**Whistleblower's Document…** **(2011.11.11)**

# PREDOMINANT PURPOSE *R. v. Gunner et al 2005*

**Webster's New World Dictionary 1957 Definitions:**
**Predominant…**most frequent, noticeable, etc.; prevailing; preponderant.
**Purpose…**to aim, intend, resolve, or plan:

1. something one intends to get or do; intention; aim;
2. resolution; determination;
3. the object for which something exists or is done.

**Presumption…**taking of something for granted.
**Purported…**to give the appearance, often falsely, of being, intending, etc.
**Preponderance…**greater in amount, weight, power, influence, importance, etc.
**Regulatory Audit…**an open and "transparent" examination and checking of accounts or financial records.
**Regulatory Auditor…**an officer who examines and checks accounts in an open and transparent manner with the taxpayer.
**Investigation…**careful search or examination; systematic inquiry. Refers to a detailed examination or search, often formal or official, to uncover facts and determine the truth (the investigation of a crime).
**Investigator/Auditor…**an officer who searches and gathers evidence and information in an undercover and covert manner to further a criminal investigation with the intent to prosecute. This officer is connected to AIMS Information Management System and is stationed in a Work Section under the Verification and Enforcement Directorate. This is the officer of at issue in respect to determining Predominate Purpose.

**INTENT & OBJECTIVE**
The primary intent of this document is to provide the impetus that advances the law in this area of criminal justice, an area where judicial determinations have traditionally been misguided and improperly rendered from limited fact and opinion alone, which has notably resulted in a zigzag of assumed judgments easily overturned from one court to the next on a myriad of altered opinions and speculation into the context of another's intent and purpose.

Whereas the secondary objective of this document is to provide legal defence teams, litigating "Tax Prosecutions", with a guide of concise explanations, directives and an exclusive disclosure listing that identifies pertinent disclosure data necessary for full answer in defence with respect to the determination of "Predominant Purpose".

This document also critically exposes the cult like esoteric functions within Canada Revenue Agency, mandated for prosecutions, in the form of "Audit/Investigation Teams". Teams that covertly discriminate the very essence of the Canadian *Charter* of Rights and Freedoms.

The reader will find a comprehensive listing of disclosure essentials in the last pages, which all defence teams are advised to base their pre-trial disclosure application on, while also informing the Crown there is need for pre-trial witness interviews, especially if it is anticipated the trial will open with a *voir dire*. It certainly is advised that defence teams insist the trial open with a *voir dire* in the determination of "Predominate Purpose" under the *Charter*.

The information contained in this document "cracks the nut" so to speak, however it is important one understands in this huge medium of policy and procedure, that disclosure begets disclosure, from a reluctant Canada Revenue Agency in protection mode of their prosecution.
Therefore, defence teams must maintain disclosure diligence and persistence without compromise…guard against accepting unverified speculation in Crown testimony including any unsolicited statements of speculation made by the Crown Prosecutor. Should the Crown witness not be sure or simply does not know the answer under questioning…defence must therefore insist the Crown provide a witness "expert" familiar with the specific process or circumstances and capable of providing the court with a full and complete answer under oath.

The subject Gunner Case introduces a new defence perspective to tax evasion cases that exposes the Agency's affinity to procedural corruption knowingly condoned by the Crown. This form of procedural corruption is specifically intended to usurp the Charter in favour of the prosecution's theory, which follows a misleading and deceitful program in application across Canada.
Clearly these actions must stop…therefore the Gunner Case provides the exposed delineation necessary to do just that.

***R. v. Jarvis 2002 SCC 73***

With admitted difficulty, the Supreme Court of Canada deliberated the quintessential elements of "Predominant Purpose" and arrived at a set of some 7 guiding factors, with the Court concluding that no one factor is necessarily determinative in and of itself, but that courts <u>must</u> assess the totality of all the circumstances.

The following excerpts provide insight into the general perspective taken by the Supreme Court in its deliberations, which led to an outline of 7 guiding factors under paragraph 94(a) to (g).

88… In our view, where the predominant purpose of a particular inquiry is the determination of penal liability, CCRA officials must relinquish the authority to use the inspection and requirement powers under ss. 231.1(1) and 231.2(1). In essence, officials "cross the Rubicon" when the inquiry in question engages the adversarial relationship between the taxpayer and the state. <u>**There is no clear formula**</u> that can answer whether or not this is the case. Rather, to determine whether the predominant purpose of the inquiry in question is the determination of penal liability, one must look to <u>**all factors**</u> that bear upon the nature of that inquiry.

We have been directed to a plethora of cases that have attempted to draw the line between audit and investigation for income tax purposes. There is a lack of consensus on the matter.

84… Although the taxpayer and the CCRA are in opposing positions during <u>an audit</u>, when the CCRA exercises its <u>investigative function</u> they are in a more traditional adversarial relationship because of the <u>liberty interest</u> that is at stake. In these reasons, we refer to the latter as the adversarial relationship. It follows that there **must be some <u>measure of separation</u> between the audit and investigative functions within the CCRA**.

93… To reiterate, the determination of when the relationship between the state and the individual has reached

the point where it is effectively adversarial is a contextual one, which takes account of all relevant factors. In our opinion, the following list of factors will assist in ascertaining whether the predominant purpose of an inquiry is the determination of penal liability. Apart from a clear decision to pursue a criminal investigation, no one factor is necessarily determinative in and of itself, but courts must assess the totality of the circumstances, and make a determination as to whether the inquiry or question in issue engages the adversarial relationship between the state and the individual.

94… In this connection, the trial judge will look at all factors, including but not limited to such questions as:

(a) 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?

(b) Was the general conduct of the authorities such that it was consistent with the pursuit of a criminal investigation?

(c) Had the auditor transferred his or her files and materials to the investigators?

(d) Was the conduct of the auditor such that he or she was effectively acting as an agent for the investigators?

(e) Does it appear that the investigators intended to use the auditor as their agent in the collection of evidence?

(f) Is the evidence sought relevant to 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?

(g) Are there any other circumstances or factors that can lead the trial judge to the conclusion that the compliance audit had in reality become a criminal investigation?

In summary, wherever the predominant purpose of an inquiry or question is the determination of penal liability, criminal investigatory techniques must be used. As a corollary, all *Charter* protections that are relevant in the criminal context must apply.

From a comprehensive review of the "plethora of cases" that have been used in an attempt to draw the line between audit and investigation, a commonality in theme arises from the **presumptive premise** that there was an "auditor," and that there was a "statutory administrative audit" in all of these cases. However, evidence to follow will show that the typical prosecution activities, performed by the Agency, abuse the nondescript label of "auditor", which is applied to an "Investigation Officer," and the term "audit," which equates to a variety of "Stage 1 Preliminary Investigation Programs." Therefore we must determine through the transparency of disclosure whether any of the above factors apply, enabling us to ultimately arrive at predominant purpose.

With regard to ***Kligman v. M.N.R. (C.A.) 2004 FCA 152*** at paragraph 31 it is noted: "It is important to look at the **"record"** to see if it appears that a decision to proceed with a criminal investigation could have been made. FCA determined that the text is cast in terms of a mere possibility as opposed to a probability and the Supreme Court itself has underlined that fact."

Sections 231.1(1) and 231.2(1) of the *Income Tax Act* provide a CRA auditor with inspection and requirement powers. Similar provisions exist in the *Excise Tax Act*. These are significant powers necessary to monitor the self-reporting nature of the taxation system. However, there is no oversight mechanism preventing CRA investigation officials from covertly abusing those regulatory audit sections as an investigation tool for collecting of evidence to further an intended

prosecution.

With guarded apprehension and in a somewhat contradictory manner, the Supreme Court of Canada clearly expressed its concern regarding giving CRA the self-governing right to arbitrarily decide when sections 231.1(1) and 231.2(1) can no longer be relied on.

The paragraph 91 from the Supreme Court ***R. v. Jarvis 2002 SCC 73***

91… we believe that allowing CCRA officials to employ ss. 231.1(1) and 231.2(1) until the point where charges are laid, might promote bad faith on the part of the prosecutors. Quite conceivably, situations may arise in which charges are delayed in order to compel the taxpayer to provide evidence against himself or herself for the purposes of a s. 239 prosecution.

It is generally accepted and quantitatively documented from previous case law that the record of Canada Revenue Agency's investigation activities are less than pristine when it comes to the application of the *Charter* rights. It goes without mention that the Agency's investigation functions are highly motivated by budgets, statistics, and reports, to succeed with their mandated function of convictions…"Prosecutions."

It follows that compliance with *Charter* conditions is cumbersome and a primary obstacle to the mandated objective of the Agency's investigation units. It is understandable then that these investigation units would wish to avoid competing issues with the *Charter*, in order to make their accessibility to evidence that much easier, thereby better ensuring a timely and successful conviction in virtually every case, regardless of individual rights.

Undoubtedly their conviction statistics would be impressive, budgets would increase, investigation departments would be expanded, and activity would be increased, using the most modern technology available. And, of course, there would be the higher wages with percentage bonuses based on the garnished revenue. Oh, how power corrupts!

To suggest that the Agency's investigation units do not have the clandestine ability or are lacking the incentive and motivation to employ sections 231.1(1) and 231.2(1) in assistance of their investigation activity, would be tantamount to denying the existence of gravity.

The Agency's investigation units must be compared with Police investigation units. The employee personnel in both investigation units are legally qualified as "authorized persons". Both are to be governed by specific rules for legal investigation interview procedures.

Under the Agency's operation, immediately, a problem of distinction and activity identification becomes a major concern. What separates the "authorized person" acting in the scope of an Investigation, from a "regulatory auditor" when virtually everyone employed by the Agency are semantically considered to be an auditor, whether it happens to be the Chief of Investigations or an Investigations Officer? Assuredly, they all have worked their way up through the ranks and truly believe themselves to be trained auditors in addition to what their current job description may be in

an investigation unit.

In regard to listed reference material, **"AIMS Online Manual"**, a major systemic deception is identified, which the Agency has knowingly designed into "Program Types" as matched with "Investigation Types", which adapts to the needs associated with a "Preliminary Stage 1 Investigation" activity.

The transparency of "Job-description" identification goes to the very heart of "predominant purpose", in being able to establish a job distinction and activity, within the Agency.
In contrast, the need to establish "predominant purpose" is rarely an issue in police investigations, mainly because police wear uniforms, carry a badge, and their training and qualifications are retrievable. Police do not have a regulatory function for demanding interview and document assistance, they are deemed to be in an investigating mode at all times, therefore police have no ulterior motive to conceal authorized status in their pursuit of evidence. The same, however, is not true of Agency investigators.

It is safe to say that zealous police detectives would find such a statutory authority desirous by legislatively permitting access and review a suspect's affairs prior to making application for a search warrant or laying charges. Such an issue has been the basis of debate over "personal-privacy protection", which has become more prominent in the aftermath of 9/11.

The police are persistent in their demands for loosening restrictions imposed on them by the *Charter*, and the same forces flourish in the Agency's investigations units as well. The police however don't have any regulatory authority set out under the Criminal Code, which simply makes the administrative sections 231.1(1) and 231.2(1) in the ITA and ETA, dangerously alluring and vulnerable to abuse by the investigation authorities that function within the Agency.

For one to believe that the Agency's undercover investigation activity would not manufacture a procedural method that would make an investigational use, of these sections, is simply naïve.

This document is intended to be a "whistleblower" in regard to exposing the Agency's contempt of *Charter* rights in its prosecution methodology knowingly formulated and designed to mislead the courts and defence teams.

***R. v. Jarvis 2002 SCC 73***

84… Although the taxpayer and the CCRA are in opposing positions during an audit, when the CCRA exercises its investigative function they are in a more traditional adversarial relationship because of the liberty interest that is at stake. In these reasons, we refer to the latter as the adversarial relationship. It follows that there must be some measure of separation between the audit and investigative functions within the CCRA.

The above paragraph 84 addresses a need to identify "separation", which would be inherent within the administrational operations of the Agency, where transparency of full disclosure is prerequisite to any case. The defence's demand and persistence for full disclosure relative to the computerized

case tracking, administrative and internal accounting documentation, is an area of disclosure information that has been historically under developed by all the current guiding case law citations before the courts.

The above noted recognition by the Supreme Court requires a defined "separation" between audit and investigation, coupled with the important 7-factors a trial judge must consider, with special regard to full disclosure of the "record" as a factor that involves all the administrative/accounting functions within the Agency's project tracking controls.

Disclosure of the "record" is the single most important factor that essentially goes to answer all the necessary conditions respective to separating audit and investigation if such a separation exists, as previously reported. Acknowledgement of "record" disclosure amounts to being a major advancement of law in respect of the *Charter*, which therefore makes it incumbent on the defence to know what constitutes as being the "record".

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Returning to the initial premise, the evidence in the case at bar, ***R. v. Gunner Industries Ltd. et al.***, shows that the identifier of the separation point between audit and investigative functions is within the organizational system maintained by the Agency investigations units, which select, process, and track targeted prosecution projects. Information of which is consolidated to a Case Number, which forms the basis of the Agency's administrative system of accounting for expenses relative to all the prosecution projects.

In all of the cited cases, it is useful to recognize the similarities in the identified activities as they develop and manifest around an audit/investigation stratification, and how all the elements settle into the overall scenario presented by the Crown.

It is important to identify and address three interconnected functions typical to the sound operation of any business, including the Agency. The Agency's investigation directorate is easily defined as a business requiring sufficient organizational controls in order to facilitate a variety of routine statistic reports. Their little-known system involves various coded activities, levels of computer data access, and training, which makes it difficult, if not impossible, for the basic Agency employee to fully comprehend the totality of the system, making them poor witnesses in any trial. The system is best described as an esoteric system, since it is understood by only a chosen few. Therefore only expert witnesses relative to each respective category are competent to testify.

It is important the defence, becomes proficient in all categories prior to formulating the examination of these expert witnesses. Defence must identify and call for the special witness types required, and insist that it be permitted to pre-trial interviews with each of the witness provided by the Crown. This is a critically important activity, especially when a *voir dire* is anticipated at the commencement of the trial.

It is essential that defence acquire a basic understanding of three areas:

1. The Agency's investigation policy and procedural guidelines governing the principles behind their operations;
2. How the Agency maintains a progressive reporting record of their prosecution projects;
3. How the Agency administratively accounts for their prosecution projects.

The following expands on these three areas of disclosure focus:

**Disclosure Area**

**1.** The Agency's policy and procedure guidelines, while not being law, does however spell out the legal principles behind their operation; the transparency of guidelines are an absolute necessity to any governmental organization that is required to perform efficiently and within the law, as well as maintaining statistics for accurate activity and progress reporting. The two manuals that contain investigation operational data are the "Tax Operations Manual" T.O.M. 11 and its 2001 replacement manual called the "Investigations Manual".

The most important demarcation identifying a decision to prosecute, is the assignment of a **Case Number**, which apart from numerous other mentioning in the T.O.M. 11, is most accurately defined under sections 1142.2(2) (D) and 1142.2(2) (E) (b), which reads: **"When a T134 Referral is accepted for a preliminary investigation, the Case Number will be assigned immediately, showing the date of the decision"**.

The **Case Number**, in effect, becomes the tracking identifier as a **Prosecution Project Number**, not unlike the assignment purpose of police **Case Numbers** or, as in construction, a **Project Number**. One will note upon comparing the two noted Manuals that the latter is void of any Case Number data, which implies that the particulars surrounding a **Case Number** is a sensitive area that must be clearly defined by the defence in disclosure. It is also semantically important to recognize that the **Case Number** may also undergo other titles, such as **Order Number** or **Link Code**.

Focus must also be placed on investigator training courses in respect to the "Criminal Investigations Program" (TD1310-000 Initial Course and the TD1312-000 Advanced Course).

Request copies on Disk or Paper of the following Training Courses complete:

a. Special Investigations Orientation Training Course No.1301
b. Special Investigations Initial Training Course No.1302
c. Special Investigations Advanced Training Course No.1304,
d. Special Investigations Information Session No.1305,
e. Special Investigations First Line Supervisor Study Session No.1306

Once defence has reviewed the above policy and procedure data contained in the above material, subsequent examination of the special Agency witnesses will make your case in any number of categories.

**Disclosure Area**

2. In regard to listed reference material, "AIMS Online Manual" and the "AIMS Overview Manual", show how the current Canada Revenue Agency (CRA) maintains records of their prosecution projects and how this AIMS computerized system, developed in the early 90's, functions.

   From these Manuals, one develops a sense of the AIMS integrated tracking system in prosecution development.

   Firstly, it is important to note that the AIMS computer network separates the revenue Agency into two distinctly separate operational areas. There are the "external" AIMS work sections and there are the "internal" AIMS work sections. The "external" AIMS sections are comprised of the regulatory functions, such as payroll audit, corporate tax audit, collections, etc., and they do not have direct access to the AIMS network. Whereas the "internal" AIMS sections are comprised of "investigation/audit" teams, groups that function under and report to the Verification & Enforcement division. Each employee of the "internal" AIMS sections has access to AIMS system through a personal entry code, which is regularly changed. The "internal" groups are also said to be "under the umbrella" of AIMS system.

   In both of the above noted Manuals, there is a computer "Screen Index" that outlines the Screens "0" to "8" and "A" to "N". The index opens with "Screen 0", which is identified as the "Investigation Leads". The next screen is indexed as "Screen 1", which holds the basic program information on the taxpayer. It is important to note that when this screen is initiated, a "Case Number" is automatically registered.
   Indexed "Screen 2" opens a "File Number" or Numbers, and may be used to identify any number of other specific entities related to the same Case Number.
   One of the most important 2-page AIMS screen is indexed "Screen 3", which is the "History of Case Assignment". This screen holds the listed names of the investigation officers and dates they were given case assignment or given re-assigned status to the case stages.
   "Screen 4" holds "Comments" and notes important to the case's development.

   The Prosecution tracking data starts on "Screen G," as the Stage 1 Preliminary Investigation, which is followed by "Screen H," the Stage 2 Investigation (Full Scale), and then "Screen I" the Stage 3 Court proceedings.

   All prosecutions comprise of 3-Stages or levels of referred case progress. Each stage contains the respective initiation and completion dates, as well as the name of the investigation officer assignment, as the AIMS computer system progressively tracks the project from one stage as it is referred to the next stage. In this manner, all levels of management and Head Quarters, given an access code to AIMS can review the case's

current status.

**ANALYSIS PROCESS STARTS**
Unless the process is self-initiated by the "internal" AIMS Investigations Units, the process is purported to start when an "external" auditor discovers, during a routine administrative audit, information suggesting the presence of what appears to be tax evasion.

This auditor, or as identified in AIMS Online Manual "Original Referrer," relays details of this suspicious information to an experienced investigation group for analysis, initiating what is regarded as the "Consultation" period. Based on a determination of prosecution potential, a request is made to have the "Original Referrer" prepare a "formal referral", which is a T134 Fraud/Prosecution Referral form. This is accompanied with a "Referral Report".

**PROSECUTION CONFIRMED**
Once the "formal referral" T134 form is received, the taxpayer data on the form is then used to initiate a new case using AIMS Screen 1, a Case Number is then immediately assigned to the project, and the numbered project now becomes part of the AIMS investigation inventory.

Although there was an early "Consultation" decision on prosecution potential, the official confirmation of a prosecution comes with the entry into the AIMS tracking network and the automatic assignment of a tracking Case Number, a number, which will now be continuously in use during the administrative/accounting life of the new project.

Detail regarding the assignment of a Case Number, who authorized it, and why it was authorized, is the specific disclosure data critically important to the defence's case, which traditionally were areas not fully understood, appreciated or explored in previous case law, but is undeniably relevant to the overall "record" necessary in determining "Predominate Purpose".

T.O.M. 1151.2 provides guidelines and common denominators regarding "what constitutes a Case", which establishes the existence of a determination procedure knowingly utilized by the Agency to initiate a "Case" with and intent to prosecute. The particulars of this determination form part of the "record", which constitutes as data required in disclosure proceedings. It is important to understand that a Case Number would not be assigned until a "Case" has been firstly determined. Therefore it can be deduced that appearance date of a Case Number is the clear demarcation of a determined prosecution "Case".

**AIMS Screen "G"… AIMS Stage 1 Preliminary Investigation:**

At this stage, the numbered AIMS inventory case (Case Number) is assigned to an "Investigations Officer" to proceeds with the prosecution project by initially processing the T134 Prosecution Referral and Workload Development. Both tasks are outlined under the T.O.M. 1141 & 1142, which are noted activities conducted and controlled by the Special Investigations Section.

There is at least one other manual that proves helpful in exposing prosecution procedural evidence. That is the "Investigations Training Orientation Course" which is a training course held in the Agency's library under #HQ1301-000. This Course corresponds with the Course list under disclosure area #1 above. This Course confirms the intent of a Stage 1 Preliminary Investigation as being the "undercover operation," which goes on to state this "field audit action" may involve the borrowing of books and records by the "Investigation Officer," and, unlike regular "Audit" practice, is explained as a slow methodical "Case" development process over many months or possibly years.

There is a form the "Investigation Officer" uses while performing his or her field audit called "Audit Findings Checklist," which contains a directive note as follows: "It is recommended that a Checklist be used when preparing a referral to Investigations." Therefore the use of such a "Checklist" is confirmation of the intent to prosecute, and outs the undercover nature of the alleged audit encounter.

Further, as noted from retrievable testimonial evidence, the three-page Checklist was formulated and is obtained from Special Investigations. The type and style of questions outlined in the Checklist deal primarily with the search for *mens rea* and to evidence that would be necessary to develop a prosecution instead of a tax liability. Refer to Supreme Court factor (f) previously noted.

In respect to the AIMS Screen "G" Stage 1 Preliminary Investigation the employee "Investigation Officer" is provided with a "Program Type" which provides the procedural prosecution plan to follow. A list of some 22 various "Program Types" are found in the "AIMS Online Manual", with each "Program" matched with an "Investigation Type 1-4".

The selected "Program Type" is part of the basic data entered into the initiating AIMS Screen 1, which generates the "Case Number", and follows through as the AIMS Stage 1 Preliminary Investigation activities as related to AIMS Screen "G".
For example, the "Investigation Officer" may be working with "Program Type 41" which is deceivingly referred to as a "Business Audit", functioning as the AIMS Stage 1 Preliminary Investigation.

Once the "Investigation Officer" has completed his "Program Type" in the AIMS Stage 1 Preliminary Investigation, all the resulting evidence collected involving informant leads, documents, and document copies, working papers, and any borrowed books and records, are attached to a T133 "Project Information" package and submitted as a "referral" to the

Director of Investigations.

The “Investigation Officer” has, by this time, discovered what he believes to be *mens rea*. The T133 submitted package is, in effect, a lead “referral” of “Project information” necessary to move the project into the AIMS Stage 2 Investigation.

The Director of Investigations reviews the referred evidence folders and makes a decision to advance the prosecution project to the next level by initiating an AIMS Stage 2 Investigation and move the prosecution project tracking to the “AIMS Screen H”.

Note: Moving from AIMS Stage 1 Preliminary Investigation to the AIMS Stage 2 Full Scale Investigation, has been traditionally presented, by the Crown, as being the demarcation decision by Special Investigations to accept or refuse a file “referral” as submitted by a purported auditor, thereby the Crown would have you believe this “referral” separates an audit from investigation.

The shortcoming relative to all previous case law shows the AIMS computerized staged prosecution tracking system has been overlooked and therefore defence has never gone behind the “referral” to Special Investigations to actually realize the purported auditor was assigned to the AIMS Stage 1 Preliminary Investigation that lead up to the AIMS Stage 2 “referral” to Special Investigations.

It has been a falsely accepted premise, submitted by the Crown, that when auditor refers a file to Special Investigations, an investigation case is created at that point. It is important to understand that such a “referral” to Special Investigations is in fact a referral to the AIMS Stage 2 Full Scale Investigation from a Case already set up in the AIMS tracking system and is moving from Stage 1 Preliminary Investigation activity to Stage 2 Investigations activity, all part of the “Criminal Prosecutions Program”.

The Crown, by exclusion, has managed to maintain a nondisclosure veil over the details regarding the “record” of procedures that involve the “referral” details from one stage to another stage relevant to a prosecution project, and the defence, up to now, has failed to realize these prosecution stages even existed in respect to correctly determining the “record” of “predominate purpose”.

**AIMS Screen “H”… AIMS Stage 2 Investigations:**
This is defined as the “Full-Scale” Investigation activity tracking level, also assigned to an “Investigations Officer,” where the initial involvement is the preparation of the “Information” necessary to apply for a search warrant in order to seize and secure documents anticipated to be used as evidence for conviction.

The basic information incorporated in the Search Warrant application is primarily derived

from the AIMS Stage 1 Preliminary Investigation as set out on a T133 Project Information package.

Once seizure of documents has been executed under the warrant, the AIMS Stage 2 Investigation Officer, who may or may not be the same employee as the Stage 1 Investigation Officer (See your disclosure of AIMS Screen 3 Case Assignment History), uses these documents to further develop the prosecution, compile and organize the material evidence necessary for a "referral" to the Department of Justice and the initiation of the AIMS Stage 3 Court.

**AIMS Screen "I"… AIMS Stage 3 Court:**
Here again the case is assigned to an "Investigation Officer," who may or may not be the same employee as the Stage 1 or Stage 2 Investigation Officer (See your disclosure of AIMS Screen 3 Case Assignment History). This assigned officer would be familiar with the case, and capable of testifying in regard to prosecution evidence to be introduced at trial, as well as coordinating the evidence and assisting the Crown Prosecutor, assigned to the case, throughout the subsequent trial proceedings.

**Disclosure Area**

**3.** The third area of discovery involves how the Agency administratively accounts for their prosecution projects. Reference is made to a "Finance and Administration Manual", "AMS Fast-Track", and specifically TOM 1151.5 highlights the **importance of accuracy** of "time sheets" with respect to statistics vital to planning and developing prosecution programs.

Currently the Agency's "time sheets" are identified as Time/Activity Records (RC509), and previous to that they were identified as Regular Activity Records (RC500). The latter "time sheets" only display regular time, while overtime is reported on the former.
With reference to TOM 11(19) 0 Special Investigation Reports (1993), "time sheets" at that time were formatted as T22 Weekly Time Reports. Currently "time sheets" are computer generated but contain the same data entry.

This information is being outlined to point out an important source of disclosure information regarding the daily activity of Agency employees, which is contained in their administrative/accounting "weekly time sheets". Disclosure of these documents provides the potential to develop the most accurate "record" of activity directly related to coded activity types, dates and time of day. This data is handwritten disclosure and extremely relevant to a defence team attempting to confirm the actions of certain individuals, for examination, as well comparisons can be made to the AIMS Screen dates and assignments, all necessary in determining predominate purpose.

**Therefore full and complete disclosure and analysis of such "time records" should**

**be the absolute first and highest priority of all defence teams,**

This disclosure now opens an original source of important information in the determination of a purported auditor's actual status, and may also provide a defence team with additional lead material that facilitates the discovery of other interconnected persons and activities requiring additional disclosure.

Time reports are irrefutable comprehensive "records" of an employee's involvements, which are outlined using "Activity Codes" accounting for every 15 minutes of employee time. The RC500 and RC509 records are completed in the original handwriting of each employee, showing the "Tax Office", "Work Section", the "Group" and "Unit" numbers when combined form an accounting Cost Center number, all directly connected with the administrative project tracking "Case Number".

Charged time is recorded from a variety of Cost Centers and consolidated under the Case Number, as the common denominator. Whether the employee is an Auditor, Investigation Officer, Desk Clerk, Team Leader, or the Chief of Investigations, their "Time/Activity Record" is a universal mandatory document within the Agency, and any time charged to a Case Number project will be accounted from a respective Cost Center.
For example, an employee's Cost Center number may be: 1222 443 5 2, where the first 4 digits represent the "Tax Service Office", the next 3 digits represents the employee's "Work Section", while the following two numbers represent the employee's "Group" and "Unit".

The Cost Center is simply an administrative/accounting tool used to consolidate the time and costs relative to every prosecution project identified by a Case Number.

Along with Time/Activity Reports, there is also another reporting facility connected to the AIMS tracking system, identified in the above manuals as the "Platinum Report Facility" (PRF). These reports replace the "T20SI Management Information System" outlined under TOM 11(19) 0. However, under the (PRF) each "internal" AIMS employee reports their assigned case project's progress under certain Activity Codes 040 and 041, which can be identified on the weekly individual Time/Activity Reports.

From the "T20SI Management Information System", we find report form T20SI-1 was used to document the "Case Initiation Report", and the T20SI-2 form was used to as a Case Progress Report, and a T20SI-3 form was a Court Stage Update Report.
It is also noted that the T20SI System was to be updated on a weekly basis, reflecting the hours from the T22 Time Reports (time sheets).

Comparison of the previous "T20SI Management Information System" to the current "Platinum Report Facility" shows the Agency has continued with a new reporting system that is very similar to the old reporting system. The change to the "Platinum Report Facility" has not resulted in data reporting changes. Instead they continue progress

reporting of their investigation projects, case history, initiation dates, completion dates, stage to stage case progression, with the names and dates of the assigned Investigation Officers charging their participating time to the respective Case Number.

In fact, the opening paragraph under TOM 9690 in 1993, confirms that the redesign of the computer system maintained and carried over the information from in previous ESSI computer system, which became an integral component of new AIMS computer system.

Knowing that the Agency has a weekly reporting system integrated with the internal AIMS employee's Time/Activity Reports is important defence disclosure material provide a weekly progression of the respective case, which can be aligned with time entries to ensure all data has been properly provided. Defense must insist on full disclosure of this reporting data, which may require comparison to the data reported under the former system in order to establish relevance.

**CROWN'S ARGUMENT:**

The Crown will argue that a "Case Number" is assigned by Audit, which brings us back to the "Audit" and "Auditor" **presumptions**. However, within the AIMS Online Manual", the AIMS Stage 1 assignment is assigned to an "Investigation Officer" not an "Auditor".

It is also difficult to believe that a newly created identifier number would be required for a regulatory audit, when all taxpayers are typically assigned unique numbers usable in the form of a Social Insurance Number or Business Numbers.

"Case Numbers" are unique and not found on routine administrative "Audit Reports" or assessments. In fact all evidence concurs with TOM 1142.2 (2)(D) and 1142.2 (2)(E)(b), that when a decision is reached to accept a referral for preliminary investigation a "Case Number" will be assigned immediately. "Case Numbers" are therefore directly associated to special projects requiring special tracking and cost accounting, and cannot be reasonably categorized as a required identifier number under a regulatory administration audit. On the contrary the internal audit function is part of an "Investigation/Audit Team" operation with intent to prosecute".

The Agency will argue that AIMS is the acronym for Audit Information Management System. However, we must again reference the audit and auditor **presumption**, which has been established as an intentional misleading use of the term "audit". Review of the overall AIMS system index shows that the function of the various screens are designed to form part of a prosecution tracking system, where the purported Stage 1 audit activity is actually utilized as the primary source of evidence necessary to support the initiation of a prosecution project.

Further by comparison of the former computer system in use prior to the current AIMS, as set out in a 1993 version of TOM 11(19)1.1(5), we note that it is referred to as a T20SI

Management Information System (MIS) also identified as the IDMS System, which was specifically catering to Special Investigation case tracking relative to the Investigator's weekly Time Reports. Naturally since the AIMS programming has been designed to take over investigation tracking it is reasonable to believe AIMS primary function pertains to the various components of investigations including audit work all leading to criminal prosecutions. It's the circumstances relative to the audit work that distinguishes it from a regulatory audit, the most obvious of course is that regulatory audits do not use Case Numbers and the specific Divisions doing them do not have assess to AIMS.

**ANONYMOUS INFORMANTS:**

Informants, a common element in virtually all tax evasion cases, go to the heart of "Predominant Purpose", and are influential in the development of a prosecution project.

More often than not, the verifiability of the "Anonymous Informant" is taken for granted by the court and the defence, so much so that the Agency has notably become carelessly dependent on the introduction of an "anonymous informant" as an investigation tool, which according to the *Criminal Code* may provide the basis for reasonable and probable grounds to believe that a search warrant is necessary to secure evidence with respect to the commission of an offence.

The Crown claims "Informant Privilege" and a nondisclosure curtain is drawn preventing disclosure, and obstructing the defendant's attempt to launch a defence of an "unreasonable search or seizure" under section 8 of the *Charter*. A tenet in Common Law sets out that the accused has the right to confront his or her accuser; however "Informant Privilege" is a strict contradiction to this common law principle.

Under Common Law, the right to confront one's accuser acted as a natural controlling feature that ensured the Informant was a tangible entity and not fabricated with the sordid intention of influencing the outcome.

As evidenced in many of the cited case, for example: *R. v. Dial Drugs*, and *R. v. Saplys*, proves the Agency is capable of some extremely disturbing acts in pursuit of a conviction. It is therefore not unreasonable to believe the old adage, "if they can, they will", would apply to the Agency in respect to the intentional fabrication of an Anonymous Informant to be used as an investigation tool in order to jazz-up applications for a search warrant on those cases that are inherently weak and lacking sufficient reasonable and probable grounds. By executing a search warrant provides a mechanism to facilitate an evidence gathering fishing expedition required to advance the prosecution.

In the **Gunner Case** there is strong evidence to base a suspicion that suggests two or more of the anonymous Informants were fabricated by the Agency and withheld from full disclosure by the Crown's abuse of 'Informant Privilege'.

The issues relevant to Informants were initiated when the Crown provided late disclosure of an Informant that arrived 4-days pre-trial. The disclosure advised the defence of a November 1996 Anonymous Informant who led information regarding personal renovations being expensed by the corporation.

Subsequent the *voir dire*, the Crown provided new disclosure regarding an October 1996 anonymous Informant who led information regarding GST and Unreported Business Income. However there was no mention of the personal renovations relative to the November 1996 informant. Therefore it can be determined from the two late Informant disclosures that there had to be two Informants with one Informant being fabricated with embellished information, which was needed in order to introduce certain speculated situations before the court.

It is interesting to note that the post *voir dire* October 1996 Anonymous Informant was not given mention in the information application for a search warrant, instead a September 1998 Anonymous Informant appears in the information application, which was 2-months prior to the execution of the search warrant.

It is important to keep in mind that a Case Number had been assigned to **Gunner** by December 23, 1996.

An interesting relationship develops regarding the above noted post *voir dire* October 1996 Informant and a purported payroll auditor who comes to the Gunner offices April 1997.
It is important to note that this payroll auditor was examination during the *voir dire* prior to the defence knowing of the October 1996 Anonymous Informant lead.

Under *voir dire* examination the defence focused on the payroll auditor's notations in his audit report. "Priority R1" and "per anonymous **"tip"** we are to go to er's as a routine audit". The auditor reported that he had taken GST information and had received information regarding two cash jobs. The report went on to note that copies of the report were sent to the head of the Underground Economy Unit. Further in examination the auditor mentions that he had received specific audit **"directives"**. When the defence questioned the auditor regarding the contents of the **"tip"**, immediately the Crown Prosecutor interjected and claimed 'Informant Privilege' regarding "tip" information and audit direction, thereby preventing the defence any further examination of this witness in the key area of the record relative to "predominant purpose".

Unknown to the defence during the *voir dire*, the alleged Informant who the Crown Prosecutor claimed 'Informant Privilege' on, was mentioned by name within the auditor's audit report notes and elsewhere within the disclosure material as initially provided by the Crowns.

Later during the main trial, when the defence learned this alleged Informant was a previous employee, the defence called this alleged Informant as a defence witness. Under sworn testimony, the alleged Informant claimed that he was never an Informant since he knew nothing

to inform about. As a result one would naturally conclude the testimony would have completely discredited the Crown before the Court for using 'Informant Privilege' to restrict disclosure position, however to date the defence has not received any subsequent disclosure from the Crown regarding of the **"tip"** or the **"directives"** the alleged auditor testified he received in respect to his April 1997 audit activities.

In the Crown's final brief the subject was addressed in the terms that since the Informant did not provide "written" permission to the Crown authorizing the release the lead information therefore the Crown must continue to protect this information, which is illogical when the only purpose of "Informant Privilege" is to protect the identity of the Informant not the details of the information **"tip"**.

The timeline associated with the post *voir dire* October 1996 Informant regarding GST and unreported business income, the purported November 1996 Informant, the assignment of a Case Number to the defendant company prior to December 23, 1996, and the appearance of an alleged payroll auditor, requesting GST and cash job information, who reported that he was attending as a result of a **"tip"** and **"directives",** and provided a copy of his report to the head of the Underground Economy Unit, is simply too coincidental to be a routine regulatory audit. Certainly all indicators suggest the alleged payroll auditor was acting in the capacity of an investigating officer gathering information and evidence for a criminal prosecution.

The fact that the defence was not disclosed details regarding the October 1996 Informant, until the *void dire* was complete, appears to demonstrate unethical behaviour by the Crown Prosecutor, in the intentional withholding of disclosure relevant to defence.

The defence believes disclosure of the **"tip"** and **"directive"** particulars directly relates to the October 1996 Informant lead information, which constitutes as nondisclosure by the Crown regarding evidence of "Predominant Purpose" to prosecute.

In respect to the September 1998 anonymous Informant, the only Informant mentioned in the search warrant information, it is important to note that this alleged Informant apparently called just two months prior to the execution of the search warrant. However there is no mention in the search warrant information regarding the October 1996 anonymous Informant.

According to the search warrant information this September 1998 anonymous Informant simply repeated the Crown's premise regarding cash sales, with one noted exception. The alleged Informant suggested there was a bank account in a small town used by the accused in the name of his mother.

The curious situation resulting from defence disclosure requests regarding this alleged bank account…is that the Crown cannot provide verifiable documents to prove the account has ever been checked into by Investigations. Surly such a bank account would be a prime location of

the alleged appropriated funds, and it is reasonable to believe that any Investigator would want to quickly know if there was any merit to the Informant tip in order to benefit their case.

In this situation two scenarios arise. Firstly, the Agency did check the account out and discovered there was no truth to the Informant's lead. Regardless the Informant tip was left in the search warrant information. Or secondly and most probable, certain individuals within the Agency knew the Informant information was only a fabrication, therefore there was no need to have the account check it out, since it was intended to influence the issuance of search warrant and to influence the court during the trial proceedings.

Regardless, the whole situation gives serious rise to question the credibility of the September 1998 Informant, as does the circumstances regarding the Informant related to the April 1997 payroll auditor, and then when coupled with the intentional nondisclosure of the October 1996 Informant, all combines to suggests a fraud perpetuated by the Agency and sustained by the Crown with the abusive application of "Informant Privilege".

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**JARVIS–GUNNER COMPARISON**

Prior to engaging into a **Jarvis-Gunner** comparison of "Record" activities, it is clear that full disclosure on the above three interconnected "Disclosure Areas" are inherent to the operation of the Agency, and are absolutely necessary to explore if the "Audit" and "Auditor" **presumptions** are to be successfully challenged.

It is unlikely "Predominant Purpose" will be found in the sterilized evidence initially introduced by the Crown, the extent of which is under their controlled compilation of evidence necessary to secure their objective, a conviction.

There are two styles of disclosure prevalent in tax prosecution cases. One involves the disclosure of evidence important to the Crown who intends to utilize it to secure conviction; the other disclosure style is important to the Accused and pertains to the evidence necessary to mount a *Charter* defence under Sections 7 & 8 primarily.

The Crown has no problem providing the Accused with the disclosure they intend to introduce at trial, which has been meticulously collected in a defined "disclosure file" for that very purpose right from the beginning of their prosecution activity. The problem however arises in respect to the type of "record" disclosure the Accused requires in order to perform procedural analysis in the determination of the predominate purpose subject to a *Charter* defence.

The Crown's mantra is that such procedural information is not relevant in the scope of their

focused criminal prosecution objective, even though the ongoing responsibility of the Crown in a criminal prosecution is clearly enunciated in the guiding case law ***Stinchcombe v. The Queen, 68 C.C.C. (3d) 1 (S.C.C.)***, a stubborn Crown Counsel can make disclosure extremely difficult, semantic, and virtually impossible. It is therefore critically important defence prepare diligent and persistent disclosure applications, without compromise.

There is a special concern regarding the type of criminal prosecution disclosure held by the Agency, as opposed to the type under a police criminal prosecution, when the Agency's activity is purported as a regulatory administrative function interlocked to a criminal investigation function. In order to make a "Predominate Purpose" distinction the two functions must be separated, therefore disclosure of the Agency's "record" of prosecution operation must be transparent in all respects.

The "Predominant Purpose" can only be located in the "records" of the Agency and transferred through the testimony of witnesses in respect to the above three "Disclosure Areas" of operational function.

These are the critical areas of disclosure courts must be cognizant of if the parameters "Bright Line", "Crossing the Rubicon", demarcation is to be identified in the form of "Predominant Purpose". It is within this zone of disclosure where the Crown has an ongoing responsibility to insure the Agency is transparent in all respects. The smallest obstruction to this accountability will discredit the Agency.

It is interesting to note that the demarcation regarding the commencement of a prosecution has been there all along, sitting under everyone's nose, since the Agency commenced functioning with accounting principals, time sheets, cost centers, and progress reports to division heads and HQ.
The demarcation is found within the administrative accounting function typical to all business operations. The demarcation is not found in some elusive mental conditioning displayed by a purported auditor. It is as simple as knowing the "activity coding" used in time sheets universally completed by all employees, including management.

It is a trite expression to say one, "can not see the forest for the trees," and the Agency has demonstrated its expertise at creating diversions that for years have essentially pulled the wool over judicial eyes and have obstructed disclosure, not necessarily by outright lying, but through a code of silence. Lying by omission or exclusion, half truths and semantics, have all played a part in the great Gatsby perpetuated by the Crown.

The reprehensible tragedy in all this focuses on the railroaded, the convicted and acquiesced taxpayers that have over the years lost their reputations, lifetime savings, their families, and their health on the basis of a huge abuse of power by an Agency who professes the highest of moral standards as guardians of Canada's finances, yet covertly designs and applies its function in an unlawful fundamental breach of *Charter* rights.

The "record" is therefore the needed disclosure, which the Agency is obliged to retain such documents and reports relevant to all criminal prosecutions for a period of 10 years after any appeal has expired, and "Time Sheets" are the epitome of that "record".

"Time Sheet Activity Records" are composed as a 3-part carbon copy document. Copy 1 is sent to Finance & Administration for data entry into is integrated into the current CAS computer systems. The Copy 2 is retained by the division manager and used for job evaluations and liability protection for an undefined period subsequent leave of employment. The Copy 3 is provided to the employee for retention as their personal record.

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It becomes obvious in the details of the following case ***R. v. Jarvis***, as in so many others cited to be representative case law, that disclosure simply did not go far enough, nor deep enough, to provide the "record" or the "Case Number" evidence necessary to expose the initial appearance of "Predominant Purpose", the decision to investigate with the intention to prosecute.
The typical premise submitted by the Crown, that that presumes there was an auditor doing an audit, who subsequently makes a referral to Special Investigations, has generally been unquestionably accepted by defence teams. With the advent of proper "Disclosure", exposed and set out in this document, this presumption should never again be tolerated or blindly accepted as compromising to the case.

**R. v. JARVIS**

- In this Case we are told that an anonymous informant provided information of unreported income from sales, and that this lead was sent to a "Business Audit" section.

*Contrary to the policy procedure TOM 1143.1(4)(C) informants are required to be sent to Special Investigations, which immediately places this Business Audit section in a questionable activity. Facts in **Jarvis Case** fall short, since in the **Gunner Case** evidence we now know from the "AIMS Online Manual" that a "Business Audit" activity is a Program Type 41, which is matched to Investigation Type 1. We also know that the "Business Audit" section is handled by an Investigation/Audit Group that reports directly to the Verification & Enforcement Directorate. It is now also known that the Special Investigations Unit and the Underground Economy Unit also report to the same Verification & Enforcement Directorate, all of which are under the AIMS umbrella of investigation activities.*

*In the **Jarvis Case** there is no testimony to deny the "Business Audit Section" was not part of the Stage 0 and Stage 1 Preliminary Investigation activities tracked under AIMS. It is a blind accepted by the court and by the defence that since the section professed by name to be an Audit section that it constituted separation between Audit and Investigation. However as noted, under the*

*Verifications & Enforcement Directorate, Investigation/Audit Groups are facilitating the Preliminary Investigation under the guise of a regulatory audit.*

*So, what type of auditor was Ms. Goy-Edwards, was she in or out of AIMS system?*
*A **Jarvis Case Number**, which is the first essential element of disclosure, is missing in this case.*

*Whereas in the **Gunner Case** evidence of a **Case Number** appeared in an AIMS Screen 1 Case Update Screen dated December 23,1996, while the to alleged auditors were involved with site visits in April 1997 and again in April 1998.*

- We are told that Ms. Goy-Edwards is an experienced business auditor, and that on February 17, 1994 she sent out two letters to **Jarvis**.

*The question was never posed by defence as to why the Informant lead was sent to a Business Audit section in the first place and why an experienced business auditor was handling an audit when the matter actually involved personal earnings and was not a business. However, we do not know what work section Ms. Goy-Edwards was stationed in, or whether she was external or internal with respect to the AIMS system. Certainly copies of her time sheets in her own handwriting relative to her involvement period on the **Jarvis Case** would provide the verification necessary to know her position and grade?*

*The court, in **Jarvis Case**, presumes this anonymous informant is verifiable and not one fabricated by the Crown in order to shore up their grounds of a search warrant.*

*In the **Gunner Case** evidence, during the main period of activity record, we find that all primary persons involved, with the exception of one, worked under the AIMS system and at one time or another during the period were stationed in Work Section #443.*

*In **Jarvis Case**, we do not know if Ms. Goy-Edwards had ever taken any investigation training courses.*
*In the **Gunner Case** evidence, the purported auditor admitted in testimony that he had taken investigation training.*

- We are told that Ms. Goy-Edwards prepared an "Audit Plan".

*Did she also take an "Audit Findings Checklist," which is a form recommended when there is an **intention** to make a referral to Special Investigation?*

- We find that Ms. Goy-Edwards was extensively involved from February 16, 1994 to March 16, 1994, visiting as many as nine art galleries, and researched the art of the deceased Mrs. **Jarvis**. She discovered the **Jarvis** bank account, and had determined

1990 and 1991 income. She concluded that the Informant lead was valid, which would mean she also had pulled all of **Jarvis** tax returns in order to make a comparison.

- This was all known to her prior making contact with **Jarvis** or his accountant Burke.

*The question is…how much time is routinely allotted to regulatory audit activities that would allow one auditor the latitude of time that occurred here. It would appear Ms. Goy-Edwards was not under any particular budgetary time restraints, which would hint that she was setup under special project conditions and would therefore be charging her time to a Case Number assigned to the* ***Jarvis Case*** *prosecution.*

*Her activity was also in contradiction to the Agency's open and transparent hallmark of a regulatory audit where the auditor and the subject get together, however the covert activities of Ms. Goy-Edwards were more characteristic of an investigation, R. v. Tiffin, 2008 ONCA 306 [47] & [155].*

*In the* ***Gunner Case*** *evidence, ex-Revenue Canada auditors (defence witnesses) explained that routine auditors are under strict time lines of 15 to 20 hours per audit, and, if any additional time maybe necessary, it would have to be requested and explained. By not accomplishing your allotted audits on time, it is seen as detrimental to an auditor's personal job record.*

*Interestingly the first assigned officer in the* ***Gunner Case*** *was notably assigned the Case some 15 months prior to submitting his referral to the Stage 2 Investigations and then from the records shows he continued the assignment all the way to the Stage 3 Court date where the AIMS Screen 3 Case Assignment History then shows the Case being reassigned to another officer, who was professed at trial as being the lead investigator. Of course the defence was not aware of this situation during the trial, due to the Crown's nondisclosure practice.*

*This therefore suggests time sheets showing a Jarvis Case Number, would be retrievable identifying and accounting for the time expended by Ms. Goy-Edwards. That is an issue of "record", established by the Supreme Court, which focuses on the disclosure of the administrative area of activity that occurred prior to and during the involvement of Ms. Goy-Edwards, which would determine the predominant purpose associated with her period of Case activity.*

- On March 16, 1994 Goy-Edwards is planning to bring her supervisor to the scheduled April 11, 1994 meeting, to provide a "second opinion" as to whether the file should be sent to the investigation section.

*On the surface one might believe it would be too early in the process to be focused on prosecution, before any face-to-face meeting with* ***Jarvis*** *or his accountant. The situation however suggests that the supervisor was along to witness mens rea, a necessary prerequisite for moving from the Stage 0 and Stage 1 Preliminary Investigation to the Stage 2 Investigation (full scale detailed investigation activity). We are told that the judge expressed disbelief when Ms. Goy-Edwards*

*testified that the supervisor was along only as a navigational guide, suggesting that she was conscious of the intended Stage 2 referral implication, and was attempting to conceal her intent.*

*In the* ***Gunner*** *evidence, the second opinion would relate to whether there was sufficient evidence gathered at that time to make a referral to move the Case from Stage 0 and Stage 1 Preliminary Investigation (Ms. Goy-Edwards area of activity) to the Stage 2 Investigation, where securing documents with a search warrant is the first order of work.*

*In the* ***Gunner*** *evidence, AIMS Screens 3 Case Assignment History, shows the purported auditor was given the "Case First Assignment" May 23, 1997, which involved activity that pertained to the AIMS Preliminary Investigation, involving Stage 0 and Stage 1 periods of activity.*
*By the time the Case was referred to Stage 2 the purported auditor had gathered sufficient evidence necessary to prepare the Search Warrant Information, which was consolidated over more than a year had elapsed since being first assigned to the Case. This situation alone is not suggestive of the extent of time typically allotted regulatory audits and is also subject to the same principles set under R. v. Tiffin, 2008 ONCA 306 [47]& [155] since the purported auditor noted on at lease three occasions that he had not been in contact with the accused owner.*

*The* ***Jarvis Case*** *is missing the full set of AIMS Screens with special attention to acquiring the AIMS Screen 3 Case Assignment History (2 pages). The AIMS computer network was the functional system at this time; however the "record" may also involve the forerunner T20SI Management Information System of reports according to TOM 11(19)0. Regardless all documents of relevant evidence fall under a 10-year retention period after all appeals, as previously noted, which is a key area of relevant disclosure the Crown is required to produce.*

*Should the Crown renege on full disclosure, the remedy is contained in* ***Stinchcombe v. The Queen, 68 C.C.C. (3d) 1 (S.C.C.)***

- It is not surprising that the trial Judge determined that an investigation was underway as of April 11, 1994 and issued a verdict of acquittal. Of course it is suggested that had the defence for **Jarvis** insisted on the full disclosure, as set out near the end of this paper, evidence would show the investigation had commenced on or prior to Ms. Goy-Edward's first assignment to the Case.

- April 11, 1994 Goy-Edwards and her supervisor meet Mr. **Jarvis** for the first time. **Jarvis** provides books and records, which they take with them. *(Illegal Seizure)*

- Late April 1994, upon reviewing the documents and doing calculations, she found discrepancies of some $700,000. She affirmed that fraud was possible.

- May 4, 1994 she prepared a T134 Fraud Referral, included her entire file, and sent it to Investigations.

*The fact that she prepared a T134 is proof under the Criminal Investigation Program (CIP) that Ms. Goy-Edwards was the officer first assigned (AIMS Screen 3 Case Assignment History) to the Case in respect to the Preliminary Investigation activities under Stage 0 and Stage 1 where a Case Number was in place since the* ***Jarvis Case*** *was first opened with the AIMS Screen 1. It is interesting to note that there is no mention of a* ***Jarvis Case Number*** *in the entire trial evidence, which is testament in confirming the Crown's successful prosecution management to obscure and conceal the AIMS investigation procedure and defence's shortcoming in disclosure.*

*In the* ***Gunner Case*** *T134 Fraud Referral document evidence was freely provided in Crown disclosure, which eventually were found to have been created in late 1998 or early 2000, after the search warrant information was prepared and possibly executed, and long after the assignment of the Case Number on or before December 23,1996.*
*It was confirmed that the T134 disclosure documents were in fact back-dated to the April period relevant the purported auditor's 1998 April activity and that the procedural handling of the 3-part document expected to be dispersed to: the permanent document envelope, the originator section, and a copy for the Special Investigations file, were instead held in file and were never dispersed according to T.O.M. policy and procedure.*

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- The **Jarvis Case** was assigned to Ms. Chang, who began the preparation of the Search Warrant Information June 1994. It was noted that the evidence provided by Ms. Goy-Edwards was sufficient to prepare the Information for the Search Warrant.

*Similarly in* ***Gunner Case*** *evidence, the purported auditor over the year he was first assigned to the Case had managed to gather sufficient evidence necessary to facilitate the preparation of the Search Warrant Information. The fact that Ms Chang in the Jarvis Case had started right into the search warrant preparation also demonstrates that Ms. Goy-Edwards had provided the Stage 0 and Stage 1 Preliminary Investigation information during her activity.*

There is little need to continue with the **Jarvis Case**. The information provided demonstrates that the disclosure of relevant procedural documents necessary for a clear determination of "Predominant Purpose" is extensively lacking.
However, the **Gunner Case** evidence exposes new avenues of disclosure and brings attention on factors that have always been there, but never been brought into focus until now.

The following is a direct response related to the **Gunner Case** circumstances and evidence in applying the "Predominant Purpose" factors enunciated by the Supreme Court in ***R. v. Jarvis***.

94… In this connection, the trial judge will look at all factors, including but not limited to such questions as:

(a) Did the authorities have reasonable grounds to lay charges?

In the Gunner evidence the company was behind on their quarterly GST payments, which was set

up in the Company financial statements as a “GST variance account”, by the company’s outside accountants. There was never any intention by the company to hide or evade taxes. The explanation was simply “cash flow” problems, not tax evasion, as it so often is with small seasonal business operations.

In respect to this “GST variance account”, the Agency would have known or should have known there was a GST account owing from the annual return information the Agency had access of.

By taking the sales reported in the financial statements attached to the filed annual corporate tax return, and the submitted GST quarterly returns, subtraction calculations easily determine that there was a variance account. Based on this information, it is not unreasonable to think that the Agency was fully aware of this situation and had been monitoring it for some years. While it is clear from the “GST variance account” that there was no tax evasion or even the intention, Revenue Canada (the Agency) could have filed alleged tax evasion charges as far back as 1993, which is when the variance accounting first occurred.

Does it appear from the record that a decision to proceed with a criminal investigation could have been made?

This is an extremely important area that requires great emphasis, where the Supreme Court makes mention of the “record.” It is clear in the **Gunner** Case that there is a critical need for disclosure that delves not only into the investigation procedures of the Revenue Canada investigation divisions but also into the administration and accounting of their investigation projects, which is necessary to completely and properly lay out the “record” in the manner of how their investigative interests developed. A large part of the predominant purpose lies in the “record” closely held by Revenue Canada, and has never been properly identified, researched and demanded in a disclosure application, until the occurrence of the **Gunner** case. Knowing the full extent of the “record” all the way back to the Case Number assignment particulars must be treated as the most important defence objective.

(b) Was the general conduct of the authorities such that it was consistent with the pursuit of a criminal investigation?

By applying the **Gunner** evidence that discloses type of information collected by the two purported auditors, a known payroll auditor who was directed or seconded to the Underground Economy Unit to request GST and Unreported Business Income based on an informant tip, while the other purported auditor who had been assigned to the **Gunner** Case Number 15 months earlier was completing a “Checklist” during his visit, a format devised by and for Investigations, which notes in the opening paragraph that it is to be used when intending to make a referral to Investigations. This latter auditor was also drawing up a floor plan of the **Gunner** office layout, which is in accordance to search warrant procedures set out in the Investigations Training Courses that are listed for disclosure near the end of this paper.

These are the type of indicators of “record” that show Revenue Canada at all material times was

concentrated on the pursuit of a prosecution project.

(c) Had the auditor transferred his or her files and materials to the investigators?

In the **Gunner** case AIMS computer screen evidence shows a Case Number was assigned in 1996, which could only occur on the "directive" of an authority following standard assignment procedure. Therefore certain transfer of forms, files, records and communiqués would have been involved in respect to opening a case in the AIMS computer-tracking system where a Case Number is only then automatically assigned.

This is a directive and procedure, the defence is missing in full disclosure. **Gunner** was assigned a Case Number in 1996, however, there is nothing in disclosure that explains why or who authorized it to be done.

A few months into 1997 evidence shows the above noted payroll auditor, also passed on the GST and Cash Job information gathered to the head of the Underground Economy Unit. This Unit is an investigating/audit unit operating under the Verification and Enforcement Directorate where we also find the Special Investigations Unit reporting.

(d) Was the conduct of the auditor such that he or she was effectively acting as an agent for the investigators?

As noted above, the record provided only advises of two purported auditors in the **Gunner** case… a known payroll auditor in early 1997 who was acting on the direction of the Underground Economy Unit and the second purported auditor or (Investigations Officer) gathering search warrant information. Both would be qualified auditors, which is a prerequisite of all Investigators. However, in this case, these particular individuals were not acting as a regulatory auditor doing a regulatory audit. Evidence show the second purported auditor was given "Case First Assignment" May 23, 1997 and according to AIMS Screen 3 Case Assignment History this assignment is effectively the AIMS Stage 0 and Stage 1 of the Preliminary Investigation.

Since the assignment history shows the Case was not officially re-assigned to another officer until the Stage 3 Court Stage December 3, 1999, therefore the purported auditor was assigned to all of the stages, including the Stage 3 in the first instance, prior the Stage 3 re-assignment occurred.

(e) Does it appear that the investigators intended to use the auditor as their agent in the collection of evidence?

Refer to this factor in (d) above.

(f) Is the evidence sought relevant to 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?

It was previously noted that the purported auditor (investigations officer) brought along a "Checklist", devised by Investigations, which contained a number of questions relevant to only *men rea* issues and opens with the notation that it is to be used when intending to make a referral to Investigations, clearly establishes prosecution intent and would qualify as "Predominate Purpose".

(g) Are there any other circumstances or factors that can lead the trial judge to the conclusion that the compliance audit had in reality become a criminal investigation?

The application of the AIMS evidence clearly establishes that the Revenue Canada's idea of a compliance audit is setup as a "Program Type" matched to an "Investigation Type", which functions as the AIMS Stage 0 and Stage 1 Preliminary Investigation process relative to the process set out under the Criminal Investigation Program (CIP). This evidence is contained in the AIMS Online Manual. Which is another item identified in the defence Disclosure List set out latter in this paper.

The **Gunner** evidence entered introduces a multitude of other circumstance and factors.

It is important to note that anyone charging time to an investigation case must enter activity code 680 in their time sheets.

In substitution of the original handwritten time sheets of the purported auditor who was first assigned to the Case, the Crown instead advised that the three original copies were destroyed after a 2 year retention, the Crown therefore provided electronic time summaries, showing the key 8-month period this assigned officer was directly in contact with the defendant, had been coded as Activity Code 0999 (AC 0999) Unreported Time, which the Crown explained as "Union job action" intended to frustrate management.

Regardless fact relevant evidence was destroyed, the 8-month coincidence or the fact the Crown failed to enter any corroborating evidence, such as any other employee witnesses with time sheets coded in the same manner or a witness properly representing the Employee's Union.

Moreover, there is a significant area of nondisclosure that was dismissed arbitrarily by the trial judge on the Crown's motion, which comprised of approximately 150 identified issues submitted as a 'disclosure application' prior to the conclusion of the *voir dire*. As a result of the premature *voir dire* decision the defence was left obstructed under *res judicata*, which therefore affected the main trial that followed.

There is also the matter of the Crown's post *voir dire* disclosure withholding regarding the early involvement of two July 17, 1996 officers connected to the Underground Economy Unit and the assignment of a 1B High Risk action, which then lead to an October 1996 Anonymous Informant "tip" that pointed to GST and Unreported Business Income, all of which was relevant evidence withheld from pre-trial disclosure by the Crown and was not known until after the *voir dire* was closed.

This action in 1996 appears to have set up a sequence of events that started with the opening a

AIMS case that automatically assigned a Case Number that first appeared on an AIMS Screen 1 "update" dated December 23, 1996, which then leads to the involvement of the first purported auditor appearance at the Gunner offices April 1997 due to a "tip" where he gathers GST and information regarding unreported business income. This was followed by the First Case Assignment May 23, 1997 to the second purported auditor who later made his appearance at the Gunner offices April 1998 after having been assigned to the Case for almost a year. Certainly this situation is not typical of a regulatory audit and raises a great deal of questions regarding how these persons coded their respective time sheets.

**Access to Information Act (ATIA)**

One other in portent matter pertains to the exemptions under "16(1)(a)(b) & (c)" found under the *Access to Information Act*, which relates to the following: "Information obtained or prepared in the course of a lawful investigation, investigation techniques, or plans for specific lawful investigations, information relating to the existence or nature of a particular investigation."

In regard to requests made through the *Access to Information Act* for "records" of information related to the **Gunner** Case, there were numerous occasions involving hundreds of pages of information that has been "exempted" based on the above noted sections. As a result, one can conclude there is certain relevant investigation evidence disclosure that exists yet is being withheld from the accused by the Crown in the scope of a criminal prosecution.

The problem that manifests is…does disclosure in a criminal prosecution case take priority over the "exempting provisions" under the *Access to Information Act*?

In argument, one can summate that the reason the Agency is withholding this information is because it would be detrimental to their prosecution case. It follows that if the withheld information would cause harm to the Agency's prosecution, clearly the evidence would be exculpatory exposing an investigation practice in breach of *Charter* rights and the Crown would therefore be required to produce all in full disclosure.

In conclusion, if the withheld ATIA evidence contains information of a clear breach of *Charter* rights by the investigation procedures practiced by the Agency, the proposed exemptions cannot therefore be said to be protecting a "lawful" investigation and would be disqualified. This would result in exposing Revenue Canada's inappropriate application of using the exemptions under ATIA as a method to obstruct disclosure in order to protect their prosecution case.

Ultimately, we conclude that compliance audits and tax evasion investigations must be treated differently. While taxpayers are statutorily bound to co-operate with CCRA auditors for tax assessment purposes (which may result in the application of regulatory penalties), there is an adversarial relationship that crystallizes between the taxpayer and the tax officials when the predominant purpose of an official's inquiry is the determination of penal liability.

"Predominant Purpose" is an important demarcation made easier when all the factors are allowed to enter the picture. In previous case law, the courts were not made aware of the full extent of

necessary disclosure relative the "record" and so were ill-equipped to make fully informed determinations.

The Agency, through the creation of an ominous system, has literally and quite successfully frightened away litigation adventurers, leaving most in a state of administrative confusion. However, with the defined introduction of "Predominate Purpose" as the guiding principle, the law in these matters can be advanced, utilizing the new *Accountability Act* and the transparency of the Agency's own administrative accounting practice of time sheets, cost centers, activity codes, work sections, case numbers, assignment histories, job descriptions, AIMS screens, policy & procedures, etc.

The door to the Agency's internal administrative/accounting activities provides the long sought answer to the demarcation of "Predominant Purpose". The Agency is duty-bound to be transparent, willing, able, and prepared to expose their procedural actions for review and verification in order to assist the courts ease of discernment, if they expect to maintain any credibility in the eyes of the law.

With the requirement powers granted the Agency under 231.2 for defined regulatory purposes only, the importance of operational transparency is all the more critical in Crown disclosure. This is the only judicial lever of control. Left unchecked, the Agency's system encourages an escalation of covert operations and abuse of power, to the ultimate detriment of the Canadian *Charter*.

**R. v. Dial Drugs Stores Ltd. [2001] O.J. No. 159 Lenz J.**

10… By the end of the trial I had also come to the unfortunate conclusion that disclosure by Revenue Canada was, at times non-existent, and always grudging and delayed. On some occasions, it was downright fraudulent, as in the "Sanitized Tax Operation Manual Disclosure". In respect of my reasons I attributed a great deal of the delay to neutral time requirements for disclosure, which now appear to be not so neutral.

121… Such a direction of a compliance audit was contrary to Revenue Canada policy (See TOM 1142.2[3]) and discussions thereof contained in exhibit "J" dated June 14th, 1993. I find as a fact that Mr. Freeman knew this was contrary to policy - he was, after all, commended for the preparation of check lists for compliance auditors, when fraud was suspected, so that Special Investigations did not appear to be directing audits when compliance auditors were obliged to return for further documents.

135… What happened in this situation, for those of us more used to criminal prosecution under the Criminal Code, is what is known as an unlawful walk-around, walk-through or perimeter-search, and the use of the evidence obtained thereby to support a search warrant. This is clearly a breach of the constitutional rights of the defendants and has been since R. v. Kokesch, 61 C.C.C. (3d) Supreme Court of Canada.

140… If this truly had been a compliance audit, the exercise of those powers would not attract *Charter* scrutiny, due to their regulatory nature. When, in fact, the compliance audit is a criminal investigation for tax fraud or evasion, it does indeed, in my opinion, attract *Charter* scrutiny.

145… The referral by Mr. Payne to Special Investigation Agent MacFarlane was a charade intended to build a demarcation between the civil regulatory function and the criminal investigatory function. In fact, the referral was not a referral from a compliance auditor to Special Investigations; it was a referral from Special Investigations to Special Investigation.

160… Some of the disclosures made by Revenue Canada were modified prior to disclosure and not for the purposes of protection of the privacy of taxpayers.

171… These are examples only of the attitude of Revenue Canada to their obligation of disclosure. That attitude to

prevent, deny or delay disclosure has made the defence of this matter exceptionally difficult. Without the persistence of Mr. Stern a great deal of the information sought would never have come to light.

185… Bearing that in mind and the nature of the breaches of the constitutional rights of the corporation and my findings in respect of the bad faith of Revenue Canada, I believe a stay is appropriate either pursuant to the *Charter of Rights and Freedoms* or the residual abuse of process power.

Note: A new trial **R. v. Dial Drugs Stores Ltd.** has been ordered in the appeal decision of JUSTICE R.D. REILLY [2003] 0306. The application of the **Gunner** evidence to this case would prove interesting in that it would show how uncannily accurate Judge Lenz was in his ruling, the referral was from Special Investigations to Special Investigation…AIMS Stage 1 Preliminary Investigation referral to AIMS Stage 2 Investigation (Full Scale).

## R. v. Saplys [1999] O.J. No. 393 MacKenzie J.

The courts are the guardians of the rights and freedoms under the *Charter* and the fundamental values of a free society that inspire them. To allow the insulation of Hui's audit in furtherance of SI's criminal investigation would, in my opinion, give SI carte blanche to engineer substantial impairment, if not eradication, of the *Charter* rights of taxpayers under investigation by the simple expedient of using an unwitting auditor to conduct an apparent compliance audit for the predominant purpose of aiding a criminal investigation.

The respondent's position is that the SI investigation was "closed"; that the file had been referred to the audit branch for an in-depth audit with a request that the audit results be reported back to SI; that the file was referred back to SI once potentially incriminating evidence had been discovered by auditor Hui; and that charges were subsequently laid and additional search warrants were issued. As I have stated, I find this position to be untenable. I find that these actions on the part of the Revenue Canada personnel involved only led to the rational and logical conclusion that SI was utilizing the audit power to gather evidence in furtherance of its stymied criminal investigation.

The applicant Saplys submits that where the conduct of a state agent creates a misapprehension that a person dealing with that state agent is not entitled to remain silent by virtue of the nature of the inquiries, then an obligation on the part of the state agent to caution such person arises. I accept this submission.

11… It is clear from the evidence that there has been a significant inconsistency in the practice of the investigators in making and preserving notes of meetings and other steps involved in the investigation in this case. The defence (applicant) contend that the failure to either make or preserve, i.e. Properly record, investigation steps in the face of internal guidelines and practices requiring the maintenance of notes suggests a deliberate attempt to frustrate the defence (applicant) right to disclosure. Even if the failure to properly record such investigative steps does not result from a deliberate course of conduct but rather negligence, the defence (applicant) contend that such failure has substantially impaired and prejudiced the ability of the applicant to make full answer and defence as they are entitled to under s. 7 of the *Charter*. In support of this proposition, the defence (applicants) cite Sopinka J. in the case of R. v. La (1997), 148 D.L.R. (4th) 609 (S.C.C.) at page 619:

> …Serious departures from the Crown's duty to preserve material that is subject to production may also amount to an abuse of process notwithstanding that a deliberate destruction for the purposes of evading disclosure is not established. In some cases an unacceptable degree of negligent conduct may suffice.

The applicants further submit that failure of the Special Investigations Branch to properly maintain and preserve investigation records has created critical gaps in the narrative of the course of the pre-audit SI investigation. The applicants are required in order to prove their allegations of *Charter* infringements that the purportedly regulatory seizures were performed for the purpose of effecting a criminal or quasi-criminal investigation. The failure of SI investigators to properly record the origins and course of the investigation has substantially impaired the capacity of the applicants in bringing forward such evidence. Without a documented accurate account of the origin of the investigation, it follows that the applicants are prejudiced in their capacity to discharge the onus facing them on these applications since the lack of the investigative records renders it even more difficult for them to appreciate and make submissions on the relevance and significance of the investigative steps subsequent to the pre-audit investigative steps taken by SI. In essence, the right to full answer and defence in the context of being able to access evidence to discharge the evidentiary onus on the applicants has been substantially reduced by the conduct of the SI investigators.

24… On the evidence and submissions, I find that this case is one of the "clearest" in which the stay is appropriate. I am persuaded that the conduct of the investigative and prosecutorial branches of Revenue Canada have irreparably prejudiced the right of the applicants to a fair trial and that the absence of appropriate records and disclosure practices and attitudes

of the investigative branch to Crown prosecutors is of such impact that there is no remedy short of a stay that could be fashioned capable of ensuring the s.7 *Charter* rights of the applicants to make full answer and defence to charges. To continue this prosecution would in effect do irreparable harm to the integrity of the judicial system and offend the defence of justice to the community by condoning the manifest misconduct of investigative branch by utilizing the regulatory audit process in furtherance of a criminal investigation.

## CONCLUSION

In conclusion "Predominant Purpose" is now the determination factor, which is dependant on the full disclosure of the *Jarvis* "record" in the administration/accounting of an investigation project commencing the instance a **Case Number** is automatically assigned once the subject is initially screened into the AIMS computer tracking program.

In order to determine the crossing the Rubicon or bright line that would establish a partition between a regulatory procedure and a criminal investigation with the intent to prosecute, courts are no longer required to weigh-in the balance of evidence or balance the probabilities in a judicial determination based on reasonable and probable grounds in order to attempt to identify a demarcation based on the mindset of a purported auditor.

The "record" of activities is found in the administrative procedures of standard accounting practice. Investigation activity requires special account tracking and attention from a budgetary and reporting perspective. This function has always existed and will always exist as a clearly identifiable area open to disclosure, but like many of the simplest things this area of disclosure has escaped recognition in all previous seminal case law typically referenced by the defence.

Whether or not there will be a successful "Predominant Purpose" determination, depends on the focuses and degree of attention placed on the application for **full disclosure** of the case assignment particulars, progress reporting, administrative and accounting procedures, as well as the full and complete disclosure of all AIMS investigation stages, which are required to track the investigation as it matures into a full scale prosecution.

**Disclosure Requirements:**

As previously mentioned the basic faulty premise associated with the type of adjudicated case law on criminal prosecution tax cases that have been typically cited in defence, all notably formulate from a starting point based on a untested **presumption** that, there was a regulatory auditor doing a regulatory audit.

Contrary to this **presumption**, the **Gunner** Case has discovered through numerous "Access to

Information", demands for disclosure and former Agency employees, that the Agency maintains an AIMS computer system that incorporates special screens pertaining to the administrative accounting and tracking of an "investigation project" with an intention to prosecute. Note the term "administrative" which is the key area all disclosure applications, must specifically focus on, keeping in mind however that the Agency specialises in being a moving target in an attempt to keep defence off balance. They will make procedural and name changes along with other deceptive measures meant to avert investigation administration detection. It is extremely important to understand in the insistence of your disclosure applications and witness examinations that whatever the current procedure maybe at the time it will still be serving the same administrative objective. There will always be an underlying accounting consolidation, administrative procedure and investigation stage assignment coding and tracking necessity relative to all investigation/ prosecution projects.

There is sufficient evidence that exposes the demarcation, crossing of the Rubicon or bright line as being the instant a **"Case Number"** is automatically assigned by opening of a case in the proprietary AIMS case control system. The **"Case Number"** is required to function as a project number that complies with commonly accepted accounting principals and practices as a consolidator and identifier for the duration of the project.

The typical procedure regarding a taxpayer's activities involves an initial "consultation session", which is held between Verification and Enforcement groups (VE) within the AIMS umbrella of investigation operations, for example consultation between the Underground Economy Unit (UE), Special Investigations Unit (SI or I) and/or any one of the numerous Investigation/Audit Units, where it is decided from: non-compliance information, any actions taken relative to a complaint, informant tip and/or hearsay information obtained, to have an official T134 Fraud Referral form prepared outlining the activities of the suspect taxpayer in question.

This T134 decision places the file in an inventory bank of potential prosecution projects.
(Note: There will be a specific time code used to record all time spent documenting lead information, currently that activity time code is 399)

When an officer is freed up from one of the Investigation/Audit Units under VE, one of these potential prosecution projects in inventory is selected for Preliminary Investigation and in order to account for the invested time in the project an AIMS computer case is screened in for tracking purposes resulting in a computer generated "Case Number" and a "File Number" sequentially assigned. The file number will contain information regarding the date of this assignment.
See T.O.M. 1142.2 (2)(D) and T.O.M. 1142.2(2)E(b) also Investigation Manual (IM) 21.5(1)

When an investigation/audit officer is selected it is officially registered in the AIMS computer system on the **Screen 3 Case Assignment History** as the "First Case Assignment"
This effectively places the officer in the Preliminary Investigation under the Criminal Investigation Program (CIP) Stage 0. It is important to note that the Preliminary Investigation involves two stages the Stage 0 and Stage 1.

The method of proceeding is based on a Program Type, which will be noted on the AIMS Screen 1 used to open the Case, ie: Program 41 (Business Audit) Time Code 534 will be used by the officer in completing weekly time sheets. There are more than 20 Program Types, which are matched to Investigation Types set out in the AIMS Online Manual.

Stage 0 pertains to the preparation of the T134 mentioned above and Workload Development, which is primarily intended to determine the cost of prosecution setoff against the collection potential regarding the asset holdings of the taxpayer.
Certainly from pure prosecution business perspective, the Agency's AIMS groups will not proceed at this Stage should they find the taxpayer has no tangible assets to setoff against the cost of investigation and prosecution.

It is important to note that at Stage 0 the assigned officer may not realize, or may not want to know, they are in fact participation in an investigation under the CIP with the progressive intent to prosecute. Debatably they are naively under the belief they are involved in an audit activity. Meanwhile an officer maybe assigned to the Case for many months and in fact years prior to finally achieving sufficient material to make a referral to the next CIP stage, Stage 2.

The official received Date the "T134 Referral and Workload Development" (Screen 0) is entered in the **AIMS Screen G** along with the officer's name Work Section (WS), Group (G) and Unit (U), as well as the officer's Grade, ie: AU2. The information contained in the T134 is also transferred to the Screen G, ie: the proposed Federal Tax Potential, Investigation Years and the Investigation Type, ie: Income Tax, GST, etc. It is now important to reference back to the AIMS Screen 1 where you will find the "Program Type", which must be compatible to the "Investigation Type" as set out in the AIMS Online Manual.

It is repeated…the overriding administrative governing principles remain the same, and forever will…the **"Case Number"** acts as an accounting identifier that is indispensable, and mandatory in respect to the budgetary and the reporting requirements of the Agency's Divisions under the AIMS umbrella of investigation operations.

The AIMS Screen 3, "Case Assignment History" is a two page screen where you will find the names and dates "Officers" were first assigned or reassigned to the Case stages following the "Criminal Prosecutions Program". Receiving the full scope of the Criminal Prosecution Program on CD in disclosure is an absolute necessity to the defence case.

The **AIMS Stage 1 Preliminary Investigation** is the most interesting and deceiving in the scope of investigation activities, simply because this activity is referred to in investigations training manuals as being the **undercover** evidence-gathering activity. Certainly when one factors in the amount of time the first assigned officer was assigned to the Gunner Case, as previously noted, clearly it greatly exceeds the typical allotted time for regulatory audits.

The Case project is only moved (referred) to the **AIMS Stage 2 Investigation** once there is

sufficient evidence generated from the Stage 1 Preliminary Investigation activity to prepare an application for a Search Warrant. Once the Case project moves to the AIMS Stage 2 Investigation the first order of work is to prepare a search warrant in order to secure the document evidence identified by the officer first assigned to the Stage 0 and Stage 1 investigation positions. Once these documents are secured full scale investigation activities are undertaken. It is the referral transition from the AIMS Stage 1 Preliminary activities to the AIMS Stage 2 Investigation that has been used to confuse and mislead the courts and the defence into a presumption that the referral to investigation is the demarcation of prosecution intent. Clearly the Agency's AIMS authorities have not been open or forthcoming in respect to investigation procedure set out under CIP where the decision to open an AIMS case accompanied by the computer generated **"Case Number"** is the process demarcation relative to Charter rights.

## DEFENCE DISCLOSURE LIST

1. Disclosure Request…the complete TD1310-000 Initial Course and TD1312-000 Advanced Course, basically all related data relative to the **"Criminal Investigations Program (CIP)"** on disk, which contains the guiding procedure used by Verification and Enforcement (VE) groups within the AIMS umbrella of investigation operations.

2. Disclosure Request…**Very Important**…request all the data connected to the, who, when, and why, of your **Case Number** and **File Number** assignment.

   Who authorized opening a case in AIMS, when was the authorization initiated, and why was it set-up.
   Note: T.O.M. 1142.2 (2)(D) and T.O.M. 1142.2(2)E(b), also Investigation Manual (IM) 21.5(1) explain that a Case Number will be assigned when there is a decision for preliminary investigation (AIMS Stage 1 Preliminary Investigation).
   Remember the **Case Number** assignment date is the demarcation of prosecution intent.

3. Disclosure Request…a complete **"AIMS Online Manual"** on disk, which must include

the full range of internal (click-on) computerized information references and any other AIMS user manuals previously used or currently in use.

Note: Employees within the Verification and Enforcement (VE) groups under the AIMS umbrella of investigation operations are the only employees that are provided with PIN Code in order to access the AIMS computer system, regulatory audit, collection are excluded access to AIMS data screens.

It is important to understand that there are two operating factions within the Agency, investigation operations under the AIMS and regulatory operations without AIMS access, the investigation faction is said to be "under the umbrella of AIMS". This information is clearly set out in the "AIMS Online Manual".

4. Disclosure request…for a print-off the following AIMS Screens: 0, 1, 2, 3, 4, G, H, I … Specifically request Browse Screens) since there is the possibility the "Update" and "Add" Screens can be altered to show incorrect dates and assignment status, which are then printed off as Crown evidence, meanwhile the screens are closed without saving the altered data to the tracking program and the screen simply reverts back to it's original data.

   In respect to the Screen 3 "Case Assignment History" it is important to insure that all pages are provided. Generally there would be 2 pages composing the Screen 3.

5. Disclosure request…specifically for a print-off of the **AIMS Screen 1 "DOWN SCREEN CASE"** for the respective Case Number.

6. Disclosure request…for **TIME SHEETS…Very important**…Request original hand written **"Time Sheets"** of the specific operatives. (RC500 or RC509 newer version Time/ Activity Reports)
   Note: On Time Sheets you will find that anyone working on an investigation is required to code their time with an **Activity Code 680** that also references the respective Case Number. However in respect to those first assigned officers to the AIMS Stage 0 activities "T134 Referral/Workload Development" you will find the officer is working under Activity Code 694 or some another Workload Development activity code that is not apparently linked to a Case Number. Certainly by the time the AIMS Screen 0 is in progress a Case Number does exist, however to date it is unknown as to how the Stage 0 time is consolidated to the Case Number in order to fulfil the Case accounting requirements. This area requires additional examination of V&E management and/or Finance and Administration personnel.

7. Disclosure request…for **"Resource Management and Statistics Directorate Reports"**

in order to cross-check an officer's time sheet data. These reports show hours of regular and overtime by activity type, name and Case Number, relative a specific critical time period. Caution: These reports are subject to possible data alterations, therefore each report should form part of witness examination.

This disclosure request should involve each key officer that was involved in your Case, ie: the purported regulatory auditor(s), the V&E investigation/auditors, the V&E investigation officers and the V&E management team leaders as well as local V&E department heads. Most of these individuals, with the exception of the regulatory auditor and department head, will be stationed in Work Section 443, which is the primary Verification and Enforcement work section.

8. Disclosure request…for all **"Case Progress Reports"** held on record, in file as hardcopy and/or electronic format in respect to the noted **Activity Codes 040 & 041** as entered in the weekly time sheets, relative to the Case Number, will provide a valuable investigation record in respect to the first Jarvis factor.

   **Activity Codes 040 and 041** are activity codes found in the weekly Time Sheets of officers assigned to a Case. These activities respectively involve **"Case Progress Reports and Statistics"** and **"Manuals, Instructions and Branch Letters"**, which are related to the Investigation Project. In examination, these time codes will lead to the relevant evidence disclosure of "Case Reports" that few are aware exist. This is an area evolved from the reporting set out under T.O.M. 11(19)1 in respect to the former T20SI Management Information System. It is important to understand that these former reporting/ tracking procedures were carried foreward into the current AIMS computer management system.

   For expert testimony regarding the **AIMS Online Guide** the proper Agency witness are **Mr. Alain Giroux 941-0481** and/or **Lynda Morin 952-0256** who are original members of the HQ AIMS Group, who will advise that the former reporting procedures are now being handled within AIMS. Clearly such key testimony directly links the investigation intent of the former system to AIMS. Evidence is available confirming the investigation progress reporting and tracking of the former T20SI system as now handled by the AIMS system.

   While the Agency purports AIMS as the acronym for Audit Information Management System it is more accurately suggested title is Audit Investigation Management System, which is clearly in accordance to the former T20SI Management Information System.

9. Disclosure request…print-off of all reports banked under the **"Platinum Reporting Facility (PRF)** & **Data Base 2 (DB2)**, within the Agency's electronic data bank systems.

The AIMS system contains a reporting format interconnected with a Platinum Reporting Facility (PRF) and Data Base 2 (DB2), which are reporting programs that have replaced the reporting process set out under TOM 11(19)1 using the T20SI format as the former Management Information System to AIMS.

10. Disclosure request…for all contents of the **“Permanent Document Envelope” (PDE)**. In the PDE Copy 1 of the T134 is to be retained…see TOM 1142.2(2)(E)(c)

11. Disclosure request…for the **“Finance & Administration” Manuals** complete, regarding all Chapters starting at Chapter 1 and Sections starting at Section 1 as well as all Sub-Sections. Note that Chapter 2, Section 3 provides a list of Activity Types by Functional Business Line Managers and Functional Program Cost Centre and Chapter 1, Section 1 contains the Finance and Administration Manual “Policy”.

    Disclosure Request…for a **Finance & Administration** schedule that contains a complete listing of all **Activity Codes** necessary to interpret employee Time Sheets.

12. Disclosure Request…**Tax Operations Manual T.O.M. 11** on Disk Complete.
    (We have a CD Disk that can be made available, however there are sections missing)
    Note: T.O.M. 11 Investigations was replaced by the “Investigations Manual” in 2000

13. Disclosure Request…for Missing T.O.M. sections:
    - TOM 1720 Standardized Referral Procedure;
    - TOM 5020 Procedure Governing Weekly Time Reports and T22 Wkly Time Report;
    - TOM 11(19) 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 4, 4.1, 4.2, 4.3, 4.4 Missing from Disk;
    - Forms: T868, T24 Wkly Production Report, ARMS system printout format, T20SI-1, T20SI-2, T20SI-3, T20SI-4 Report Forms and Case Complexity Factor Rating Form.

14. Disclosure Request…for a complete **“Investigation Manual”** on Tax Investigation not on Customs.

15. Disclosure Request…for a complete **“Investigation Training Manual” HQ1301-000**
    Note: This manual contains all the covert details regarding the agency’s investigation practice.

16. Disclosure Request…Since these Agency witnesses may be required in an initial *voir dire*, it’s important to understand they are deemed defence witnesses (Examination in Chief), therefore it is important you insist on unsupervised pre-trial access to interview your witnesses. After all they are your witnesses in a *voir dire* hearing.

17. Disclosure Request…In order to rebut Crown’s argument regarding “local procedures” in

order to show all TSO must comply to universal procedure as outlined in manuals, it maybe necessary to pursue a line of defence witnesses by requesting the Crown to provide the names and contacts of Agency employees who have retired or resigned from the "local and regional" divisions of Special Investigations and V&E within the last number of years.

18. Disclosure Request…**ACSES Diaries** for the full period in question. These diaries relate to regulatory audit and collection. However the actions will align to certain investigation agent requests and inquiries.

19. Disclosure Request…**Log of Action** is a computer-tracking program, relative to an audit activity that involves Verifications & Enforcement investigation officers and collections. (Look for a **"1B High Risk"** entry and you will note an assignment of a Case Number corresponds)

20. Disclosure Request…for the Crown to provide at least 2 **"Expert Witnesses"** for each specialized area, as follows:
    - AIMS (local "Information Systems Administrator" and "HQ AIMS Group" member)
    - Finance & Administration,
    - ACSES Diary relative to all business categories (GST, Payroll, Corporate)
    - Assistant Director of Verification & Enforcement (ADVE).

    Note:
    All departments under the AIMS umbrella of operations are: Underground Economy Unit, Special Investigation Unit, Investigation/Audit groups, all report directly to the Assistant Director of the Verification & Enforcement Directorate. In V&E (Work Section 443 is the primary work section, see Time Sheets).

21. Disclosure Request…firstly request through the ***Access to Information Act***, all the Investigation "records" of Information held in file under your particular Case Number, as well as all electronic data be recalled and printed-off into a disk or hardcopy format.

    Note: ATIP may reply with exemptions citing Sections 16(1)(a), (b) or (c) of the *Act*, which read…The head of a government institution may refuse to disclose records obtained or prepared in the course of lawful investigations, material pertaining to information relating to investigation techniques or plans for lawful investigations, the conduct of lawful investigations, the nature of a particular investigation, the identity of confidential source of information.
    Under this circumstance such a reply confirms relevant evidence exists, which is being withheld. It is therefore important have the **Court** order this full disclosure, because the rights of the Accused in a criminal trial takes priority over the exemptions under the *Act.*

22. Disclosure Request…for all **Cost Center (Centre)** accounting data spreadsheets relative to the defendant's Case Number, in order to determine Agency activity during any specific

period.

It's important to understand, Agency administration consolidates their investigation activity time charges (Investigation Activity Codes) under a Case Number (Accounting Project Number). These time charges originate from the charged activity time entered in the weekly Time Sheets of those employees who have worked on a particular Case Number. Each employee is stationed to a home Work Section (W/S).

A **Cost Center** is almost as good as Time Sheets, containing the officer's name, hours & dates worked and the Activity Code (A/C) of the work type done on a particular Case Number project. While the Agency will likely attempt to conceal their investigation activity by altering the respective A/C used in Time Sheets, currently however A/C 680 represents investigation activity, which is an A/C listed in the various Finance and Administration Manual disclosure.

A typical **Cost Center** number will appear as: 1222**443**02, where the first four digits "1222" represent the zone, ie. Regina Tax Service Office (TSO), the next three digits "443" represent the employee's W/S and the following single digits "0" and "2" relate to the employee's specific Group & Unit within the W/S.

**Cost Centers** contained within the Agency's accounting computer system, are connected to the respective Case Number/Link Code or Order Number and to Activity, which forms an indispensable administrative investigation accounting *Jarvis* "record"…a disclosable accounting "record" that must always be maintained in one form or another. Certainly this is a key area of special witness examination, necessary to exhume the modified concealments.

Note, while there are numerous W/S within the Agency, the most common W/S under the AIMS operations umbrella is W/S 443, which pertains to the Verification & Enforcement Division, whereas W/S 641 is typical of the Special Investigations Unit.

23. Disclosure Request…defence must be aware of the Agency's applied use of **"Anonymous Informants"**, especially the **Informants** set out in the information for a search warrant. defence must specifically request disclosure of the data bank print-off of the **"Retrieve Informant's Lead"** sheets regarding each **Informant** on record should the defence sense the **Informant** lead is questionable in any manner, such as the close timing of the **Informant** to the warrant date or lead redundancy that is subtle but contrary to the actual conditions. It is important to check the sequence of the "Informant lead" ID number, since these numbers are computer generated.

It is submitted that the Agency is not beyond fabricating and embellishing **Informant** leads as a prosecution tactic to bolster a weak and questionable case. In order to better ensure a

warrant will be issued, sufficient grounds are portrayed and introduced through an **Anonymous Informant** (See CC s.487 Grounds for issuing warrant), which is overseen and approved by the Agency Head Office in Ottawa.

Once the a warrant is issued the Agency, in a fishing expedition, is free to gather the necessary evidence to make their case where often the mandatory *mens rea* necessary for a warrant was only speculation prior to the execution of the warrant.

It is submitted that the Crown, knowingly participates in this **Informant** embellishment by applying **"Informant Privilege"** to obstruct the disclosure of certain evidence in order to prevent any connection that may result in exposing the name of the Informant and to divert attention away from this prosecution search warrant tactic.

This situation falls into the category of… "If they can they will" and the extent of this practice is yet to be properly determined. It is therefore important defence specifically request the Court review all "Anonymous Informants" to ensure each Informant is at arms length and verifiable.

The very concealment of a material witness Informant may jeopardize trial fairness, therefore while it is at the discretion of the Court to review the Informants there is an underlying obligation to do so should there be any affect whatsoever on the ability of accused to meet full answer in defence.

Informant Case Law: ***R. v. Davies [1982] 1C.C.C. (3d) 299 (Ont. C.A.)***
***R. v. Scott, [1990] 3 SCR 979***

24. Disclosure Request…for disk copies of the following current **Investigations Training Courses** not redacted in any manner:
    a. Special Investigations Orientation Training Course No.1301
    b. Special Investigations Initial Training Course No.1302
    c. Special Investigations Advanced Training Course No.1304,
    d. Special Investigations Information Session No.1305,
    e. Special Investigations First Line Supervisor Study Session No.1306

This investigation course material provides insight into the comparables of how investigation cases are developed. It sets out the investigation stages that follow the **Criminal Investigation Program (CIP)** and provides defence with a great deal of important information necessary for witness examination purposes. With this information a witness can be confronted with the specifics of their actions in respect to investigation procedures.

In respect to requesting this training information be sure to specify the current handout

material accessed by the training student investigators, including any video and screen presentations used in training. Remember you are in defence of criminal charges where all relevant disclosure must be made available to the accused in accordance to the principles set out under *Stinchcombe*.

25. Disclosure Request…In the course of the trial the Crown will offer the explanation for nondisclosure that the retention period of a document has expired and the subject evidence has been destroyed. In this circumstance is important to know, that for any record to be stored or destroyed, **Form TF23**, "*Request for Records Storage or Destruction"*, must be prepared signed by the manager or director responsible for the records. Therefore a duly completed Form TF23 would be available as proof of evidence storage or destruction, which the Crown must disclose.

    Basically all evidence records relevant to a prosecution case must be retained for a number of years after the case has fully run its course. Interestingly there is a variation in policy regarding the number of holding years. However with any ongoing case all evidence must be retained and disclosed to the defence, otherwise the Crown is condoning the destruction of evidence, the remedy of which is subject to a defence motion to dismiss the Crown's case.

26. "**Enforcement Services (ES)**" is the intelligence component in the development process of a prosecution case. It is responsible for the collection, evaluation, collation, analysis and dissemination of such information as may become evidence relevant to the case at hand or in respect to a future investigation.

    Disclosure Request…

    a. The "Enforcement Services Officers (ESO)" will complete a "Workload Control Report (WCR)" attached with the original incoming information.

    b. There will be a "Workload Control File and Number" created on the Special Investigations Information System (ENIS). Note (ENIS) is a former data holding program.

    c. The Special Investigations Information System (ENIS) will include an "Operational Report" (OR) and a "Vendor History Report (VHR).

    d. The full description of all "Project Type Codes" relative to operational reporting. Ie: 010, 020, 030, 040, 050, 060, 070, 099, 101, 102, 103, 104, 105, 901…etc.

    e. The full description of all "Workload Type Codes" relative to operational reporting. Ie: 11, 12, 13, 20, 31, 32, 33, 34, 40, 50, 55, 59, 61, 62, 63, 64, 65, 99…etc.

27. Disclosure Request… for **"Notebook Disclosure"**
This maybe the best kept secret by the Crown. According to certain testimony that mention a "running diary" and the new evidence found within the Special Investigations Manual, also being called the GST Investigations Manual, it has become known that the Agency officers, in the same respects as police officers, are provided with "Notebooks" in order to document case progress. Certainly the fact that these "Notebooks" exist but have never been introduced in any trial is proof that the Crown has failed to provide full disclosure and is in serious breach of it duty as an officer of the court.

**"GST INVESTIGATIONS MANUAL"**
Part V Enforcement Services Section
Chapter 2 Operational Program & Chapter 4 Notebooks

**Section Notes:**

a. The usage and retention of "notebooks" are regulated by department policy and the *National Archives of Canada Act*.
b. Department "notebooks" shall be issued to all Enforcement Service Officers (ESO).
c. Each officer shall be responsible for the security of his/her "notebook".
d. Once filled "notebooks" must be returned to the regional manager of Enforcement/ Investigations for retention.
e. Each "notebook" shall be in the officer's own handwriting, no pages are to be removed and a single line is to be drawn through unwanted words and must still be legible.
f. The "notebooks" shall be recorded daily regarding: time charges, enquiries and observations, name and/or identifiers of overt, covert or cooperating individual persons met and all details relative to the "Debriefing Report".
g. Time Statistics will be compiled from the "notebook".
h. See *Archibald vs. The Queen* (1957) 116 CC 62

28. Disclosure Request…for **"Intelligence Reports"**, which are an extension or elaboration of the officer's **"notebook"**, using the memos to file and the "Operational Report"
    a. All "Intelligence Reports" are to be stored within a secured room or in a locked cabinet within the Investigations area.
    b. All files related to case before the courts are to be retained and reviewed every six months until the case has been concluded.
    c. Disclosure Request…full disclosure description of all "Position Codes" relative to intelligence reports. Ie: E01. E02, E10, E11, E20, E30, E40, E50, E60, E61, E70, E71, E72, E80, E99…etc.

29. Disclosure Request…for **"GST Investigations Manual"** In accordance to the Investigations Training Manual (HQ1301-000, 03-1996 page 6-6, there is a manual specifically referred to as the **"GST Investigations Manual"**.

The type of Manual received to date is entitled “Special Investigations Policy and Procedures Manual” issued December 2, 1991 with some revisions done in 1993. It is uncertain whether this is the referred to “GST Investigations Manual”, because there is nothing in the Index of the Manual as received that specifically pertains to GST. Further, the Index lists sections that are not included in the 590 pages of material, to the extent that it appears the Index was drawn from a different Manual version. Certainly this Manual requires further research and explanation as part of a disclosure application request by the defence.

30. Disclosure Request…**“Investigation Reports”** are identified within the “Special Investigations Policy and Procedures Manual” (GST Investigations Manual), identified above, under Part VI, Chapter 13, Section A and B. This Manual notes information pertaining to the “Investigation Reports” is not currently applicable, which suggests such reports exist but are being withheld. Certainly additional information is necessary on these reports, which must be derived from an official disclosure application submitted by the defence pre-trial

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Predominate Purpose Notes…

Firstly…the assignment of a **“Case Number”** is the only true administrative/accounting demarcation regarding intent to prosecute. The assignment of a **“Case Number”** automatically occurs when the subject is screened into the AIMS computer tracking programming, which is computer system that replaced the former ENIS Special Investigations Information System.

It is important to understand that virtually all of the Stage 0 and Stage 1 Preliminary Investigation work is initially handled by individuals identified as being either “Audit” or “Tax Avoidance” (TA). This is being done intentionally as a distraction since both are acting as **“Enforcement Services Officers (ESO)”** and both work out of Work Section W/S 443 (Verifications & Enforcement Directorate) as a general rule, by being assigned to a **"Program Type"** that cross-references to an **“Investigation Type”**.

The **“Programs Types”** and **“Investigation Types”** are outlined in the **AIMS Online Manual**, while the scheme of investigation stages is found under the **Criminal Investigations Program (CIP)** and in the **AIMS Online Manual.**

The Stage 0 and Stage 1 Preliminary Investigation “referral” to the Stage 2 Investigation is a “smoke & mirrors” “referral” utilized to mislead the courts into believing this “referral” is the demarcation between a regulatory audit and a criminal investigation activity, when in fact it is really only a progression within the Criminal Investigations Program (CIP). The term “audit” is left

undefined under these circumstances in order to leave the court with the impression "audit" is a regulatory process. The court must therefore be provided with evidence that clearly defines the investigation nature of the various (CIP) Stages supplemented with activity coding evidence and work description profiles of the professed auditor.

A good "Flow Chart" reference is located in the Investigation Manual at section 24.4.1, which lays out the referral process that actually occurs.

The referral to the Stage 2 Investigation is the point the Crown would have the record of the Agency's investigation activity appear to begin. This is the position where the previously noted **presumption** takes form, regarding a regulatory auditor doing a regulatory audit.

Disclosure is paramount in tax evasion cases where the _Charter_ is often the only line of defence open to the accused. The Supreme Court of Canada in ***Jarvis*** and in ***Ling*** clearly establish the **"record"** as a necessary factor in the determination of **"Predominant Purpose"**, which when coupled with ***R. v. Stinchcombe*** the seminal case law governing disclosure practice, provides the accused with the necessary tools to pursue relevant disclosure for full answer in defence.
The **"Defence Disclosure List"** in this material, exposes the esoteric systems within the administrative and accounting facets of the Agency where the "record" of the investigation with the intent to prosecute is located.

Persistence for full disclosure in accordance to these principles becomes a critical element to the accused.

****** Compromise Disclosure at your Peril ******

## SUPPLEMENTAL CASE LAW

The main legal principles applied to the disclosure of information in criminal matters were set down by the Supreme Court of Canada in the landmark case of ***R.v. Stinchcombe, [1991] 2 S.C.R. 326*** and have since been elaborated and applied in numerous subsequent cases. More recently in ***R.v. Taillefer*** and ***R.v. Duguay [2003} 3 S.C.R. 307***, where Mr. Justice LeBel reiterated the key principles as follows:

> The rules may be summarized in a few statements. The Crown must disclose all relevant information to the accused, whether inculpatory or exculpatory, subject to the exercise of the Crown's discretion to refuse to disclose information that is privileged or plainly irrelevant. Relevance must be assessed in relation both to the charge itself and to the reasonable possible defences. The relevant information must be disclosed whether or not the Crown intends to introduce it in evidence, before election or plea… [p. 334]
>
> As the courts have defined it, the concept of relevance favours the disclosure of evidence. Little information will be exempt from the duty that is imposed on the prosecution to disclose evidence. As this Court said in ***R.v. Dixon [1998] 1 S.C.R 244***, "the threshold requirement for disclosure is set quite low…The Crown's duty to

disclose is therefore triggered whenever there is a reasonable possibility of the information being useful to the accused in making full answer and defence" see also ***R.v. Chaplin [1995] 1 S.C.R. 727***, at paragraphs 21, 26-27. "While the Crown must err on the side of inclusion, it need not produce what is clearly irrelevant" (*Stinchcombe* p. 339). [p. 334-5]

***Kligman v. Minister of National Revenue [2004] F.C.J. No. 639 (at para.31)***
The standard of proof for coming to the answer to the question is low (predominate purpose of investigation with the intent to prosecute). In Jarvis, certain factors for consideration are suggested in determining the Purpose, the first of which includes this question: "Does it appear from the record that a decision to proceed with a criminal investigation could have been made?" The Federal Court of Appeal has determined that this text "is cast in the terms of a mere possibility as opposed to a probability"

***Ellingson v. Minister of National Revenue [2005] F.C.J. No.1323***
The low standard of proof is confirmed in this case**,** where it is agreed that the whole of the evidence with respect to the issuance of the Requirement must be considered in order to determine the Purpose. That is, the Auditor's opinion on the Purpose is not determinative; the Purpose must be derived from an "objective" analysis of the evidence, being an analysis of all the evidence (see ***Capital Vision v. Minister of National Revenue [2002] F.C.J. 1797****.*

It is interesting to note in *Ellingson v. Minister of National Revenue* there is direct testimony reference to a Special Enforcement Program (SEP) as a separate audit unit within the Investigations Division. Testimony goes on to say, the SEP Unit does not conduct investigations, where during the course of a SEP audit it is determined that an offence may have been committed, the file is referred to an investigator within the Investigations Division.

What the above witness testimony has failed to mention in court testimony; is that SEP programs are specifically found in the **AIMS Online Manual** (see Defence Disclosure List) as a "Program Type" directly matched to corresponding "Investigation Type".

This witness failed to mention the AIMS computer system automatically assigns a Case Number, used to track the "record" of Investigation Stages.

The witness neglected to advise the Stage 0 and Stage 1 Preliminary Investigations conclude in the guise of an audit and the evidence and information gathered is transferred as a "referral" to the Stage 2 Investigations, where it is used in the preparation and execution of a search warrant.

The witness fails to advise CRA and their predecessors have devised a proprietary process to camouflage the Stage 0 and Stage 1 Preliminary Investigation "record" of activity to have it appear as an "Audit performed by Auditors", when the actual "record" will show a programmed prosecution activity being carried out by Audit/Investigation teams reporting to the Verification and Enforcement Directorate. This propriety process has been devised to take advantage of the court's and the defence's naivety.

By not volunteering disclosure in to the Agency's administrative/accounting procedure this witness typifies an **"exclusionary style"** of testimony, which the above **Defence Disclosure List** is intended to overcome by educating the defence attorneys in their examinations. The old adage prevails… "Don't ask the question if you don't know the answer"

This document exposing the covert and misleading prosecution procedures practiced by Canada Revenue Agency and the former Revenue Canada has been compiled with the specific intent of undermining this organization and exposing the Crown's negligence and lack of professional behaviour as a facilitator. By demonstrating in pre-trial submissions that the defence is armed with a wide range of disclosure application knowledge relevant to the *Jarvis* "record" of investigation procedure it becomes obvious disclosure could evolve indefinitely, thereby the Crown becomes hesitate in opening Pandora's Box knowing it will result in case law imposing significant liabilities on the Crown and Agency.

**Therefore please help in this objective by distributing this material to all first line defence lawyers.**

Feel free in contacting the undersigned with any questions you may have. We are pleased to assist in anyway possible and interested learning more from your experiences with the use of this material in your disclosure applications, which will be added to the ongoing revisions of new evidence discoveries contained in this **"Whistleblower's Document"**.

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