

# General Corporate — Commentary — Articles — English — Vern Krishna —, 2010-09-08 -- Taxpayers require Bill of Rights

2010-09-08

## Search Details

Search Query: Table of Contents

## Delivery Details

Date: January 8, 2019 at 3:15 p.m.

Delivered By: VERN KRISHNA

Client File: GAAR

Unlike Americans - who have their Taxpayer Bill of Rights codified in the Internal Revenue Code - Canadian taxpayers do not have equivalent legal protection. 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?

## Taxpayers require Bill of Rights

Date: September 8, 2010

*Vern Krishna*

A Bill of Rights typically entrenches rights into the law so that individuals can enforce them through the legal process.

Unlike Americans—who have their Taxpayer Bill of Rights codified in the Internal Revenue Code—Canadian taxpayers do not have equivalent legal protection. 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?

The history of tax law is laced with battles over taxpayer rights. King John’s penchant for increasing feudal taxation in England without consulting his Lords precipitated the creation of the greatest constitutional document—Magna Carta—in 1215. The grievances of a poll tax on all males and females over the age of 15 caused the Peasant’s Revolt in 1381.

Hume’s History of England captures the drama of the event: “The first disorder was raised by a blacksmith in a village of Essex. The tax-gatherers came to this man’s shop while he was at work; and they demanded payment for his daughter, who he asserted to be below the age assigned by the statute. One of these fellows offered to produce a very indecent proof to the contrary, and at the same time laid hold of the maid: which the father resenting, immediately knocked out the ruffian’s brains with his hammer.”

To be sure, the techniques of the modern tax collector are more dignified, but not necessarily more sensitive.

Taxpayer rights are not a high priority with Canadians until they get into a skirmish with the tax authorities. Then rights become a hot-button topic. Pierre Trudeau sacrificed enshrining property rights in the Charter of Rights and Freedoms because of Saskatchewan’s resistance to their inclusion. The provincial NDP government was concerned that the inclusion of property rights in the Charter would inhibit their power to tax and expand government intrusion into their economy.

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 in its report: “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.”

Later that year, the Conservative government—by then in power—issued a statement, impressively titled the “Declaration of Taxpayer Rights.” However, it did not enact the declaration as law, leaving taxpayers to hang on to a flimsy slogan.

Apart from Charter restrictions on search and seizure, our courts consider the Income Tax Act essentially as a regulatory statute. Hence, for example, the courts support the reverse onus clause—which deems the tax authority’s assessment to be proper and correct unless the taxpayer proves it is not—as convenient for the administration of the act.

The latest version of the 15-point declaration is eloquent, but impotent. It gives taxpayers the right to:

- Pay no more in taxes than required by law.
- Service in English and French.
- Privacy and confidentiality.
- A formal review and an administrative appeal by the CRA.
- Be treated professionally, courteously, and fairly.
- Complete, accurate, clear, and timely information.
- Not pay income tax amounts in dispute before an impartial review.
- Have the law applied consistently.
- Lodge a service complaint and be provided with an explanation of findings.
- Have the costs of compliance taken into account when administering tax legislation.
- Expect the CRA to be accountable.
- Provide relief from penalties and interest under tax legislation because of extraordinary circumstances.
- Expect that the CRA will publish service standards and report annually.
- Expect that the CRA will warn taxpayers about questionable tax schemes in a timely manner.
- Be represented by a person of his or her choosing.

However, the 15 rights collectively confer minimal protection. The right to pay only what the law requires one to pay is a penetrating bureaucratic observation into the obvious. Canadians have enjoyed the right of constitutional taxation since 1917.

The right to service in English and French and the right to privacy reflect existing law. Others “rights”—for example, the right to professional, courteous and fair treatment—restate duties that all public “civil” servants who live off taxpayer dollars should adhere to without a declaration.

The relief from penalties and interest in extraordinary circumstances—the so-called “fairness provisions”—depend upon the CRA’s discretion. The right of taxpayers to choose counsel is an important legal right—if only they could afford one.

In 1984, the government proclaimed that the Declaration of Taxpayer’s Rights strengthens Canada’s democratic institutions and increases transparency and accountability for all Canadians. It is a pity that it did not entrench the rights in legislation. Is an unenforceable right a legal right?

---

*Vern Krishna, CM, QC, FRSC is Tax Counsel, Borden Ladner Gervais, LLP, and Professor of Common Law and Executive*

*Director of the Tax Research Centre, University of Ottawa.*

*vkrishna@blg.com*

Copyright 2010 Vern Krishna. Reproduced by permission.

End of Document

© 2019 Thomson Reuters Canada Limited.