

Unenforceable Bill of Rights for Taxpayers

By

Vern Krishna

A Bill of Rights typically entrenches rights in the law so that individuals can enforce their rights through the legal process. However, unlike Americans - who have their Taxpayer Bill of Rights codified in the Internal Revenue Code – Canadian taxpayers do not have equivalent legal protection. We must rely on the goodwill of the Minister of Revenue for our rights. Although the government has said that "...taxpayers ... have rights and that ... the CRA take these rights seriously", neither the Conservatives nor the Liberals have enacted taxpayer rights into law. Why? Because they are concerned that taxpayer rights will erode the discretionary power of the bureaucracy.

Taxpayer rights are not a high priority with Canadians until they get into a tax dispute with the tax authorities. Then, rights become a hot button topic. Pierre Trudeau sacrificed enshrining property rights in the Charter of Rights and Freedoms in 1982 because Saskatchewan resisted their inclusion for fear that such rights would inhibit the provincial power to tax.

The Conservatives in opposition in 1984 created a Task Force to study the behaviour of the tax authorities. The Task Force documented its conclusions of the tax collectors' proclivity towards oppressive and insensitive conduct:

“What we heard disturbed us deeply. We were distressed by the fear with which ordinary Canadians greet a call from the tax department, a fear that is sometimes cultivated by Revenue Canada.

The complexity of the many provisions affecting lower income Canadians often causes serious resentment.... These taxpayers can least afford the costly professional assistance needed to defend their rights.

Another factor that undermines the rights of ordinary Canadians is the sweeping powers given to the Department. In some cases, they are even greater than the powers of the police.”

However, when the Conservatives came into power, they resiled from their advocacy in opposition and issued a declaratory statement instead, which they impressively called a "Declaration of Taxpayer Rights". However, the government did not enact the Declaration as law, leaving taxpayers with only a flimsy slogan hung on walls of CRA offices (if you can find one).

Since the Charter of Rights & Freedoms does not protect property rights, taxpayers have minimal constitutional protection against the tax collector. A notable exception is in criminal tax law, which the government uses to prosecute tax evasion. Apart from Charter restrictions on search and seizure, the courts consider the *Income Tax Act* a regulatory statute. Hence, for example, the

courts support the reverse onus clause - which deems the Minister's assessment to be proper and correct unless the taxpayer proves it is not – as administratively convenient.

The rights in the Declaration state some obvious slogans, such as, taxpayers should:

- Pay no more in taxes than required by law.
- Be treated professionally, courteously, and fairly.
- Have the law applied consistently.
- Be represented by a person of his or her choosing.

They do not, however, address the fundamental issues of complexity, uncertainty, cost of compliance, and litigation. The *Income Tax Act* has more than 3000 pages. This compares with the original 1917 Act of 11 pages. The comments of a member of the British Parliament speaking about the Irish Home Rule bill in 1889 would also fairly describe the Canadian *Act* today:

. . . it sweats difficulties at every paragraph; every provision breeds a dilemma; every clause ends in a cul-de-sac; dangers lurk in every line; mischiefs abound in every sentence and an air of evil hangs over it all.

Even Albert Einstein conceded: “The hardest thing in the world to understand is the Income Tax.” (“The Hardest Thing in the World to Understand Is Income Taxes”)

The tax dispute resolution process is long and expensive. After filing an objection to an assessment, the taxpayer can expect to wait between 9 to 12 months (longer during the pandemic) even for initial contact by an appeals officer. In 2016, the Auditor General reported to Parliament that it took an average resolution time at the administrative level of 431 days for medium, and 896 days for high, complexity files. Add in litigation time and the total time to resolve tax cases can range from 6 to 10 years! As every individual knows, fighting government is expensive and well beyond the means of the average taxpayer.

A Taxpayer Bill of Rights would strengthen Canada’s democratic institutions and increase transparency and accountability for all Canadians. It is a pity that governments of both stripes have not entrenched the Rights in law. An unenforceable Bill a not a legal right.

Professor Vern Krishna, CM, QC, FCPA of the University of Ottawa Law School and Tax Counsel with TaxChambers LLP (Toronto).

vkrishna@uottawa.ca

www.vernkrishna.com