

# THE CANADIAN TAXPAYER

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## Do Shares of an American Company Credited to an Account with a Canadian Broker Constitute “Specified Foreign Property”?

David H. Sohmer

At first blush the answer seems crystal clear. Each share is “a share of the capital stock of a non-resident corporation”, and there is no requirement that the share be situated, deposited or held outside Canada as is the case for funds or intangible property.<sup>1</sup> However as one digs deeper clarity is replaced by opacity. Consider the following excerpts from a decision of the Court of Chancery of the State of Delaware in the case of *In Re Appraisal of Dell Inc.*:<sup>2</sup>

The petitioners are five institutions who owned common stock of Dell Inc. . . . The Funds held their shares through custodial banks. By virtue of this relationship the Funds did not have legal title to the shares; they were beneficial owners.

<sup>1</sup> *Income Tax Act* paragraph 233.3 (1) “specified foreign property” (a) and (c).

<sup>2</sup> Del. Ch., Consol. C.A. No. 9322, Laster, V.C. (July 30, 2015) (Revised Mem. Op.)

But the custodial banks did not have legal title either. The shares they held were registered in the name of Cede & Co., which is the nominee of the Depository Trust Company (“DTC”).

Technically, both the Funds and the custodial banks were “entitlement holders”. This term is defined under Article 8 of the Delaware Uniform Commercial Code as a “person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary . . . The term “securities intermediary” means either a “clearing corporation”, i.e. DTC, or a person including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity”, i.e. the custodial banks.

The terms “securities account” and “securities entitlement” are defined in Section 8-501 of the Uniform Commercial Code which is reproduced in Article 8 of the Delaware Uniform Commercial Code:

(a) “Securities account” means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

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(b) Except as otherwise provided in subsections (d) and (e), a person acquires a securities entitlement if a securities intermediary:

(1) Indicates by book entry that a financial asset has been credited to the person's securities account.

The term "technically" is not a term of art which has legal consequences. The context indicates that the Court

intended it to mean a formal description of a legal relationship that encompasses beneficial ownership. While beneficial ownership can be a term of art, the Court's use of the term in the context of Article 8 of the Uniform Commercial Code appears to stretch the concept so as to reflect economic realities. This is illustrated by the following explanation of the securities entitlement system:

Broker participants in DTC own a pro rata interest in the aggregate number of shares of an issue held by DTC. And their beneficial owners, the end customer, owns an interest in the shares in which the brokers themselves, have an interest. Consequently, there are no specific shares directly owned by either broker participants, DTC, or the underlying beneficial owner. As a result, the beneficial owner's ownership cannot be tracked to a specific share, but rather, his ownership interest is represented as a securities entitlement at his or her own broker dealer. Each of these beneficial owners don't own the actual shares that have been credited to their account, but rather they own a bundle of rights defined by Federal and State law and by their contract with the broker.<sup>3</sup>

The Official Comment to Section 8-503 of the Uniform Commercial Code indicates that "beneficial ownership" in the context of Article 8 does not have the same meaning as "beneficial ownership" in the context of the common law of property.

2. Although this section recognizes that the entitlement holders of a securities intermediary have a property interest in the financial assets held by the intermediary, the incidents of this property interest, are established by the rules of Article 8, not by common law property concepts. These concepts do not work for the indirect holding system. A security entitlement is not a claim to a specific identifiable thing; it is a package of rights and interests that a person has against the person's securities intermediary and the property held by the intermediary. The idea that discrete objects might be traced through the hands of different persons has no place in the Revised Article 8 rules for the indirect holding system.<sup>4</sup>

The Prefatory Note to Revised Article 8 of the Uniform Commercial Code confirms this.

The principal goal of the Article 8 revision project is to provide a satisfactory framework for analysis of the indirect holding

<sup>3</sup> Erik Sirri, Director of the SEC's Division of Trading and Markets as quoted in John Welborn, "The 'Phantom Share' Menace," *Regulation*, Vol. 31, No. 1, Spring 2008 at page 53.

<sup>4</sup> Investment Securities, Uniform Commercial Code 661 (1994) at page 773.

system. The technique used in Revised Article 8 is to acknowledge explicitly that the relationship between a securities intermediary and its entitlement holder is *sui generis*, and to state the applicable commercial law rules directly, rather than by inference from a categorization of the relationship based on legal concepts of a different era.<sup>5</sup>

The requirement to report specified foreign property under ITA [section 233.3](#) was introduced in the 1995 federal budget. In 2006 Ontario became the first Canadian province to enact a securities transfers act based on Revised UCC Article 8. Since then all provinces have enacted similar legislation. ITA 233.3 has never been updated so as to accommodate the unique and *sui generis* relationship created by the securities transfer legislation. The [Supreme Court of Canada](#) has held that the economic realities of a situation cannot be used to recharacterize a taxpayer's *bona fide* legal relationships absent finding of a sham.<sup>6</sup> A convincing case can be made for the argument that section 233.3 requires that a share be beneficially owned as that term is understood in the context of the common law of property and that this is not the case where securities entitlement legislation establishes the legal relationship.

ITA subsection 233.3(1) also defines specified foreign property as including "an interest in, or right with respect to, an entity that is non-resident". While the term "property" is defined in ITA [subsection 248\(1\)](#) as including "a right of any kind whatever", the context dictates that the right must be more than a contractual claim. Consider the case of a contract entered into in Canada between two Canadian residents pursuant to which in return for cash equal to the current value of a share of a non-resident company the other party agrees to pay an amount equal to dividends paid on the share and an amount equal to the price of the share at a specified time. The legislative intent of ITA 233.3 is to help the CRA detect and audit investment income earned abroad. The shares of the non-resident company in this case are merely an external basis for determining the value of the contract.

While the concept of a security entitlement "includes a package of *in personam* rights against the intermediary", a securities entitlement "is itself a form of property interest not merely an *in personam* claim against the intermediary"<sup>7</sup>. Assuming that a security entitlement is intangible

property or for civil law incorporeal property, it would only constitute specified foreign property if it is situated, deposited or held outside Canada. A securities entitlement is not held by or deposited with a broker. Unlike patents and trademarks, a securities entitlement is not intellectual property which is protected by statute. It is a creation of American and Canadian statutes and only has meaning in the context of such statutes, and so is not susceptible of being situated anywhere.

Waiting for the issue to be resolved by the courts will prolong the uncertainty. The Minister of Finance should announce the intention to amend the ITA with retroactive effect so as to deem the "end" entitlement holder to be the beneficial owner of the securities credited to his or her account. Whether civil penalties should or can be imposed retroactively is a more contentious issue.

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## Cabinet Shuffle Leaves Key Players in Place but Adds Some New Faces

As was widely anticipated, the [cabinet shuffle in mid-July](#) worked on the periphery leaving key high-profile ministers such as Morneau and Freeland in place. But speculation that a few of the older ministers might not run in 2019 and thus move from cabinet turned out not to be true. Trudeau has made significant changes to his cabinet, bringing five new ministers to the table and creating new portfolios for seniors, intergovernmental affairs and border security.

The Prime Minister spelled out these objectives other than simply trying to preserve seats. Given the issues of trade being so volatile, it is not surprising that this is an area where he is trying to diversify.

Canada is a trading nation whose economy relies on the hard work and innovation of its small businesses, entrepreneurs, and workers. The changes to the Ministry will place an even greater focus on diversifying international trade, supporting and growing small businesses, expanding tourism, promoting our exports, and improving trade within our own borders.

<sup>5</sup> *Ibid.*, page 674.

<sup>6</sup> *Shell Canada v. R.*, [1999] 3 S.C.R. 622, [1999] 4 C.T.C. 313 at para. 39.

<sup>7</sup> Prefatory Note to Revised UCC Article 8, p. 670.

Creating more jobs, opportunities, and prosperity for Canadians is the Government's top priority.

He also is clearly concerned about federal-provincial relations given the change of government in Ontario, the relationship with B.C. over pipelines and anticipated changes in Alberta and Quebec.<sup>1</sup>

The Government will build on its strong relationship with provinces, territories, and municipalities, working together to find solutions to pressing issues from fighting climate change, to creating growth that benefits everyone, to breaking down barriers to interprovincial trade.

The Government will continue to maintain the integrity and security of our borders. We remain focused on effectively managing the arrival of irregular migrants, assessing asylum seekers, making our system more efficient, and preventing the flow of illegal drugs and firearms into our communities. The Government will further address gun violence and work to reduce organized crime to keep our communities safe and great places to live.

The changes to the Ministry are as follows:

- Dominic LeBlanc, currently Minister of Fisheries, Oceans and the Canadian Coast Guard, becomes Minister of Intergovernmental and Northern Affairs and Internal Trade. Minister LeBlanc will also become President of the Queen's Privy Council for Canada.
- James Gordon Carr, currently Minister of Natural Resources, becomes Minister of International Trade Diversification. Canada's prosperity is tied to progressive trade and economic opportunities beyond our borders, and Carr will work to help Canadian people and businesses compete and succeed around the world, and diversify our trading markets. [Carr has been a strong minister from Manitoba — ed.]
- Mélanie Joly, currently Minister of Canadian Heritage, becomes Minister of Tourism, Official Languages and La Francophonie. Joly will work to increase tourism to and within Canada, and harness the full economic potential of this key sector of our economy. She will also ensure Canada's strong and sustained engagement in the Organisation internationale de la Francophonie. [Most observers believe that Joly has been a disappointment in Heritage — ed.]
- Amarjeet Sohi, currently Minister of Infrastructure and Communities, becomes Minister of Natural Resources. Minister Sohi will support Canada's important

resource industries and help them innovate to support long-term economic growth and export to new markets around the world. He will oversee important pipeline projects, including the completion of the Trans Mountain Expansion Project.

- Carla Qualtrough, currently Minister of Public Services and Procurement, becomes Minister of Public Services and Procurement and Accessibility. She will continue to work to ensure the Government of Canada's services and procurement processes are modern and efficient, while taking on additional responsibilities focused on removing barriers that prevent Canadians from fully participating in our communities and workplaces.
- François-Philippe Champagne, currently Minister of International Trade, becomes Minister of Infrastructure and Communities. Minister Champagne will implement the Government of Canada's historic plan to invest in infrastructure so that communities across the country have the tools they need to thrive, prosper, and innovate.
- Pablo Rodriguez, currently Chief Government Whip, becomes Minister of Canadian Heritage and Multiculturalism. Minister Rodriguez will help ensure the vitality of Canadian arts, culture, and heritage, while promoting the diversity and inclusion that makes Canada stronger.
- Bill Blair, currently Parliamentary Secretary to the Minister of Justice and Attorney General of Canada and to the Minister of Health, becomes Minister of Border Security and Organized Crime Reduction. He will work to ensure Canada's borders are managed in a way that promotes legitimate travel and trade while keeping Canadians safe and treating everyone fairly and in accordance with our laws. He will play an important role in coordinating efforts to reduce gun violence and tackle organized crime. Minister Blair will also continue to lead the legalization and strict regulation of cannabis, and will be the minister responsible for irregular migration. [He also adds strength to the greater Toronto team, but it is well known that Doug Ford and Bill Blair have a mutual hatred stemming from Blair's role as Chief of Police who "went after" Ford's brother Rob when he was mayor of Toronto. — ed.]
- Mary Ng becomes Minister of Small Business and Export Promotion. She will help Canadian entrepreneurs and businesses grow, compete, and succeed, here in Canada and abroad. Minister Ng will also assume responsibility for the Business Development

<sup>1</sup> These are somewhat edited version of the official [press release](#) with a couple of our own comments.

Bank of Canada. [Ng was elected in a recent by-election after working in the PM's office — ed.]

- Filomena Tassi, currently Deputy Government Whip, becomes Minister of Seniors. Minister Tassi will help the Government better understand the needs of Canadian seniors and ensure that programs and services are developed that respond to Canada's aging population. This will provide Canadian seniors and future retirees greater security and a better quality of life. [This is a new department and an addition to the cabinet — ed.]
- Jonathan Wilkinson, currently Parliamentary Secretary to the Minister of Environment and Climate Change, becomes Minister of Fisheries, Oceans and the Canadian Coast Guard. [He takes over from LeBlanc and adds west coast representation in cabinet — ed.]

In addition to these changes, the following ministers will be named as follows:

- Carolyn Bennett becomes Minister of Crown-Indigenous Relations. She will continue her work to renew the nation-to-nation, Inuit-Crown and government-to-government relationship between Canada and Indigenous peoples.
- Scott Brison becomes President of the Treasury Board and Minister of Digital Government. Minister Brison will continue his work to transform the Government's digital services so they are designed for the people who actually use them and better serve Canadians.
- Marie-Claude Bibeau becomes Minister of International Development. Bibeau will continue to position Canada as a leader in international development, while working to reduce poverty and inequality in the world, and advancing gender equality and empowering women and girls.
- Kirsty Duncan becomes Minister of Science and Sport. She will continue to support Canada's world-class science, research, and innovation ecosystem, while promoting Canadians' health and well-being through sport and recreation.
- Bardish Chagger becomes Leader of the Government in the House of Commons, a role in which she will continue to coordinate the Government's day-to-day business in the House and manage its legislative agenda. [She previously had the Small Business portfolio as well — ed.]

## Quebec Years to Collect Federal Taxes

After a resolution passed in the National Assembly in May, the Quebec government will ask Ottawa for the power to collect federal taxes in a move that could reduce paperwork for companies and individuals who would only have to file a single tax return instead of two. Members of the National Assembly adopted a unanimous motion calling on Ottawa to allow Quebec to administer a single-tax system.

Of course, this approach is exactly the opposite of what is the case elsewhere in Canada where the feds collect on behalf of the provinces.

The conceptual idea is that there would be some significant savings in terms of eliminating redundancies. But it is not clear whether or not the redundancies would be more efficiently handled if the feds took over the Quebec tax system.

With an election pending in the fall, there is even more posturing by Quebec politicians than usual. While federal authorities have said publicly they are willing to discuss giving Quebec full tax-collecting powers, a government source said the federal Liberal government opposes the idea. A [CBC report](#) states that:

Finance Minister Carlos Leitão has said the government will "very soon" send an official letter to Ottawa on the subject. "It takes times, these are complex issues . . . and yes, we will take up the fight," Leitão said.

Quebec is the only province to have a tax department that is completely independent and distinct from the federal government. The province has also collected the GST in Quebec for the federal government since the early 1990s.

Ewan Sauves, a spokesman for the Coalition Avenir Québec, said in an email his party doesn't have a precise number, but estimates the province would save "several hundred millions of dollars."

Audrey Cloutier, a spokeswoman for Leitão, said the government doesn't have a specific number either, but added that if Quebec received full federal tax-collecting power, "one element must be maintained."

"It all has to be done without compromising Quebec's fiscal autonomy," she said. "If there is a single tax return, it must be administered by Quebec."

Of course, the attraction of a separate provincial return (no matter who collects the funds) is that the province can tailor its provincial tax system to deal with unique issues without consulting the feds. The CBC report continued:

The position of the province's main parties contrast with the conclusion of a Quebec government report in 2015 that looked at finding efficiencies in the state's public programs.

Lucienne Robillard, who held office at the provincial and federal level for the Liberals, headed the committee that created the report.

It stated Quebec would receive almost \$400 million in direct savings if it handed over its tax-collecting power to Ottawa.

The province would, however, be deprived of about \$700 million in tax-evasion collection that was conducted by the provincial revenue department, it added.

Robillard's report recommended Quebec "seriously consider the option of transferring its tax administration operations to the federal government."

That recommendation was quickly shelved, however. [*Don't confuse us with facts!*]

Robillard also noted in her report that her recommendation would hit a nerve in Quebec society.

"The commission emphasized the sensitive nature of the issue," the report stated. "The setting up by Quebec of an independent tax administration was a striking illustration of Quebec's determination to achieve autonomy, during the period immediately preceding the Quiet Revolution."

Alexandre Laurin, director of research at the C.D. Howe Institute, said he agreed with the report.

"I don't deny there are some cost savings for eliminating duplication," he said. "I think what makes more sense is for the Canada Revenue Agency to take on administering taxes for Quebec. They already do it for free for the nine other provinces."

The debate has surfaced a few days after the federal Conservatives in Quebec passed a resolution aimed at eventually combining federal and provincial tax returns into a single form collected and administered by the province. Andrew Scheer has come out in support of the idea . . . chasing Quebec votes as he is.

## PBO Opines on Tax Implications of Health Care Speculation

The federal government announced in Budget 2016 that it would undertake a comprehensive review of federal tax expenditures. The objective of the review "is to ensure that federal tax expenditures are fair for Canadians, efficient and fiscally responsible".

In January 2017, several news sources indicated the federal government was considering taxing employer contributions to private health services plans and/or employee benefits received from such plans. The measure did not appear in either Budget 2017 or Budget 2018, and the government has not indicated whether it is still considering this option.

Under the baseline tax system, most employer-paid benefits are taxed at the personal level. For example, the value related to the personal use of an employer-provided vehicle must be computed and added to an individual's taxable income when he or she files his or her tax return.

Employer contributions to extended health benefits or dental plans are excluded from that rule. Employees receiving benefits from such plans do not have to include them in their taxable income. However, the employer can still deduct the value of the premiums paid from its taxable income (as any other business expenditure).

Two Members of Parliament requested that the Parliamentary Budget Officer estimate the federal income tax revenue that would be generated if the government were to treat employer-paid health plans as a taxable benefit. They also requested the impact of this measure on different Canadian households. The [Executive Summary](#) states that:<sup>1</sup>

PBO determined that this measure would increase federal personal income tax receipts by \$2.8 billion.

The majority of the new tax burden would be borne by high-income individuals, since they are the people most likely to work in jobs that provide such benefits. They are also the taxpayers facing the highest marginal tax rate.

However, when lower income workers or retirees receive such employer-provided benefits, they would face a higher

<sup>1</sup> [http://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2018/Taxation%20of%20EHB/Taxation\\_EPHB\\_updated%202018-06-01\\_EN.pdf](http://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2018/Taxation%20of%20EHB/Taxation_EPHB_updated%202018-06-01_EN.pdf).

tax burden, although it would be mitigated to some extent by the medical expense tax credit.

Taxable benefits (whether in cash or non-cash benefits) are generally pensionable, and thus subject to Canada Pension Plan (CPP) contributions. Therefore, CPP contributions would also increase by \$532 million.

CPP contributions are capped at maximum annual pensionable earnings of \$55,900. Consequently, it is only employees earning less than this amount who would be affected by including health benefits in their taxable income.

For example, an employee that benefits from an extended health care plan paid at 100 per cent by the employer (representing an average annual premium of \$1,400), and who pays the current CPP contribution rate of 4.95 per cent, would incur an annual increase of \$70 in his or her CPP contributions.

In the case of Employment Insurance (EI), non-cash benefits are not insurable. Therefore, the inclusion of employer-provided health benefits would not increase EI contributions or benefits for employees.

Finally, including these benefits in an individual's taxable income would also increase his or her net income (line 236 of the T1 return). This figure is used to determine the amount of Canada Child Benefit (CCB) that will be paid in the following year. Thus, the federal government would also incur a \$317-million decline in CCB payments the following year.

Similarly, benefits for the elderly would decrease. These include the Old Age Security, Guaranteed Income Supplement and the Allowance for a spouse/common-law partner.

Summary Table 1 presents the breakdown of the fiscal impact for the federal government of including such employer-paid benefits in the taxable income of the recipient.

<b>Change in federal tax revenues and transfer payments (2018)</b>	<b>\$ millions</b>
<b>Tax or transfer item</b>	
Federal Personal Income Tax	2,838
CPP Contributions	532
Working Income Tax Benefit	-35
Canada Child Benefit	-317
Old Age Security	-47
Guaranteed Income Supplement	-27
Allowance for Spouse/Common-law Partner	-5
Refundable Medical Expense Supplement	-10
<b>Federal Net Balance</b>	<b>3,810</b>

## Employee Directed Gift to a Charity

Making a charitable donation in honour of or in memory of a third party is of course a common event. In such a case, the donor will normally get a receipt for tax purposes and the charity will arrange for the fact of the donation to be known to the honouree or the deceased's family.

But a **ruling letter**<sup>1</sup> from the CRA deals with a different fact situation which may be of some general interest. To understand the gist of the ruling you have to know how the CRA deals with gifts to employees for long-term service.

The question posed was:

whether an employee will realize an employment benefit if the employee opts to forego a non-cash gift valued under \$500 that the employee is otherwise entitled to under the [employer's incentive] program, with the result that the employer would make a cash gift of a specified amount to a specified registered charity. For starters, in this situation, the employee would not receive the charitable donation receipt.<sup>2</sup>

**Paragraph 6(1)(a)** of the *Income Tax Act* states that a taxpayer's income from an office or employment shall include "the value of board, lodging and other benefits of any kind whatever received or enjoyed by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment", with certain stated exceptions. An amount or benefit not directly received or enjoyed by a taxpayer may also be included in his or her income under these provisions under **subsection 56(2)** of the Act.

Although, there is no provision in the Act that excludes gifts and awards provided to an employee from being subject to tax, the CRA has an administrative policy that allows an employer to give an employee a non-cash long-service or anniversary award valued at \$500 or less, tax free. The award must be for a minimum of five years' service, and it has to be at least five years since the employer gave the employee the last long-service or anniversary award. Any amount over the \$500 is a taxable benefit. A complete detail of the administrative policy is available on the CRA website at [www.cra.gc.ca/gifts](http://www.cra.gc.ca/gifts).

So what happens if the employee, instead of taking the gift, asks that it be donated to a charity?

Subsection 56(2) of the Act states that "a payment or transfer of property made pursuant to the direction of, or with the

<sup>1</sup> **CRA Views 2012-0440821E5**, Non-cash long-service award and cash donation, March 5, 2013.

<sup>2</sup> The ruling is silent on whether the employer would get a receipt.

concurrence of, a taxpayer to some other person for the benefit of the taxpayer or as a benefit that the taxpayer desired to have conferred on the other person . . . shall be included in computing the taxpayer's income to the extent that it would be if the payment or transfer had been made to the taxpayer". The concurrence or participation of the taxpayer in the conferring of the benefit to a third party may be passive or implicit and can be inferred from all the circumstances of a particular situation. This provision is discussed in detail in [Interpretation Bulletin IT-335R2](#) — Indirect Payments, dated July 12, 2004, which is available on the CRA website.

And then we get to the nub of the ruling.

Generally, we are of the view that where an individual directs that an amount to be received from an office or employment be paid directly to a charity, subsection 56(2) of the Act will apply to include that amount in the employment income of that individual in the same manner as if it were paid directly to the individual. **However, in light of the facts that the long-service award conferred on the charity would have been a non-taxable non-cash gift if it were received by the employee; the employee, employer and charity are dealing at arms length; the employee does not receive a charitable donation receipt; and the donation is under \$500, it is our view that the CRA administrative policy on non-cash gifts and awards would apply providing that the employee would not forego any salary, other compensation or taxable benefits as a result of the donation.** [Our emphasis.]

The ruling makes perfect sense from a tax point of view and we think this is a wrinkle which interested people might tuck away for future reference. The fact situation might not arise very often but when it does, the ruling will be useful.

## A Useful Quote

We recently had a discussion with a colleague about the need to keep even minimal receipts in conjunction with a short trip. Do we really have to have chits for a couple of short cab rides, a receipt for a quick sandwich and coffee for lunch and so forth?

I suggested that keeping scores of receipts was a waste of time, recalling that former Finance Minister Ben Benson when introducing tax reform in 1970 said his intention was not to force every Canadian to become a bookkeeper.

My colleague responded with the usual and obvious comments about CRA auditors.

But we countered with a case to back up our view from no less an authority than former Chief Justice of the Tax Court of Canada, Donald Bowman.

Sometimes cases contain gems which the average reader will miss, but which may be useful in other situations as useful citations. We read the decision of Judge Donald Bowman in the case of *Merchant v. The Queen*<sup>1</sup> some years ago.

The issue in question was the deductibility of certain expenses by a high-profile Saskatchewan lawyer.

Bowman states at paragraph 23 of the reasons for judgment:

**It is my view that there is no requirement in law that expenses be supported by receipts or other corroboration if such expenses can be supported by credible viva voce testimony and the amounts can be identified with a reasonable degree of specificity (*Weinberger v. Minister of National Revenue* (1964), 64 D.T.C. 5060 (Can. Ex. Ct.)). Subsection 230(2.1) of the *Income Tax Act* specifically requires persons carrying on business as lawyers to keep books and records. **Why lawyers are singled out is uncertain, but I do not regard compliance with section 230 to be a prerequisite to the deductibility of expenses if they can otherwise be proved.** Failure to keep books and records carries its own sanction but had Parliament intended that sanction to include non-deductibility of expenses it would have been quite capable of saying so. [Our emphasis.]**

We offer this quote as a potentially useful precedent for any readers who can use it.

<sup>1</sup> 1998 Carswell Nat 630, [1998] 3 C.T.C. 2505 (T.C.C.).