed for but still ignored registered mail demands to file, and/or promised by phone to file but still has not filed, etc. In other words, the deemed officer/agent has failed in fulfilling its fiduciary duty to report that office's income. Only then does CRA step in, as another agent of Her Majesty, and file for the deemed officer. As the *ITA* "legal representative" never made the initial assessment, CRA's initial assessment is on a "Notice of (Re)Assessment". The (re) is a negative and cancels out the re in the *ITA* definition of "assessment", so a CRA "Notice of (Re)Assessment" is a Notice of (Re)Reassessment = an initial assessment by CRA.

33 Fiduciary Duty to Report All Income

An individual taxpayer with dual legal capacity, who could be an officer making "**office profit**" for Her Majesty's office that is public money, and/or an individual making income that is not "**office profit**" and that is private property, fits the *ITA* definition of "taxpayer":

248(1) "taxpayer" includes any person whether or not liable to pay taxes

An individual with the all-lower-case 'social insurance number' ("SIN") and the upper-and-lower case Social Insurance Number (also¹¹⁹ called "SIN" by CRA¹²⁰) has a fiduciary duty, as officer/agent of Her Majesty's office (see diagram, "**ITA Fiduciary Duty: Due to Agency**"), to report all of the individual's income in **both** capacities; public money for that office, and all private property received not for that office. One concludes (see **Appendix**): 'income' for the *ITA* of an individual with a SIN =

$$\begin{aligned} & \text{"public money" (by officer) for Her Majesty's office ('social insurance number') as:} \\ & \quad \text{taxable income + 'non-taxable income'} \\ & \quad \quad \quad + \\ & \text{private property (by individual of full capacity) with (Social Insurance Number) as:} \\ & \quad \quad \quad \text{ITA "exempt income"} \end{aligned}$$

34 T1: For Filing Only Canada's Public Money?

As there is no line on a T1 to file any private property that is *ITA* "exempt income" which is deemed by *ITA* s.3(f) to be equal to zero, and a T1 does not use the upper-and-lower case Social Insurance Number but the all-lower-case 'social insurance number', it seems a T1 is designed by CRA for filing only the "**office profit**" of Her Majesty's office (public money) made by the officer, and not the *ITA* "exempt income" of an individual's private property. How then can one avoid being charged with failing to report all 'income', if one earned 'income' not as such an officer? I propose a possible solution is by filing such 'income' not on CRA's T1, but instead by letter with the proper SIN.

35 Filing Private Property by Letter

Up until 1990 T1 forms said, "*Form authorized by the Minister of National Revenue*". Since 1991¹²¹ T1 forms no longer say that the Minister authorizes them (see the earlier forms, "**T1 GENERAL for 1990**" and "**T1 GENERAL for 1991**"). Does that mean a taxpayer can file a return on something other than on CRA's T1 form?

In the case of **Sandra June Gibbs v. Regina**¹²², the court ruled:

[45] The appellant submits that there is no such prescribed form under the Act and that for this reason she is not able to comply with the legal requirement that she file her return of income on such a form. She argues that the T-1 form is not a prescribed form.

[46] This issue was considered by Silverman J. in R v. Watson 2005 BCSC 1225 (CanLII), 2005 BCSC 1225. ... The Crown conceded that there was no regulation prescribing the T-1 form and that there was no documentation whereby the Minister expressly authorized the form.

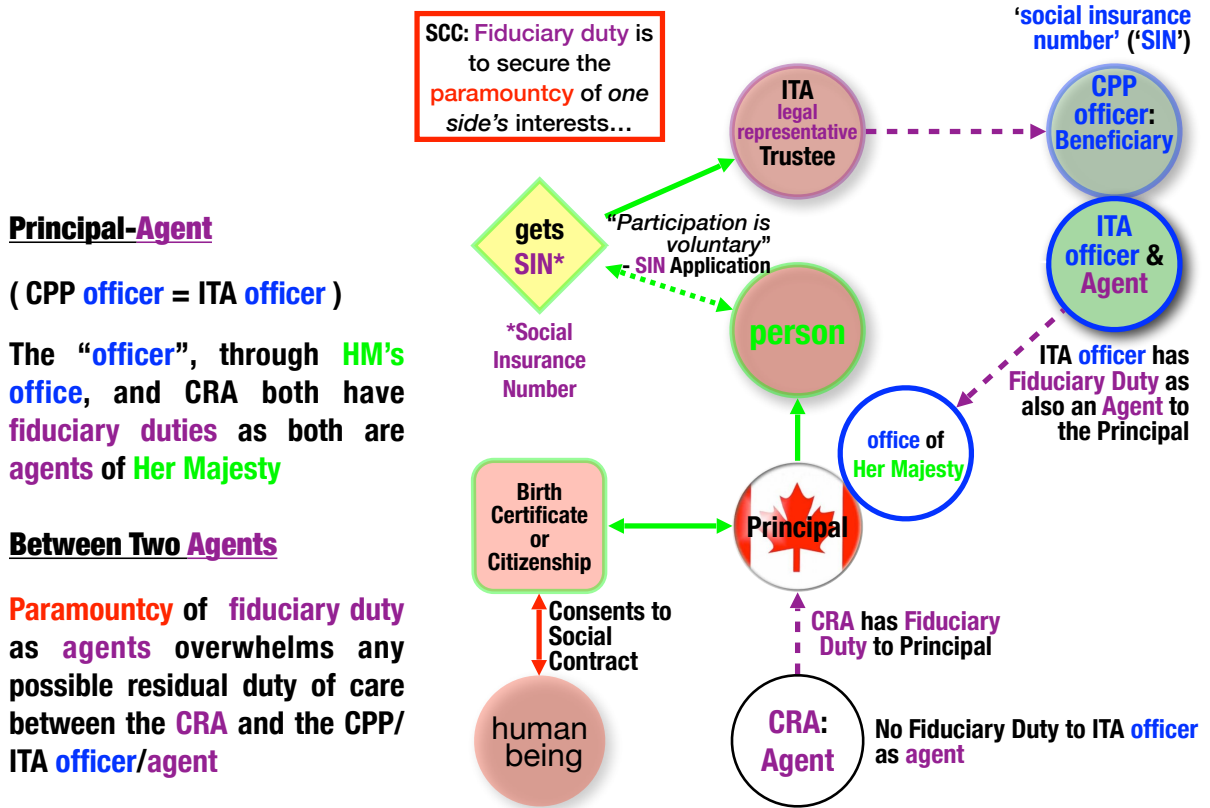
¹¹⁹ The dual meaning of SIN allows a bank account with a SIN to be either income earned by an officer, or income earned by a individual, or both; the individual self-assesses whose money it is.

¹²⁰ CRA started using SIN for both Social Insurance Number and 'social insurance number' in 2001.

¹²¹ From Chapter 10, 1991 was also when the T1 switched to using the 'social insurance number'.

¹²² *Sandra June Gibbs v. Regina*, 2006 BCSC 481 (CanLII), <http://canlii.ca/t/1mwxt>

ITA Fiduciary Duty: Due to Agency



In **Hart Electronics**¹²³, the Manitoba Court of Appeal ruled:

“Under the provisions of section 126(2), the Minister notified the respondent company that it was required to file income tax returns on form T2. An officer of the company sent a letter to the Department enclosing unsigned T2 forms, showing no tax payable, on which certain remarks and comments had been filled in. No documents were attached. The company was charged with failure to file the returns required. When a magistrate dismissed the charge, the Crown appealed to the Manitoba Court of Appeal, where it was stated that T2 forms had been enclosed in a letter to the Department and that these forms 'although not signed contained certain information'.

Held: The appeal was dismissed. In the Court's opinion, a T2 form, which gave certain information sent by letter though the form was not signed, constituted an income tax return.”

Since T1 forms no longer say that the Minister authorizes them, and in **Gibbs**, “The Crown conceded that there was no regulation prescribing the T-1 form and that there was no documentation whereby the Minister expressly authorized the form”, and in **Hart**, “a T2 form, which gave certain information sent by letter though the form was not signed,

¹²³ The Queen v. Hart Electronics Limited, 59 DTC 1192 <http://ownlife.com/tax/hrte591.htm>

constituted an income tax return”, it seems that one could file *ITA* “exempt income” of a individual (private property) by letter¹²⁴ with the upper-and-lower case Social Insurance Number. As such *ITA* “exempt income” is deemed = 0 by *ITA* s.3(f), reasons to file such *ITA* “exempt income” by letter are so the accounting and bank records correlate with the tax filings to Her Majesty by the individual taxpayer in all legal capacities, and for the individual to establish a written title claim to his private property so it is a superior claim to Her Majesty’s deeming¹²⁵ in the *ITA* that it is Canada’s public money (see diagram, “**Public Money vs. Private Property in Canada**”).)

Corroborating that an individual can file by letter are the CRA letters (see, “**REQUEST TO FILE AN INCOME TAX AND BENEFIT RETURN**” and “**DEMAND FOR INCOME TAX AND BENEFIT RETURN**”). The first one says, “2013 T1 Return”, then below that, “We have not received your income tax and benefit return for the tax year shown above. We request that you complete this return and mail it to...” Most Canadians would conclude that CRA is requesting a 2013 T1 Return be filled, but this is NOT the case; the letter says, “we have not received **your** return”; not “we have not received the above return”. It goes on to say, “We request that you complete **the** return”, but “the” now refers only to **your** return for the year shown above. In the second CRA letter, “**DEMAND FOR INCOME TAX AND BENEFIT RETURN**”, it says “We are sending you this demand to file your income tax return in accordance to subsection 150(2) of the *ITA*”; however, the *ITA* never says that a return of income is only a T1.

36 Tax Evasion: A Breach of Fiduciary Duty to Report all Public Money

If the agent/officer fails to report all ‘income’ that is deemed and not rebutted to be Canada’s public money, it could be seen as a **breach of fiduciary duty** by an agent of Her Majesty to have made secret profits and committed a fraud against public money, which, from Chapter 3 earlier, fits exactly the definition of tax evasion.

37 Remedies in Equity for Breach of Fiduciary Duty

As mentioned earlier in Chapter 3, tax evasion is legally similar to breach of trust by a “public officer”. Remedies for breach of fiduciary duty are available in equity, as per the Supreme Court of Canada case of **Canson Enterprises Ltd. v. Boughton & Co.**¹²⁶:

Operating as a court of conscience, equity ... acted in a wide range of cases where there was misrepresentation or failure to give information, not amounting to actual fraud, where a person was under a fiduciary duty ... to inform another. As a court of conscience, it would act in personam to prevent persons from acting against the

¹²⁴ Electronic filing (E-filing), introduced in 1992, is for filing only with a ‘social insurance number’ and not a Social Insurance Number: <http://netfile.gc.ca/rdy-eng.html> and has no provision for filing by letter to report tax exempt income: <http://netfile.gc.ca/rstrctns-eng.html>. CRA form letters (T1114 E (06)) that urge individuals to file electronically also only use the ‘social insurance number’. It appears one cannot e-file *ITA* “exempt income”.

¹²⁵ *ITA*, R.S.C. 1985, c. 1 (5th Supp.), s.6(3) and 9(1)

¹²⁶ *Canson Enterprises Ltd. v. Boughton & Co.*, [1991] 3 SCR 534 <http://canlii.ca/t/1fsh7>



Canada Revenue Agency

Agence du revenu du Canada

REQUEST TO FILE AN INCOME TAX AND BENEFIT RETURN

025091

WINNIPEG MB R3C 3M2

Account Number	Date
033	October 28, 2014

If you need more information, call the toll-free number listed below.

Local calls and Long distance calls : Dial 1-800-448-0444

Year and type of return

2013 T1 Return

Saskatchewan Tax Services Office 340-3rd Ave. North Saskatoon, SK S7K 0A8

We have not received your income tax and benefit return for the tax year shown above. We request that you complete this return and mail it to:

Winnipeg Tax Centre 66 Stapon Rd Winnipeg MB R3C 3M2

You can also drop off your completed return at the tax services office indicated in the upper right-hand corner of this letter.

If we owe you an income tax refund, or if you want to claim tax benefits, you must first file your income tax return.

There are a number of reasons why you have to file an income tax and benefit return, including if you owe tax. These reasons are given in the income tax and benefit guide for each tax year, under the main heading "Before you start," then the subheading "Do you have to file a return?"

You can find an income tax and benefit guide by going to www.cra.gc.ca/forms and selecting the link for "Tax packages." Then, select the applicable year and your province or territory.

If you want a paper copy of an income tax and benefit guide and return, please call us at 1-800-959-8281.

If you do not file your return and you owe tax, the following will happen:

- we will apply a penalty to your late-filed return;
- beginning on the day after your return was due, we will charge interest (compounded daily) on both the penalty and any amount of tax owing.

Repeated failure to file your returns may result in increased penalties and interest.

If you have already filed your income tax return, complete the form on the back of this letter and return it to the tax centre indicated above.

See reverse side





Canada Revenue Agency / Agence du revenu du Canada

WINNIPEG MB R3C 3M2

DEMAND FOR INCOME TAX AND BENEFIT RETURN

032181

Account Number 033	Date December 09, 2014
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If you need more information, call the toll-free number listed below.

Local calls and Long distance calls : Dial 1-800-448-0444

Year and type of return

2013 T1 Return

Saskatchewan Tax Services Office
340-3rd Ave. North
Saskatoon, SK
S7K 0A8

We are sending you this demand to file your income tax return in accordance with subsection 150(2) of the Income Tax Act.

You are hereby required to complete and file an income tax return for the tax year indicated above, within 30 days of the date of this demand. Please be aware that if penalties and interest are applicable, we will calculate them from the original date your return was overdue.

Mail your completed return to:

Winnipeg Tax Centre
66 Stapon Rd
Winnipeg MB
R3C 3M2

You can also drop off your completed return at the tax services office indicated in the upper right-hand corner of this letter.

If you do not comply with this demand, the implications under the Income Tax Act are serious. In these circumstances, we can raise an assessment under subsection 152(7) of the Income Tax Act and/or take further action.

If you do not file your return and you owe tax, the following will happen:

- we will apply a penalty to your late-filed return;
- beginning on the day after your return was due, we will charge interest (compounded daily) on both the penalty and any amount of tax owing.

Repeated failure to file your returns may result in increased penalties and interest.

In addition to the penalties and interest described, failure to file this return may result in a fine of no less than \$1,000 and up to \$25,000, or both a fine and imprisonment for a term not exceeding 12 months on summary conviction.

If you need an income tax return, please visit the "Tax Packages" section of our Website at www.cra.gc.ca/forms, or call us at 1-800-959-8281.

dictates of conscience as defined by the court, i.e., where there was equitable fraud." Equity's remedies, the Lord Chancellor stated, were more elastic than those available at common law. Operating in personam," he continued, equity could order the defendant... to pay damages... but to (also) make restitution, or to compensate the plaintiff by putting him in as good a position pecuniarily".

Black's Law Dictionary, 9th Edition defines "disgorgement" as:

Disgorgement: The act of giving up something (such as **profits** illegally obtained) on demand or by legal compulsion.

One could conclude that an income tax reassessment adjudicated in Tax Court of Canada is a **disgorgement** of the public money illegally obtained from Her Majesty's office, of which payment can be demand (CRA "Demand to Pay") or legally compelled (CRA liens and/or garnishees). This further corroborates that an officer identified with the all-lower-case 'social insurance number' is also an agent of Canada handling public money.

In addition to disgorgement, **deterrence** is also allowed in equity, as stated also by the Supreme Court of Canada in the case of **Hodgkinson v. Simms**¹²⁷:

This was a case of material non-disclosure in which the appellant alleged breach of fiduciary duty and breach of contract against the respondent in the performance of a contract for investment advice and other tax-related financial services.

*The respondent's behaviour calls for strict legal censure. The **remedy of disgorgement is not sufficient** to guard against the type of abusive behaviour engaged in by the respondent. The law of fiduciary duties has always contained within it an **element of deterrence**.*

*I make this point because an allegation of breach of fiduciary duty carries with it the stench of dishonesty -- if not of deceit, then of **constructive fraud**. See Nocton v. Lord Ashburton, [1914] A.C. 932 (H.L.).*

One could conclude that ITA fines and penalties are "elements of deterrence" also from the law of fiduciary duties on the agent/officer for breach of its fiduciary duty (fraud) to report accurately, and on time, all of Canada's public money. (See "ITA Liability: Due to Debt").

38 No Breach of Fiduciary Duty

In most tax evasion cases, Canadians accept by silence the ITA's deeming of earning income as an agent/officer for Her Majesty's office; therefore, Canada has a superior claim that such income is her public money, and the breach in that agent/officer's fiduciary duty to report all public money is a fraud against the public, i.e. tax evasion. If one declared that his income *stays* as his private property, there is no breach of fiduciary duty as that income never became Canada's public money, nor is it office profit".

¹²⁷ *Hodgkinson v. Simms*, 1994 CanLII 70 (SCC), [1994] 3 SCR 377 <http://canlii.ca/t/1frpl>

ITA Liability: Due to Debt

Jointly & Severally Liable

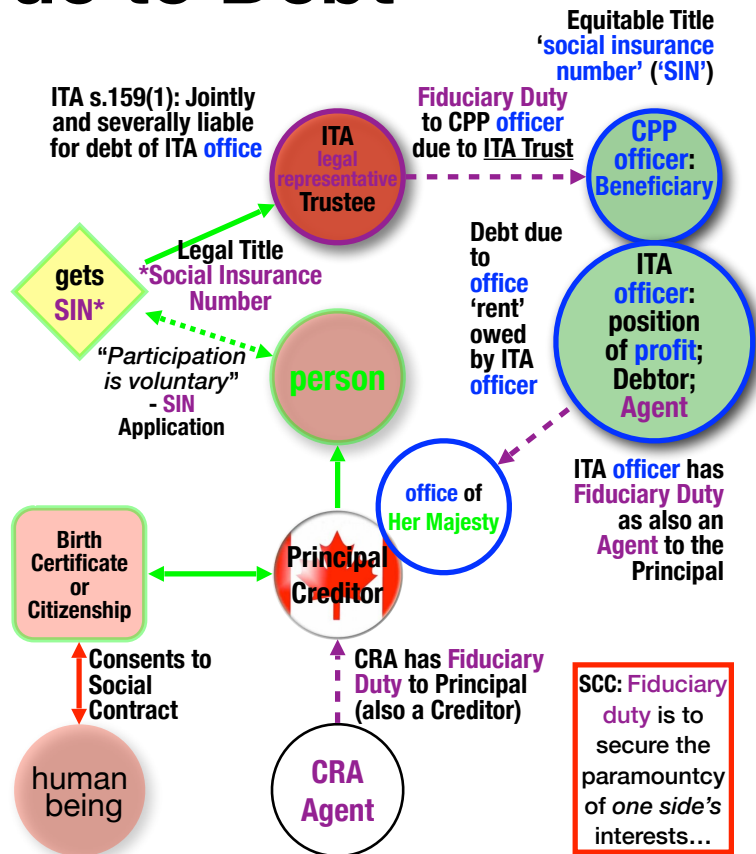
The **legal representative** is jointly & severally liable to **Her Majesty** for debts of **Her office**

Priority in Debt Collection

CRA has priority in collection due to **fiduciary duty** of **ITA officer** to **Her Majesty**, the principal, and with the **legal representative** through its **fiduciary duty** to that **officer**

Title to Property

The **person** with both SINs holds complete title to property (unless registered with **Her Majesty**: i.e. land, motor vehicles, firearms, etc.)



39 Superior Title Claim: 'Income' Never Became Public Money

As tax evasion is a property offence, only someone without superior title can commit such an offence. One who has declined the deeming to be an officer for Her Majesty's office, such as by stamping deposit checks with such intent, has a superior claim to one's property to remain private (versus Her Majesty, who only has a *deemed* claim to title, and which has now been rebutted). Such a person could not commit a property offence such as tax evasion because the private property **never became public money**. As a consequence, there **cannot be any fraud** against the public either. This is the **third essential element** of tax evasion that CRA and Crown is silent on.

40 Private Property Claim: Lawful Tax Avoidance

The *ITA* describes what taxable income is, and that tax payable is on the taxable income:

2. (1) An income tax shall be paid, as required by this Act, on the taxable income for each taxation year of every person resident in Canada at any time in the year.

(2) The taxable income of a taxpayer for a taxation year is the taxpayer's income for the year plus the additions and minus the deductions permitted by Division C.

117(2) The tax payable under this Part by an individual on the individual's taxable income or taxable income earned in Canada, as the case may be (in this subdivision referred to as the "amount taxable") for a taxation year is ... (*various tax rates follow*)

"**Accounting profit**" (see **Appendix**) is zero if one pays himself everything so one's private property is *ITA* "exempt income" and is deemed by *ITA* 3(f) to be = 0 when calculating one's total income. As one is not holding or performing the duties or accepting any benefits of Her Majesty's office, one lacks the legal power to convert one's income into "**office profit**" that is taxable income or one's private property into public money.

41 No Tax Evasion: No Actus Rea

Tax evasion requires proof of both *actus rea* (guilty act) done with a guilty mind (*mens rea*). There could be no *actus rea* for these reasons:

- 1) A filing by letter is evidence that one *declined* the deeming in the *ITA* to be "*clothed with all the powers*" of Her Majesty's office receiving public money, and so has a **superior** title claim to one's income as one's private property.
- 2) No fraud can occur against the public if one **never consented** to convert one's private property into public money for Canada.
- 3) CRA often demands the individual return be filed on a T1 form. Public money for Her Majesty's office can be filed on a T1, but it has is no line to file private property which is *ITA* "exempt income" earned by an individual who is not an officer.
- 4) Private property, as *ITA* "exempt income", is deemed = 0 by *ITA* s.3 (f).
- 5) It is therefore **impossible** to file on a T1 the income of *both* taxpayers: the individual **and** Her Majesty's office. As the judge said in **Stanchfield**¹²⁸ at paragraph 27, "*It is an attempt at the impossible and the respondent cannot do the impossible*", as also expressed by the legal maxim, '*Lex non cogit ad impossibilia*'¹²⁹.

42 No Tax Evasion: Mens Rea Irrelevant

As it is trite that *mens rea* (guilty mind) must precede *actus rea* (guilty act), there is no need to discuss *mens rea* if there is no *actus rea*. Such a taxpayer has, in fact and in law, a **superior title claim** to his property as his private property, and which is not public money.

¹²⁸ *Canada (National Revenue) v. Stanchfield*, 2009 FC 99 (CanLII), <http://canlii.ca/t/22g7x>

¹²⁹ *Channel Guide India Ltd v. ACIT* (Mum.) (Trib.) (www.itatonline.org); an income tax case in India

43 Lack of Full Disclosure for Agents of Her Majesty?

Recall Crown's position is that the individual is indivisible; all 'income' (not defined by the *ITA*) from a 'source' (not defined by the *ITA*) by such an indivisible individual is subject to, and taxable, by the *ITA* as 'profit' (also not defined by the *ITA*). However, Crown's position does not protect private property rights, nor can it explain how the *ITA* taxes worldwide 'income', nor can it explain why the *ITA* cannot tax a partnership. (See diagram: "**Crown's Position on the 'Income' Tax Act**"; undefined words are in orange).

First, the *ITA* has no definition of 'income'¹³⁰ for individuals. Is this to obfuscate that an individual through a corporation sole has dual legal capacity with both public and private property rights, and so can have private property income that is not taxed by the *ITA*?

Second, the *ITA* has no definition of 'profit'. If an individual received all 'income' as private property, there can be no "**office profit**", and there would be no "**accounting profit**" left to tax (see **Appendix**). However, if 'income' is for Her Majesty's office as public money, regardless of what that "**office profit**" is called by the officer, whether the officer has an intent to 'profit' or not, and even if there is zero "**accounting profit**", Her Majesty, as the office/officer's creator, has full jurisdiction via CRA and/or the courts¹³¹ to determine their office's 'profit' picture. Is this why the *ITA* definition of "office" was not debated in the House of Commons¹³² when the current *ITA* definitions for "employee" and "employer" were retroactively amended¹³³ in 1953 to the 1952 *ITA*¹³⁴?

Third, the *ITA* has no definition of 'source'. Is this to obfuscate that there can be two 'sources' of 'income': "**office profit**" for Her Majesty's office that is taxable, and 'income' for a individual of full capacity that cannot be "**office profit**", "**accounting profit**" equals zero, is *ITA* "exempt income", and so is unable to be taxed by the *ITA*?

Fourth, there is no definition of the all-lower-case 'social insurance number' in any statute or regulation. Is this to obfuscate and not draw attention to Her Majesty's office and/or its officer that seems to be both identified with that all-lower-case 'social insurance number'?

Fifth, the *ITA* has no definition of 'non-taxable income', thus allowing the courts to decide what it means. Is this to obfuscate that private property income of an individual is **not** 'non-taxable income', **unless** it is qualified that it is not for Her Majesty's office?

¹³⁰ Income is defined in *ITA* s.129(4), but that definition applies only to private corporations.

¹³¹ See, for example, *Stewart v. Canada*, [2002] 2 SCR 645, 2002 SCC 46 (CanLII), <http://canlii.ca/t/51sg> and the nearly 200 cases that subsequently referenced *Stewart*.

¹³² *Real Estate Council of Alberta v. M.N.R.*, 2011 TCC 5 (CanLII), <http://canlii.ca/t/2f7p9>: [21] "*The definition of "office" found in the 1948 Income Tax Act was nearly identical to the current one in the Canada Pension Plan except it includes "the office of a lieutenant-governor". Despite the considerable debate in the House of Commons with regard to the 1948 amendments to the Act, none concerned the definition of office.*"

¹³³ *An Act to amend The Income Tax Act*, 1-2 Elizabeth II, Chapter 40, assented to May 14, 1953

¹³⁴ *ITA*, 1952, amended in 1953 retroactive to 1952 Statutes of Canada

Sixth, the acronym “SIN” have been used since 2001 by CRA to denote both the upper-and-lower case Social Insurance Number and the all-lower-case ‘social insurance number’. Is this to obfuscate that an individual with the upper-and-lower case Social Insurance Number still has to file and is still liable as an *ITA* “legal representative”, even if he did not consent, for that taxation year, to be an officer for Her Majesty’s office with the all-lower-case ‘social insurance number’? This also corroborates with Chapter 9’s analysis of CRA’s **CPT1** and **CPT100** forms, and also with CRA’s computers using “Surname” and “SIN” to identify individual taxpayers¹³⁵ as *ITA* “legal representatives” but not as “officers”. If individuals were indivisible, which is Crown’s position, then there would be no need for CRA to have two different definitions on their web site¹³⁶ for the acronym “SIN”.

Seventh, a T1 uses the all-lower-case ‘social insurance number’ to denote it is a filing of the office’s income. There is no legislative requirement¹³⁷ to file on a T1, but CRA often sends requests and demands to file on a T1, and even has charged taxpayers with failure to file on a T1. Is this so CRA can charge even a taxpayer who is not an officer with failure to file and with tax evasion?

Eighth, T1 forms no longer say that the Minister authorizes them. Is this because a taxpayer who declines to work for Her Majesty’s office can file instead a return by letter, as I have done here, without using the all-lower-case ‘social insurance number’ that identifies that office?

One could conclude why ‘income’, ‘profit’, ‘source’¹³⁸, ‘social insurance number’, ‘non-taxable income’ are not statutorily defined, and that “SIN” and the *ITA* individual “taxpayer” have two meanings, and that CRA insists taxpayers file on T1 and T2125 forms that are not mandated by the *ITA*, and that Crown does not say in court the **three missing essential elements** of tax evasion (how the individual **becomes** an officer/agent of Her Majesty, how that office **converts** ‘income’ received in the officer’s hands to “**office profit**”, and who has **title** to the property in question), is because all that could expose an individual taxpayer has a choice to receive in its hands, as an individual who is not an *ITA* “officer”, private property that is deemed by the *ITA* to be an amount equal to zero.

However, such **lack of full disclosure** runs counter to a principal’s fundamental duty; it must give its agents full disclosure¹³⁹ so they can fulfill their fiduciary duties.

¹³⁵ *The Tax Collector’s Bible*, Alan Baggett, <http://www.taxcollectorsbible.com> ISBN 978-1-55483-913-1

¹³⁶ CRA’s definitions for Social Insurance Number: *Definitions for letter S*: <http://www.cra-arc.gc.ca/tx/bsnss/glsry/s-gn-eng.html> and for ‘social insurance number’: <http://www.cra-arc.gc.ca/tx/ndvdl/tpcs/ncm-tx/rtrn/cmpltng/prsnl-nf/sin-nas/menu-eng.html>

¹³⁷ *Sandra June Gibbs v. Regina*, 2006 BCSC 481 (CanLII), at [46], <http://canlii.ca/t/1mwxt>

¹³⁸ *CRA Audit Manual*, 2012 Release, page 87: “‘source’ is defined as taxable and non-taxable income’. If this is true, why not define it in the *ITA*? Or is it obfuscating that an *ITA* individual is deemed by the *ITA* to have two legal capacities?

¹³⁹ *The Law of Trusts*, Eileen Gillese, Irwin Law Books, <http://www.irwinlaw.com/titles/law-trusts-2e>: Trusts do not require full disclosure, but agency and contract do require full disclosure.

44 Compare to CRA Alert on Tax Protestors: Theory Validated?

In November 2011, CRA issued¹⁴⁰ a Tax Alert on “tax protestors” (see attached, “**CRA Alert: Tax Protestors**”). This Tax Alert seems to be based on a CRA News release for September 2010, but which was never released (see attached, “**The CRA takes action against tax protest movement**”). The released November 2011 version says:

Don't buy into illegal tax protester schemes

The Canada Revenue Agency (CRA) warns all Canadians to beware of individuals that try to convince you that Canadians do not have to pay tax on the income they earn. These individuals, also known as tax protestors, not only fail to report their own earnings, but they also conspire, counsel, and promote these tax schemes.

Natural vs. Legal Person

One of the most common false arguments tax protestors use is the natural vs. legal person argument, in which they treat themselves as two separate people for income tax purposes. They define the natural person as the individual that performs the labour required to earn income, and the legal person as the legal entity that the federal government creates through the issuance and use of the social insurance number (SIN). Tax protestors allege that the legal person has to file an income tax and benefit return, and that income received belongs to the natural person and is therefore not subject to Canadian income tax.

The wording is virtually identical except the unreleased version says, “*treat themselves as two **persons***” instead of the released Tax Alert which says, “*treat themselves as two separate people*”. If these are false claims by “tax protestors”, then the reverse should be how the *ITA* works. Compare each false claim against this theory paper’s conclusions:

CRA Position #1: Canadians have to pay tax on the income they earn.

My Conclusion: **Agreed**; Canadians have to pay tax on the ‘income’ they earn.

CRA Position #2: Canadians have to report their own earnings.

My Conclusion: **Agreed**; Canadians have to report their own earnings.

CRA Position #3: Canadians cannot treat themselves as two separate people for income tax purposes.

My Conclusion: **Agreed**; Canadians cannot treat themselves as two separate **people** for income tax purposes, but rather as two separate (legal) **persons**.

CRA Position #4: Tax protestors define the natural person as the individual that performs the labour required to earn income.

¹⁴⁰ CRA Newsroom, <http://www.cra-arc.gc.ca/nwsrm/lrts/2011/1111130-eng.html>

My Conclusion: Agreed; labour can be provided by someone other than a natural person, such as by children not of legal age, or adults lacking mental competency.

CRA Position #5: Tax protestors define the legal person as the legal entity that the federal government creates through the issuance and use of the social insurance number (SIN).

My Conclusion: Agreed; the legal person (Her Majesty's office) is **not** created by the federal government but by the individual by "*filling an office*", and it is **not** created through issuance of the social insurance number, but by the individual's use of the same number originally issued by Services Canada as a Social Insurance Number.

CRA Position #6: Tax protestors allege that the legal person has to file an income and benefit return.

My Conclusion: Agreed; the legal person (Her Majesty's office) cannot file an income and benefit return as the officer is an artificial person. It is the individual in the capacity of *ITA* "legal representative" that files, and often signs, that office's return.

CRA Position #7: Tax protestors allege that income received belongs to the natural person and is therefore not subject to Canadian income tax.

My Conclusion: Agreed; that income received is *deemed* by the *ITA* to belong to a legal person, Her Majesty, and is therefore subject to Canadian income tax.

CRA Position #8: Tax protestors allege the *ITA* is valid, but it does not apply to natural persons.

My Conclusion: Agreed; the *ITA* does apply to natural persons.

CRA Position #9: Tax protestors allege the *ITA* only applies to a legal representative of the legal person that is created through a SIN.

My Conclusion: Agreed; the *ITA* applies to *both* persons identified with a SIN: the officer for Her Majesty's office with the 'social insurance number' (SIN) and to the individual as a legal representative with the Social Insurance Number (also SIN).

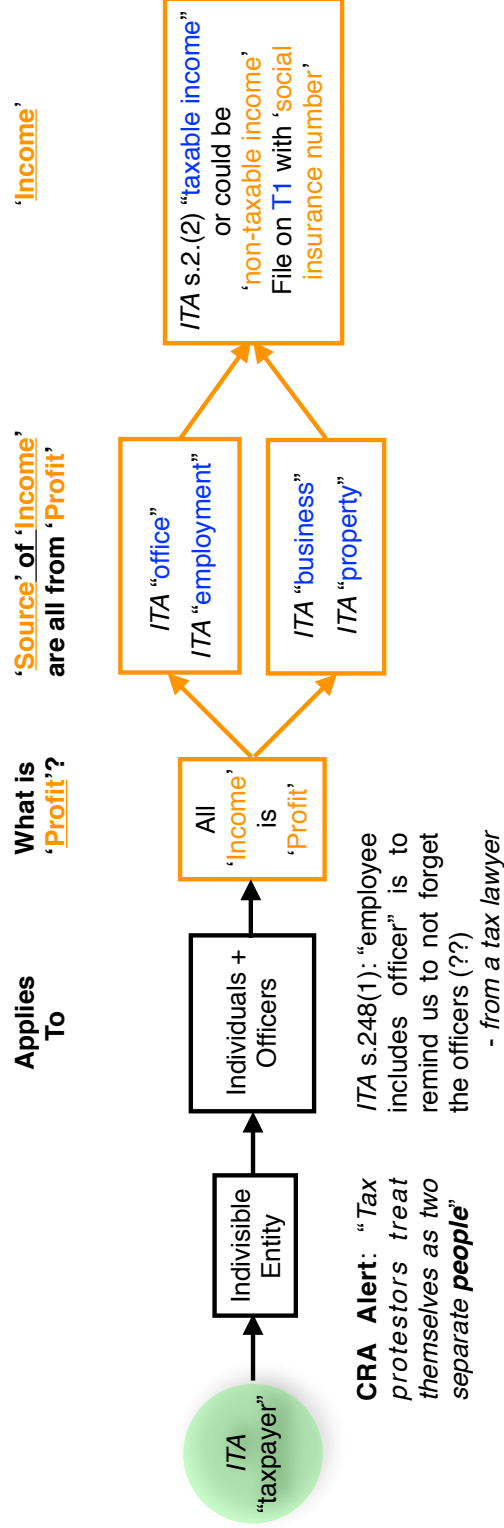
CRA Position #10: Tax protestors do not define themselves as persons under the *ITA*.

My Conclusion: Agreed; persons under the *ITA* comprise of every one who consents to Canada's social contract, including natural persons or individuals.

In summary, this theory does not disagree with **ANY** of CRA's ten so-called "tax protestor" positions.

Four Problems with Agent for Crown's Theory

- 1) Does not protect private property rights
- 2) Violates international human rights treaties
- 3) Cannot explain how ITA taxes worldwide income
- 4) Cannot explain why partnerships are not directly taxed



Words and phrases in orange are not defined by the 'Income' Tax Act. Could this be because the individual taxpayer could be divisible, so that there actually are:

- two kinds of 'income'?
- two kinds of 'sources'?
- two kinds of 'profit'?

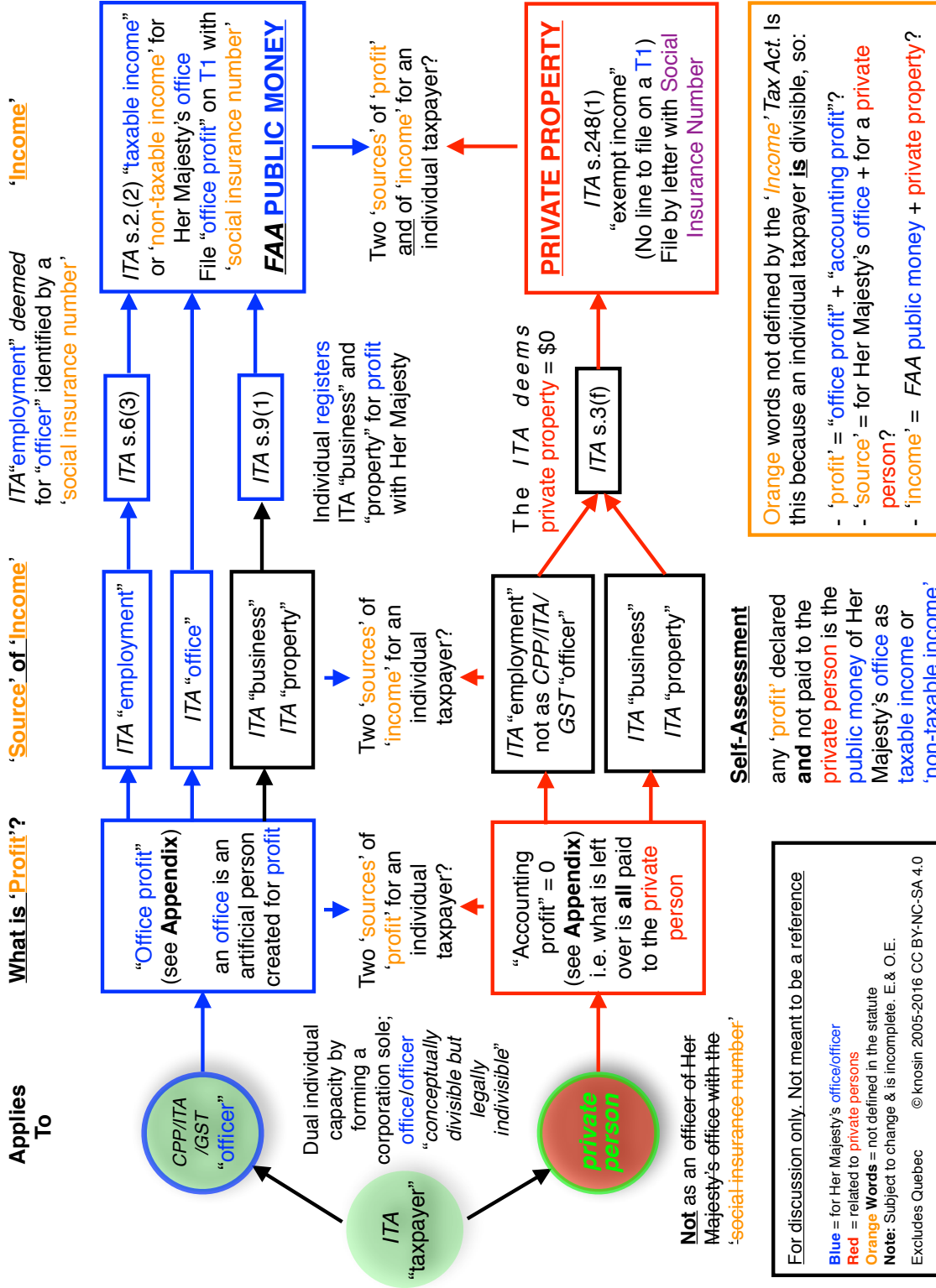
Self-Assessment

all 'profit' paid to the taxpayer is taxable income and must be declared

For discussion only. Not meant to be a reference

Orange Words = not defined in the statute
 Note: Subject to change & is incomplete. E & O.E.
 Excludes Quebec © knosin 2005-2016 CC BY-NC-SA 4.0

This Theory Paper's Version of Canada's 'Income' Tax Act Version .7



CRA Alert: Tax Protestors

Does presentation's conclusions match CRA's positions?

Canada Revenue Agency

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> [Newsroom](#) - [Alert](#) - [Tax Alert](#) - [Don't buy into illegal tax protester schemes](#)

Tax Alert

Don't buy into illegal tax protester schemes

The Canada Revenue Agency (CRA) warns all Canadians to beware of individuals that try to convince you that Canadians do not have to pay tax on the income they earn. These individuals, also known as tax protesters, not only fail to report their own earnings, but they also conspire, counsel, and promote these tax schemes.

Natural vs Legal Person

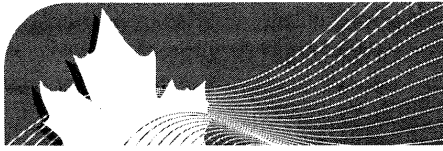
One of the most common false arguments tax protesters use is the natural vs. legal person argument, in which they treat themselves as two separate people for income tax purposes. They define the natural person as the individual that performs the labour required to earn income, and the legal person as the legal entity that the federal government creates through the issuance and use of the social insurance number (SIN). Tax protesters allege that the legal person has to file an income tax and benefit return, and that income received belongs to the natural person and is therefore not subject to Canadian income tax.

Canadian courts have repeatedly and consistently rejected all arguments made in these tax protester schemes.

45 Conclusions

My theory **agrees** with **all** ten points made in CRA's Tax Alert on "Tax Protestors". This corroborates my theory, which concludes the individual taxpayer **can** be divisible into two legal **persons** (but not as two people) in a fashion recognized by law by creating a corporation sole (see diagram, "**This Theory's Conclusions on the 'Income' Tax Act**"). This dual legal capacity – as an individual or as Her Majesty's officer - allows the *ITA* to have jurisdiction over both persons, legally tax individuals who consent to be such officers, yet respect Canada's common law principles to private property rights, and comply with its international human rights covenants. Unlike many of the "*OPCA Litigants*" that the Associate Chief Justice of Alberta wrote as a 135 page *obiter dicta* (a statement made in a court decision that is not essential to the disposition of the case) in the divorce case of ***Meads v. Meads***¹⁴¹, I conclude that the *ITA* is **legal and constitutional**, as it imposes an **indirect federal tax** on individuals that consent to being deemed by the *ITA* as federal officers of Her Majesty.

¹⁴¹ *Meads v. Meads*, 2012 ABQB 571, pages 15-150: <http://canlii.ca/t/fsvjq>



News release

The CRA takes action against tax protest movement

Ottawa, Ontario, September xx, 2010... The Canada Revenue Agency (CRA) is always on the lookout for tax schemes and is taking action to fight them.

On August 25, 2010, the Canada Revenue Agency undertook nine co-ordinated searches— in British Columbia, Alberta, and Saskatchewan—of individuals associated with the tax protest movement. These individuals (tax protesters who support the notion that they do not have to pay tax on the income they earn) are believed to be part of a pyramid scheme that promotes the evading of tax.

“This is the first co-ordinated search action against tax protesters of this magnitude ever conducted by the CRA,” said the Honourable Keith Ashfield, Minister of National Revenue, Minister of the Atlantic Canada Opportunities Agency, and Minister for the Atlantic Gateway. “This is an example of how the CRA works hard to identify and correct non-compliance to keep the system fair for Canadians who comply with the tax laws.”

The CRA has evidence that the nine cases are associated with a pyramid scheme promoting the tax protest movement. The CRA has alleged that the individuals involved have not only failed to report their earnings from the scheme, but they have also counselled others to participate in the scheme and evade paying taxes.

Under the scheme, tax protesters treat themselves as two separate persons when they prepare their income tax and benefit returns. They consider a natural person to be the individual who does the labour needed to earn income. And they consider a legal person to be the legal entity created by the federal government through the issuing of a social insurance number, and who legally has to file a tax and benefit return. The legal person then hires the natural person to do the labour needed to earn income. Tax protesters allege that income received as a natural person is not subject to Canadian income tax. Canadian courts have consistently rejected natural person arguments that have often been advanced by tax protesters in order to avoid paying taxes.

Paying taxes is the law, and those who fail to follow tax laws could face serious consequences. The CRA has the authority under the *Income Tax Act* and the *Excise Tax Act* to use a number of tools to address non-compliance. When taxpayers are convicted of tax evasion or tax fraud, they have to repay the full amount of taxes owing and any amounts fraudulently obtained, plus interest, as well as any civil penalties that may be assessed by the CRA. If people are convicted, the courts may fine them up to 200% of the federal tax evaded or false refunds claimed, and sentence them to a jail term of up to two years.

Those who have participating in a scheme and want to come forward to correct their tax affairs can use the CRA's Voluntary Disclosures Program (VDP). If you make a valid disclosure before you become aware of any compliance action being started against you by the CRA, you may only have to pay the taxes owing plus interest, and you will not have to pay penalties or face prosecution in the courts. More information on the VDP is available at www.cra.gc.ca/voluntarydisclosures.

Before participating in a tax scheme, Canadians should seek independent advice from a reputable tax professional or contact the CRA to ask about a scheme's validity.

Remember, if it sounds too good to be true, it probably is.

-30-



Canada Revenue
Agency

Agence du revenu
du Canada

Canada

This theory is corroborated by showing that an individual taxpayer pays income tax, CPP, GST, and EI depending on its relationship with Her Majesty's office and its officer, which as a corporation sole is "*conceptually divisible but legally indivisible*" from the office.

The *ITA* taxes undefined 'profit'. If an individual not as an officer in an unregistered activity pays himself everything left over after other expenses have been paid (no "**accounting profit**" - see **Appendix**), that could be "*untaxed income (which) would be inappropriate*"¹⁴², so the *ITA* deems an individual as an officer making "**office profit**" that is public money for Her Majesty's office identified with the all-lower-case 'social insurance number'. An individual can also become such an officer by applying for CPP and/or for GST, as it all involves the same office.

An individual (not as an officer) lacks the legal power to receive or convert private property into public money. One could conclude that the undefined *ITA* word 'income' for an individual could be = (**public money as "office profit"**) + (**private property income**) - see **Appendix**.

An individual filing with the all-lower-case 'social insurance number' seems to have the characteristics in CRA's P-182R¹⁴³ **Policy Statement** of a principal-agent relationship. Justice Kovatch said in *HMTQ v. Doug Amell et al*¹⁴⁴ that such an officer is also a "*statutory agent identified with a social insurance number*". The law of fiduciary duty, with equity principles such as **disgorgement** and **deterrence**, could be the legal foundation for *ITA* reassessments and civil and criminal penalties. All lead to the same conclusion - an officer with the all-lower-case 'social insurance number' is also an **agent** of Her Majesty.

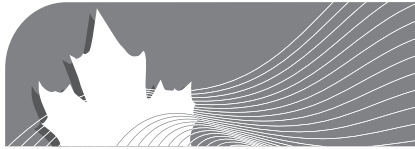
Applying for a GST account means one consents to be an agent of Her Majesty collecting and remitting Canada's public money. As both the GST "office" and the *ITA* "office" for an individual are the same office with Her Majesty, one could conclude that, just like GST, income tax **also** involves one as an agent of Her Majesty collecting and remitting Canada's public money and not private property (see attached, "**CRA Tax Alert: Abuse of Source Deductions and GST/HST Amounts Held in Trust**").

Corroborating this theory even further is that it also offers plausible explanations as to how the *ITA* taxes worldwide income, and why the *ITA* cannot tax a partnership even though it is recognized as a person in law. With all this, one would find it hard to conclude that someone filing with the all-lower-case 'social insurance number' is not an officer and agent of Her Majesty with fiduciary duties since it is then dealing with Canada's public money.

¹⁴² *Notes on Proposed Amendments to the Income Tax Act*, Proposed section 3.1, Department of Finance, http://www.collectionscanada.gc.ca/webarchives/20071124194314/http://www.fin.gc.ca/news03/data/03-055_2e.html, published October 31, 2003

¹⁴³ *GST/HST Policy Statement on Agency*, P-182R, Canada Revenue Agency, <http://www.cra-arc.gc.ca/E/pub/gi/p-182r/README.html>. While this CRA Policy Statement is for GST, the principles and duties of an agency relationship should be the same for non-GST matters.

¹⁴⁴ *HMTQ v. Doug Amell et al* 2010 SKPC 107, at [50]: www.canlii.ca/t/2c05t



Tax alert

Abuse of source deductions and GST/HST amounts held in trust

The Canada Revenue Agency (CRA) is warning businesses about the consequences of failing to report and remit source deductions and goods and services tax/harmonized sales tax (GST/HST) they hold in trust for the Government of Canada.

Trust funds and your obligations¹

The *Income Tax Act* and the *Excise Tax Act* require businesses to hold source deductions and GST/HST amounts in trust for the government. Employers are required to remit these source deductions—amounts withheld from employee salaries and wages to pay income tax, Canada Pension Plan/Quebec Pension Plan, and employment insurance premiums—to the federal government by certain dates.² Businesses that collect GST/HST must also remit these amounts to the government by specified dates.³

Funds held in trust must not be used as an alternate means of cash for a business. The CRA will use its legislated powers of recovery to make sure that amounts considered to be held in trust are paid to the government in full and on time.

There are consequences

Businesses that do not fulfill their obligations or comply with payroll requirements may be assessed penalties or interest or incur other consequences.⁴

Businesses have to file their GST/HST returns and make payments on time. Failure to do so may result in penalties and interest on any returns or amounts the business has not remitted to the government by the filing due date.⁵

The *Income Tax Act* and the *Excise Tax Act* allow for the recovery of source deductions and GST/HST amounts by:

- enhanced garnishments to collect amounts considered to be held in trust for the government;
- assessment of the directors of a corporation for the corporation's failure to remit either source deductions or GST/HST amounts;
- seizure and sale of assets of a debtor corporation, an assessed director or a sole proprietor; and
- any other means of recovery allowed under federal legislation.

Come to us before we come to you

If you have collected source deductions or GST/HST amounts and have not remitted them on time, please contact the CRA as soon as possible to make arrangements to pay the outstanding amounts.

Employers or businesses that have failed to file returns, remit source deductions or GST/HST amounts for current or previous years can voluntarily correct their tax affairs by participating in the Voluntary Disclosures Program. The Voluntary Disclosures Program allows taxpayers to come forward to correct inaccurate or incomplete tax information and disclose information they have not reported to the CRA. Taxpayers will not be penalized or prosecuted if they make valid disclosures before they become aware of any CRA compliance action against them. These taxpayers may only have to pay the taxes owing, plus interest.

More information

More information is available on the CRA's Web site at www.cra.gc.ca/voluntarydisclosures.



Tax evasion in Canada is now a predicate offence to fraud. This could be because the current *EIA* uses the CRF, whereas the old *Unemployment Insurance Act* held its funds separately from the CRF. With everything now dealing with the CRF, tax evasion is legally similar to fraud (breach of trust) by a public officer, as I have shown how:

- 1) An individual becomes an officer of Her Majesty dealing with public money by “*filling an office*¹⁴⁵” and creating a **corporation sole** which, the Industry Canada website¹⁴⁶ says, “*once the corporation (sole) is established, there is no distinction between the person who holds the office and the office itself.*”
- 2) That office is identified with the all-lower-case ‘**social insurance number**’.
- 3) That officer is also an **agent** of Her Majesty and so has a **fiduciary duty** to report Canada’s **public money** accurately and on time.
- 4) That officer can breach its **fiduciary duties** by failing to report all property deemed or consented to be Canada’s **public money** accurately and on time.

As the *ITA* must protect private property rights, the deeming to be an officer must be rebuttable. While income for any office is “**office profit**” and taxable by the *ITA*, to protect Her Majesty’s honour, an individual’s private property can be *ITA* “exempt income” which is deemed by *ITA* s.3(f) to be equal to zero, so that Her Majesty does not illegally convert the private property into public money.

CRA often demands individual returns be filed on a T1 or T2125 despite there being no legal requirement to file on only those forms. The T1 and T2125 both use the all-lower-case ‘social insurance number’ to denote that they are for filing only the public money of Her Majesty. As there is no line on a T1 to file any *ITA* “exempt income”, and it is deemed by *ITA* s.3(f) to be equal to zero, filing such private property income of a individual on a T1 is a **legal impossibility** and so cannot be tax evasion. An alternative is to file such private property by letter with the upper-and-lower-case Social Insurance Number denoting the individual’s capacity as an *ITA* “legal representative”.

(The Appendix follows on page 80 and 81)

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¹⁴⁵ *Institutes of the Lawes of England, Coke on Littleton*, Sir Edward Coke: Co. Lit. 2a

¹⁴⁶ Industry Canada website, <http://www.ic.gc.ca/eic/site/ciip-pdci.nsf/eng/ci00384.html>

Appendix: Examples of ‘Income’ Calculations for an Individual Taxpayer

Definitions

“**Accounting profit**” - What is left over from revenue after all expenses are paid, including payments to individuals as officers of Her Majesty’s office and/or as individuals.

“**Office profit**” - Profit for Her Majesty’s office/officer with the ‘social insurance number’. As an office is an artificial person created initially for profit, any compensation for Her Majesty’s office is **office profit**, regardless of what it is called. If it is from a **business** or **property** ‘source’ of ‘income’, the taxability depends on whether the officer had an intent to ‘profit’ (= **taxable income**) or not (= undefined ‘**non-taxable income**’).

For Profit Taxpayer

ITA s.18(1)(c)¹⁴⁷ does not apply as the taxpayer (limited company, sole proprietorship, or registered partnership) is created for office profit and not for exempt income:

18(1)(c) In computing the income of a **taxpayer** from a business or property no deduction shall be made in respect of an outlay or expense to the extent that it may reasonably be regarded as having been made or incurred for the purpose of gaining or producing **exempt income** or in connection with property the income from which would be **exempt**;

Example 1 – All Paid as *ITA* “Employee” or as Director’s Fees- \$100K Paid to Officer

Office profit = \$100K as *ITA* “employee” or Director’s fees (officer); \$0 to individual

Accounting profit = \$100K - \$100K to officer - \$0 to individual = \$0

Total profit of **for profit taxpayer** = **accounting profit** = \$0

Total ‘income’ of individual = (**office profit**) + (**private property ‘income’**) = \$100K + \$0
= \$100K as taxable income for Her Majesty’s office with ‘social insurance number’

Individual files \$100K on T1 with ‘social insurance number’ of Her Majesty’s office.

Example 2 – All \$100K Paid to Individual

Office profit = \$0; \$100K paid to individual (*ITA* “exempt income”)

Accounting profit = \$100K - \$0 to officer - \$100K to individual = \$0

Total profit of **for profit taxpayer** = **accounting profit** = \$0

Total ‘income’ of individual = (**office profit**) + (**private property ‘income’**) = \$0 + \$100K
Private property ‘income’ = \$100K as *ITA* “exempt income” which is deemed = 0 by *ITA* s.3(f), and there is no line on T1 to file *ITA* “exempt income”.

(*Optional*) individual files by letter with the upper-and-lower case Social Insurance Number.

¹⁴⁷ *ITA*, R.S.C. 1985, c. 1 (5th Supp.), s.18.(1)(c)

Example 3 – \$100K for Worker; 70% Paid as Director’s Fees; 30% to Individual

Office profit = pays \$70K as Director’s fees (officer); \$30K to individual

Accounting profit = \$100K - \$70K to officer - \$30K to individual = \$0

Total profit of **for profit taxpayer** = **accounting profit** = \$0

Total ‘income’ of individual = (**office profit**) + (**private property ‘income’**) = (\$70K) + (\$30K)
= \$70K as taxable income for Her Majesty’s office with ‘social insurance number’
+ \$30K as ITA “exempt income” for the individual as private property

Individual files \$70K on T1 with ‘social insurance number’ of Her Majesty’s office
(*Optional*) individual files by letter with a Social Insurance Number as there is no line on T1
to file ITA “exempt income”. \$30K ITA “exempt income” is deemed = 0 by ITA s.3(f).

Individual Taxpayer

Activity Not Registered for Her Majesty’s Office - \$100K paid to the individual

ITA s.18(c) applies as individual produces ITA “exempt income” (see Chapter 27):

18(1)(c) In computing the income of an (*individual*) from a business or property no deduction shall be made in respect of an outlay or expense to the extent that it may reasonably be regarded as having been made or incurred for the purpose of gaining or producing **exempt income** or in connection with property the income from which would be **exempt** (*since an individual is incapable of receiving office profit from Her Majesty’s office identified with the all-lower-case ‘social insurance number’*);

Office profit: individuals lack the legal power to receive any ‘income’ as **office profit**

Accounting profit = \$100K - \$0 to officer - \$100K to individual = \$0

Total profit of **individual as taxpayer** = **accounting profit** = \$0 since individuals are incapable of receiving profit; also cannot deduct expenses per ITA s.18(1)(c)

Total ‘income’ of individual = (~~**office profit**~~) + (**private property ‘income’**) = \$100K
= \$100K as ITA “exempt income” for the individual as private property

NOTE: Filing a T1 with \$0 could be ambiguous as it could mean the individual worked as an officer but made no **office profit**, or it could mean that the individual worked only as a individual, made ITA “exempt income” that is deemed = 0 by ITA s.3(f), and since there is no line on T1 to file ITA “exempt income”, was \$0 filed as ITA “exempt income”?

(*Optional*) individual files by letter with the upper-and-lower case Social Insurance Number the individual’s ITA “exempt income”.