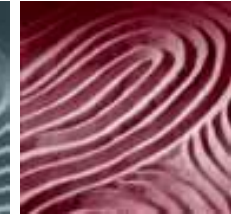
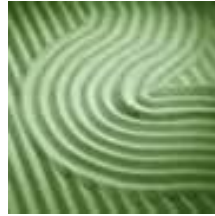


Robson Court
1000-840 Howe Street
Vancouver, B.C.
Canada V6Z 2M1
Tel. 604.687.2242
Fax.604.643.1200
www.millerthomson.com



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TAX EVASION/DEALING WITH SPECIAL INVESTIGATIONS

By Robert J. MacRae

MAY 20, 2004

MILLER THOMSON LLP

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TAX EVASION/DEALING WITH SPECIAL INVESTIGATIONS

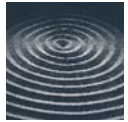


Date: May 20, 2004

Presented by: Robert J. MacRae



Tax Evasion



Audit vs. Investigation

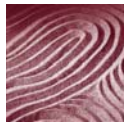
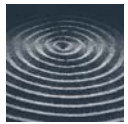


Tax Evasion Cases/Professionals

Dealing with Special
Investigations or “Investigators”



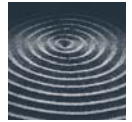
Tax Evasion – Section 239 of the *Income Tax Act*



- False Statement – Section 239(1)(a)
- Obstruction/Alteration of Records - Section 239(1)(b)
- False or Deceptive Entries in Book - Section 239(1)(c)
- Evasion of Compliance – the Act of Payment of Taxes – Section 239(1)(d)
- Conspiracy – Section 239(1)(e)
- Tax Evasion - Section 239(1.1) Refunds/Credits
- GST – Section 327
Parallel provisions with minimum fines



Criminal Code charges possible as well

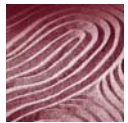
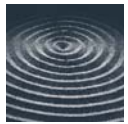


➤ Party to the act



➤ Counseling

➤ Theft/fraud

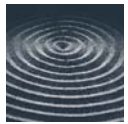


Tax Evasion is a Crime – Subject of Prosecution, Fines/Imprisonment

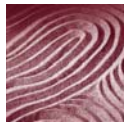
- On Summary Conviction – fine of 50-200% of tax/up to 2 years imprisonment
- On Conviction on Indictment – fine of 100-200% of tax/up to 5 years imprisonment
- Viewed seriously by the courts as “theft from us all”



Stated Purpose of Prosecutions: Deterrence through Publicity



Information Circular 73-10R3



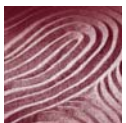
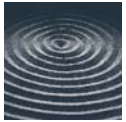
- Stated Policy of “Zero Tolerance”
 - Particularly large scale frauds – SRTC prosecutions – ITC fraud in GST

 - BUT
 - Voluntary Disclosure
 - Compassionate Grounds
 - Large Number of Cases



Tax Evasion, Investigation and Prosecution is a Significant Undertaking

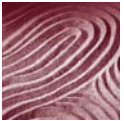
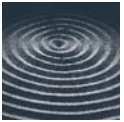
- Burden of Proof on the Crown
 - “beyond a reasonable doubt” contrast “ordinary assessment” where onus is on the taxpayer
 - Significant in Crown must prove underlying facts and mental element
 - Defense tries to have evidence excluded
- Accused Need Not Testify or Explain



Audit vs. Investigation

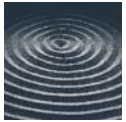
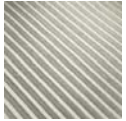
- When can civil audit powers no longer be used?
 - 231.1 Audit/Inspection
 - 231.1 Requirement/Demand

- Charter Rights
 - Section 7 – right to liberty and fundamental justice includes right to remain silent
 - Section 8 – right to be secure against “unreasonable search and seizure”
 - Section 24 - remedy for breach/“disrepute”



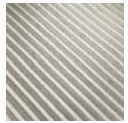
➤ *Norway Insulation* SCC 1995

➤ *Ling/Jensen* SCC 2002
- Guidelines

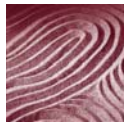
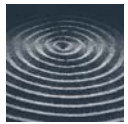


Investigation? Audit? Jarvis tests

- Did the authorities have reasonable grounds to lay charges? Does it appear from the record that a decision to proceed with a criminal investigation could have been made?
- Was the general conduct of the authorities such that it was consistent with the pursuit of a criminal investigation?
- Had the auditor transferred his or her files and materials to the investigators?
- Was the conduct of the auditor such that he or she was effectively acting as an agent for the investigators?



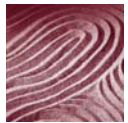
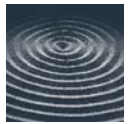
Investigation? Audit? Jarvis tests (con't)



- Does it appear that the investigators intended to use the auditor as their agent in the collection of evidence?
- Is the evidence sought relevant to the taxpayer liability generally? Or, as is the case with evidence as to the taxpayer's *mens rea*, is the evidence relevant only to the taxpayer's penal liability?
- Are there any other circumstances or factors that can lead the trial judge to the conclusion that the compliance audit has in reality become a criminal investigation?

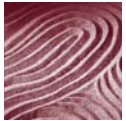
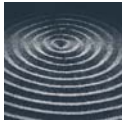


Tax Evasion Decisions re Professionals



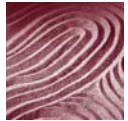
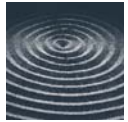
- *R. v. Simons* 1977
 - Inventory
 - Acquitted/strong criticism of Revenue

- *R. v. Ross* 2000
 - Convicted
 - “Late” sale at historical cost of shares about to be sold to third party
 - “Wilful blindness”



➤ *R. v. Bromley* 2004

- Charitable donations at issue
- Taxability in question must be “clear and unequivocal”
- Allegations of sham/cheque-kiting
- Acquitted

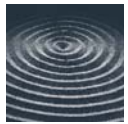


Dealing with Special Investigations

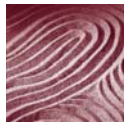
- Sources of SI leads
 - Audit/collections referrals
 - Non-filers
 - Informers
 - Special projects
 - International joint audits
 - Crime



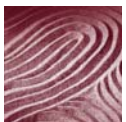
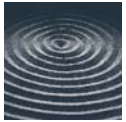
Dealing with Special Investigations (con't)



➤ Understanding their role/mindset

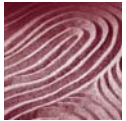
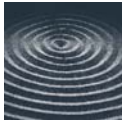


- Investigations Manual 1M-04 released July 11, 2003
- Required reading
 - T1134 leads/references



The process:

- Search Warrants under Section 231.3 of the *Income Tax Act*, Section 487 Criminal Code issued *ex parte* by a BCSC Judge on an “Information” – an Affidavit setting out facts and establishing a *prima facie* case
- “Clear this all up” meeting?
- Department of Justice consulted on prosecution
- Possible Trial/Appeal



- If no prosecution, Section 163(2) penalties/tax usually
 - A sigh of relief from taxpayer
 - Don't sit still for tax/penalties