1 St. Clair Ave. East, Suite 900 Toronto, Canada M4T 2V7 Tel: 416-923-0809 Fax: 416-923-1549 www.alpertlawfirm.ca

VOLUNTARY DISCLOSURES

This issue of the Legal Business Report provides current information to the clients of Alpert Law Firm on the rules relating to the tax treatment of independent contractors. Alpert Law Firm is experienced in providing legal services to its clients in tax dispute resolution and tax litigation, tax and estate planning matters, corporate-commercial transactions and estate administration. Howard Alpert has been certified by the Law Society as a Specialist in Estates and Trusts Law, and also as a Specialist in Corporate and Commercial Law.

A. THE VOLUNTARY DISCLOSURES PROGRAM

The Canada Revenue Agency ("CRA") Information Circular IC07-1 entitled "Taxpayer Relief Provisions" provides that penalties and interest may be waived or cancelled in whole or in part on the following grounds: (i) the interest or penalty arose due to circumstances beyond a taxpayer's control; (ii) the interest or penalty arose primarily because of actions of the CRA; or (iii) there is a confirmed inability to pay the amounts owing.

Pursuant to subsection 220(3.1) of the *Income Tax Act* ("Act"), the CRA has wide discretion to give equitable relief to taxpayers by cancelling or waiving penalties and interest that would otherwise be payable under the Act. This discretion is exercised partly through the Voluntary Disclosures Program ("VDP"). If a voluntary disclosure is found to satisfy all the requisite conditions, relief will be given from penalties and prosecution that may otherwise have been imposed.

In general, the Minister's ability to grant relief under the VDP is limited to any taxation year that ended within the previous ten years before the calendar year in which the submission is filed. However, there is currently no limitation period applicable to the ability of the Minister to examine unreported income. The Minister can assess back taxes and interest for an infinite number of years while only offering relief for the most recent ten years.

In June 2010, there were indications that the CRA was working towards a more lenient and consistent approach for the repatriation of offshore income taxes. In order to encourage voluntary disclosures, under the new CRA rules, where voluntary disclosures are made, auditors would only go back a maximum of ten years when assessing offshore unreported income and it would be unnecessary for the taxpayer to explain the initial capital.

1 St. Clair Ave. East, Suite 900 Toronto, Canada M4T 2V7 Tel: 416-923-0809 Fax: 416-923-1549 www.alpertlawfirm.ca

If a voluntary disclosure is found to satisfy all the requisite conditions, relief will be provided from penalties and prosecution that might otherwise have been imposed. However, the taxpayer will still be liable for remitting outstanding taxes and duties. In addition, the taxpayer may also be liable for interest on the outstanding taxes and duties; however, the taxpayer is still entitled to bring an application to the Taxpayer Relief Committee requesting relief from the payment of interest on the outstanding taxes and duties.

Similar voluntary disclosure provisions are available pursuant to: (i) section 88 and section 281.1 of the *Excise Tax Act*; (ii) section 173 and section 255.1 of the *Excise Act, 2001*; (iii) section 30 and section 55 of the *Air Travelers Security Charge Act*; and (iv) section 37 of the *Softwood Lumber Products Export Charge Act*. In addition, the Ontario Ministry of Finance has a similar voluntary disclosure program for certain provincial taxation statutes.

B. CIRCUMSTANCES UNDER WHICH VDP RELIEF WILL BE CONSIDERED

The CRA has outlined specific circumstances under which VDP relief may be granted, which include circumstances where a taxpayer: (i) failed to fulfill their obligations under the applicable act; (ii) failed to report any taxable income they received; (iii) claimed ineligible expenses on a tax return; (iv) failed to remit source deductions for their employees; (v) failed to report an amount of goods and services tax ("GST"); (vi) failed to file information returns; or (vii) failed to report foreign income that is taxable in Canada.

The CRA has also listed the following examples of circumstances that will not be eligible for the VDP: (i) tax returns with no tax owing; (ii) provisions in the Act under which a taxpayer can elect specific treatment of certain transactions; (iii) advance pricing arrangements for certain transactions between a taxpayer and a non-resident entity; (iv) the rollover provisions; (v) bankruptcy returns; and (vi) post-assessment requests for penalty or interest relief.

Where the VDP is not applicable to a taxpayer's particular tax situation, relief may be requested under the Taxpayer Relief Provisions.

C. CONDITIONS FOR VALID VOLUNTARY DISCLOSURE

Once a disclosure is made, the taxpayer is expected to pay all amounts owing as a result of the disclosure; however, non-payment will not disqualify a valid voluntary disclosure. The taxpayer's authorized representative can make the voluntary disclosure

1 St. Clair Ave. East, Suite 900 Toronto, Canada M4T 2V7 Tel: 416-923-0809 Fax: 416-923-1549 www.alpertlawfirm.ca

on behalf of the taxpayer by submitting a signed copy of the appropriate prescribed authorization form. In order for a voluntary disclosure to be considered valid by the CRA, evidence of all four conditions outlined below must be present.

(1) DISCLOSURE MUST BE VOLUNTARY

First, the disclosure must be voluntary. The taxpayer is required to initiate the voluntary disclosure. A disclosure may not qualify as voluntary if it is found to have been made with the knowledge that an audit, investigation or other enforcement action that is set to be conducted by the CRA or has been initiated by the CRA or other authorities with which the CRA has information exchange agreements, such as a provincial authority, a police force, or a securities commission. The confirmation of the voluntary status of disclosure will only take place after all the information, including the identity of the taxpayer, is provided to the CRA.

A taxpayer may be disqualified from obtaining the benefits of the VDP where the taxpayer has knowledge of a prior audit relating to a third party who is associated with or is related to the taxpayer, if it is reasonable to believe that the purpose and impact of the audit of the third party is sufficiently related to the subject matter of the voluntary disclosure.

The existence of computer-generated notices from the CRA is considered to be an enforcement action by the CRA under Information Circular IC00-1R3 entitled “Voluntary Disclosures Program” (IC00-1R3). Therefore, their existence may disqualify the disclosure from being voluntary, unless it can be demonstrated that the taxpayer did not receive the computer-generated notice or that enough time has passed to suggest that the enforcement action had in effect been abandoned by the CRA.

(2) DISCLOSURE MUST BE COMPLETE

Second, the disclosure must be complete. The disclosing taxpayer is expected to provide full and accurate reporting of all previously inaccurate, incomplete or unreported information. The CRA may request documentation to verify amounts disclosed.

The disclosing taxpayer will not be disqualified simply because the disclosure contains a minor error or omission. However, if the disclosure is found to contain material errors or omissions, the disclosure will not qualify for the VDP.

The taxpayer will be held to the reasonable person standard and the disclosure must be substantially complete. Where a disclosure is found not to qualify for the VDP on this basis, the taxpayer’s disclosed information will be processed in the normal

course by the CRA, and the taxpayer will be exposed to interest and penalties on the entire outstanding amount.

(3) DISCLOSURE MUST INVOLVE AN INCOME TAX PENALTY

A disclosure must involve the potential application of at least one income tax penalty. The penalty may be a late-filing penalty, a failure to remit penalty, an installment penalty, or a discretionary penalty, such as an omission penalty or a gross negligence penalty. Where there is no monetary penalty involved, there is no need for a taxpayer to disclose information though the VDP. If that is the case, it is sufficient for a taxpayer to submit the information to the CRA in the normal manner.

(4) DISCLOSURE OF OVERDUE INFORMATION

Generally, the disclosure should involve information that is at least one year or more overdue. Where a voluntary disclosure relates to the current taxation year, it will qualify for the program only where it is submitted as part of a disclosure for a series of years, where it corrects a previously filed return, or where the disclosure contains information that is itself at least one year past due.

D. NO-NAME VOLUNTARY DISCLOSURES

The primary benefit of initiating a no-name voluntary disclosure is that it starts the clock running in terms of protecting the taxpayer from penalties, prosecution and CRA audits.

Formerly, this type of disclosure procedure allowed an unidentified taxpayer to obtain an understanding from a VDP officer as to whether or not their disclosure would qualify for the VDP by disclosing sufficient information to the officer on a no-name basis. Under the former guidelines, the CRA retained the right to verify the information, but if it proved to be in conformity with what was represented earlier, the CRA would honour any previous commitment and grant a taxpayer access to the VDP once their identity was revealed.

As of September 2006, the CRA implemented a fundamental policy change to the no-name VDP. This policy change was a response to the decision made by the Federal Court of Canada in ***Karia v. Canada (MNR)***, 2005 FC 639, which is discussed in the Recent Case Law section of this memorandum. As a result, while the taxpayer remains unidentified, the CRA will not confirm that the taxpayer qualifies for the VDP. The CRA will only make a decision in respect of the taxpayer's voluntary disclosure after the identity of the taxpayer is revealed to the CRA. The no-name discussions with

a VDP officer are intended to be "informal, non-binding, and general in nature," as noted in IC00-1R3, and any advice based on the facts as submitted on a no-name basis is "without prejudice."

Once a taxpayer initiates a non-name voluntary disclosure, the identity of the taxpayer must be revealed within 90 days from the effective date of disclosure (the date the no-name voluntary disclosure is received by the CRA) for the taxpayer to qualify for the VDP. If the identity of the taxpayer is not received by the CRA within 90 days, the CRA will close the no-name VDP file and protection from penalties and prosecution will be terminated. A final and complete submission of the voluntary disclosure is expected within this 90-day period. The taxpayers authorized representative can make the voluntary no-name disclosure on behalf of the taxpayer. In this case, the taxpayer's representative should submit a signed copy of the appropriate prescribed authorization form at the same time the identity of the taxpayer is provided.

E. SECOND DISCLOSURE BY THE SAME TAXPAYER

The CRA expects taxpayers to remain compliant after using the VDP. Under normal circumstances, a taxpayer is entitled to utilize the benefits of the VDP only once.

A second disclosure for the same taxpayer may be considered by the CRA if the circumstances surrounding the second disclosure are beyond the taxpayer's control. At the time of making a second disclosure, a taxpayer must provide their name and specify that they had previously made a disclosure.

If it is discovered during the course of the disclosure review that the taxpayer had previously made a disclosure and the taxpayer has not disclosed this fact, the CRA may deem the disclosure to be invalid for VDP purposes. If the second disclosure relates to the same issue that was previously denied as incomplete due to information not being received by the stipulated date, then the second disclosure will be denied.

F. HST NON-COMPLIANCE

Effective April 1, 2007, changes were implemented to subsection 280(1) of the *Excise Tax Act* ("ETA") regarding Harmonized Sales Tax ("HST") (formally GST) penalties and interest for non-payment or late payment of taxes. Pursuant to the ETA, a "wash transaction" occurs when a supply that is taxable is made and the supplier has not remitted an amount of net tax by virtue of not having correctly charged and collected the tax from the recipient who is a registrant, who would have been entitled to claim a full input tax credit if the tax had been correctly applied. The former 4% flat penalty for a

"wash transaction" was replaced with a 4% interest charge, and, for overdue balances, the 6% penalty previous imposed was removed and offset with a new basic rate plus 4% interest.

Since one of the pre-conditions of the VDP is that the disclosed amount be subject to a penalty, it appears that a disclosure related to one of the above-mentioned situations may no longer qualify for the VDP. To date, the CRA has not indicated that it will make any changes to the VDP in light of these legislative changes.

A taxpayer that qualifies for the VDP is no longer able to avoid the extra interest on overdue balances, which previously would have been waived as a penalty. The CRA does have discretion to grant a taxpayer relief application and waive interest in appropriate situations. However, case law has confirmed that in exercising this discretion, the CRA must consider all relevant factors; and the Courts should not fetter or otherwise limit the decision-making authority of the CRA.

G. PROVINCIAL VOLUNTARY DISCLOSURE

The Ontario Ministry of Finance has outlined similar conditions to those of the federal VDP for corporations and individuals who wish to voluntarily disclose a violation of a provincial tax statute.

The Ministry of Finance requires that five conditions be satisfied for the voluntary disclosure to qualify as valid: (i) the disclosure must be voluntary; (ii) the disclosure must be full and accurate; (iii) all books of account, records and documents must be made available and questions from Ministry staff answered so that the information disclosed can be verified; (iv) the disclosure must not relate to information for the current tax return; and (v) the disclosure must involve an offence with a civil penalty, fine or jail term.

H. CORPORATE DISCLOSURE

Effective April 1, 2008, the CRA administers the corporate tax voluntary disclosure program on behalf of Ontario and corporate taxpayers should follow the procedures outlined by the CRA.

1 St. Clair Ave. East, Suite 900 Toronto, Canada M4T 2V7 Tel: 416-923-0809 Fax: 416-923-1549 www.alpertlawfirm.ca

I. REMEDIES

If the CRA finds that a taxpayer's submission does not satisfy all four conditions of the federal VDP, a taxpayer may request that the decision be reviewed internally by a Tax Services Office Director. A taxpayer can also apply for a second or third internal review, but once the second and third review decisions are released, a request for a subsequent internal review will not generally be granted by the CRA.

Alternatively, a taxpayer may apply to the Federal Court for judicial review of the Minister's original or review decision. When examining if the decision to deny a taxpayer access to the VDP has merit, the Court will hold the Minister to a standard of reasonableness. If a Federal Court judge determines that a new fairness review is to be conducted by the Minister, the Minister's subsequent review can also be the subject of a new application for judicial review.

A taxpayer may file a Notice of Objection; however, this type of objection is limited to the correctness of the assessment. A taxpayer cannot file a Notice of Objection outlining the reasons they should have qualified for the VDP.

J. SOLICITOR-CLIENT PRIVILEGE

A taxpayer must exercise caution when making the decision to initiate a voluntary disclosure. Any information given to the CRA, even if a taxpayer does not qualify for the VDP, can potentially be used against the taxpayer by the CRA.

Pursuant to section 241 of the Act, where information has been revealed to the CRA through the VDP, the information may be used in the course of the administration or enforcement of the Act, even if the information does not qualify for the program.

A taxpayer may make a voluntary disclosure to the CRA personally or through an agent. When a taxpayer makes a voluntary disclosure through a lawyer, the taxpayer is protected by solicitor-client privilege with respect to the taxpayer's identity, solicitor-client communications and any documents revealed to a lawyer up until the time the voluntary disclosure is made.

Generally, solicitor-client privilege does not extend to communications between an accountant and their client. However, in certain circumstances solicitor-client privilege can extend to communications between an accountant and a taxpayer where an accountant and a lawyer together assist a taxpayer in making a voluntary disclosure.

Where an accountant acts as a representative of the taxpayer to communicate facts or issues to a lawyer for the purpose of giving or obtaining legal advice, the communication is viewed as communication between the taxpayer and the lawyer and is therefore protected by solicitor-client privilege.

Once a voluntary disclosure is initiated and the taxpayer's history is revealed to the CRA, any solicitor-client privilege that may have attached to the disclosed documents is lost.

In ***Visser v. M.N.R.***, 89 DTC 5172, a taxpayer argued that the documents requested for verification by the CRA in a voluntary disclosure were subject to solicitor-client privilege. The Court held that in applying for the VDP, there is an implied undertaking to produce supplementary information, regardless of its privileged character. Solicitor-client privilege cannot be claimed against documents related to matters forming the substance of a disclosure because in making the voluntary disclosure a taxpayer is demonstrating an intention to waive solicitor-client privilege with respect to the relevant documents.

K. RECENT CASE LAW

1. *Karia v. Canada (MNR)*, 2005 FC 639

As a result of this judicial review decision by the Federal Court, the CRA made significant changes to its no-name voluntary disclosure policy, which are discussed in Section C of this memorandum.

The taxpayer's residence and business were searched by the Peel Regional Police in connection with a fraud investigation. The taxpayer's representative subsequently contacted the CRA to make a no-name voluntary disclosure and informed the Minister of the investigation by an unnamed police force. The CRA informed the representative that the disclosure was valid as presented, subject to new details coming to light. The representative then revealed the identity of the taxpayer.

Once the taxpayer's identity was revealed, the Minister advised the taxpayer's representative that the disclosure would not qualify for the program as it did not satisfy the voluntariness requirement. The CRA accepted that the taxpayer was not aware of the CRA investigation that had been underway before the disclosure was made, but claimed that the disclosure was initiated with the knowledge of the enforcement activities of the Peel Regional Police. Since the CRA had an informal communications agreement with the police force, it claimed the police force qualified as an authority with which it had an information exchange agreement, making the disclosure invalid.

The Court held that the taxpayer's application should be allowed since the disclosure should have been accepted once the taxpayer's identity was revealed. The requirements of promissory estoppel were met because the taxpayer acted to his detriment. Therefore, the Minister was estopped from exercising his discretion in a manner inconsistent with the promise made.

Further, the agreement the CRA had with the Peel Regional Police was informal and did not qualify as an information exchange agreement. The CRA cannot use an informal communication agreement to deny the taxpayer access to the VDP. In addition, there was no way that the taxpayer could have had constructive knowledge of this agreement between the CRA and the Peel Regional Police.

2. ***Brown v. Canada (CRA)*, 2007 FCA 26**

In this Federal Court of Appeal case, the taxpayer failed to remit GST that he had collected from 1996 to 2003. The taxpayer's legal representative made hypothetical inquiries about the tax owed to a VDP officer on July 22, 2004. The following day, the legal representative advised the taxpayer on the procedures for making a voluntary disclosure. On September 1, 2004 the taxpayer received a notice from the CRA informing him that his 2001 and 2002 income tax returns were under review. On September 7, 2004 the Tax Services Office received a letter dated July 23, 2004 expressing that the taxpayer wished to make a voluntary disclosure. The CRA advised the taxpayer that his disclosure would not be considered voluntary, since an enforcement action had been commenced and was communicated to the taxpayer prior to the receipt of the disclosure letter by the CRA. This decision was confirmed on internal review.

The taxpayer applied for judicial review of the Minister's decision. The Federal Court dismissed the taxpayer's application. The date that a taxpayer is considered to have made a voluntary disclosure is the earlier of the date that the taxpayer identifies themselves or the date that the taxpayer or his representative signs a client agreement form with the CRA. The taxpayer's representative had contacted the VDP officer in July to make general inquiries and not to commence a voluntary disclosure. The Court held that the Minister's decision was not unreasonable and that there had been no breach of procedural fairness.

The taxpayer appealed the decision to the Federal Court of Appeal, which dismissed the taxpayer's appeal. The taxpayer had tried to raise a new argument regarding the legality of the Minister's decision. The Federal Court of Appeal held that it was inappropriate to consider the new argument on its merits.

3. ***334156 Alberta Ltd. v. Minister of National Revenue*, 2008 FCA 228**

In this Federal Court of Appeal case, the corporate taxpayer filed tax returns for the 1998 to 2003 taxation years in February 2004 and the Minister imposed late filing penalties on the returns. The corporate taxpayer sought relief from those penalties alleging that a voluntary disclosure had been made for the 2000, 2001 and 2002 returns. The Minister denied the corporate taxpayer's request for relief on the basis that an enforcement action had been initiated before the returns were filed and that the CRA had been communicating with representatives of the corporate taxpayer on this matter during the relevant period.

The corporate taxpayer applied to the Federal Court for judicial review of the Minister's decision, alleging that there was no evidence that inquiries were made by the CRA about the tax returns prior to the time when they were filed. The CRA's internal records indicated that certain individuals had communicated with the CRA in connection with the corporation's affairs during February and April 2003. However, the corporate taxpayer alleged that these individuals were not *authorized* representatives of the corporate taxpayer and therefore any knowledge gained by these individuals in communications with the CRA could not be imputed to the corporate taxpayer.

The application was dismissed on the basis that the CRA's internal records showed that there had been continuous contact between the CRA and the taxpayer's representatives about the overdue returns from 2000 to 2004. The allegation that the representatives were not authorized to represent the corporate taxpayer could not be considered by the Federal Court in the application for judicial review, since this argument was not previously put before the decision-maker at either the first or the second level internal CRA taxpayer relief reviews.

The corporate taxpayer appealed the decision to the Federal Court of Appeal. The Federal Court of Appeal dismissed the appeal on the basis that there was no reviewable error in the Minister's decision. The Federal Court of Appeal followed the recent decision of the Supreme Court of Canada in ***Dunsmuir v. New Brunswick***, 2008 SCC 9, which held that when reviewing a decision made by an administrative tribunal such as the CRA, the standard to be applied is whether the decision is reasonable.

4. ***L'Heureux v. Canada (Attorney General)*, 2006 FC 1180**

The taxpayer carried on a consulting business. On April 13, 2004 the taxpayer's primary client was informed that the CRA intended to perform an audit on the client's business. The taxpayer submitted an application for the VDP on May 28, 2004,

recognizing that he had omitted to declare income earned in the operation of his business, including fees invoiced to and paid by his primary client.

The CRA informed the taxpayer that the disclosure did not qualify as voluntary since the taxpayer was aware at the time of his submission that an audit of his primary client had been initiated and the audit would reveal amounts paid to the taxpayer, even if they had not been declared by him.

The taxpayer applied for judicial review of the CRA decision. The Federal Court dismissed the taxpayer's application, holding that the CRA's decision denying the voluntary disclosure was reasonable. Disqualification from the VDP, based on the knowledge of an audit, is not limited to a direct and immediate review of the tax returns or financial statements of the taxpayer. A taxpayer may not qualify for the VDP based on knowledge of audits of third parties, if it is reasonable to believe that the purpose and impact of the audit is sufficiently related to the voluntary disclosure. There must be a causal connection between the disclosure and the fact that an audit is in progress for the audit to disqualify an application for the VDP.

5. ***Palonek v. The Queen*, 2007 FCA 281**

In this Federal Court of Appeal case, the taxpayer attempted to initiate a voluntary disclosure in June 2002. He had not filed income tax or GST returns from 1993 to 2001. The taxpayer submitted his tax returns within 90 days of the initial date of disclosure to the VDP officer. In August 2002, the officer requested that further details be submitted regarding the taxpayer's business and gross income. The taxpayer's representatives requested an extension of time to make further submissions, which was granted by the CRA officer assigned to the file. The officer gave the taxpayer's representatives until December 16, 2002 to make these additional submissions and informed the representatives that if no further information was received by December 16, 2002, the CRA would finalize the review based on the information previously submitted.

No further information was submitted by the taxpayer or his representatives and no further extensions were requested. The CRA informed the taxpayer that the submission did not qualify for the VDP, as the disclosure was incomplete. The CRA officer was of the view that the taxpayer had failed to disclose all matters that could effect his GST and income tax liability, including details that had been requested about his business and gross income, and that the taxpayer had failed to mention that he had an ownership interest in a particular corporation. On three subsequent internal reviews by the CRA, it was determined that the disclosure was incomplete.

The Federal Court dismissed the taxpayer's application for judicial review of the CRA decision. The primary question to be determined by the Court in its judicial review regarding qualification for the VDP is whether the Minister's administrative decision meets the standard of reasonableness and can withstand a somewhat probing examination. The Court agreed that the taxpayer had failed: (i) to disclose all relevant materials; (ii) to provide details about his business and gross income; and (iii) to mention that he had had an ownership interest in a certain corporation. Therefore, the CRA had met the standard of reasonableness in making its decision to deny the VDP.

The taxpayer appealed to the Federal Court of Appeal on several grounds. First, the taxpayer claimed that the Minister failed to inform him of the possible consequences of making a disclosure under the VDP, and this failure constituted a violation of administrative law obligations of fairness as well as an infringement of his rights under sections 7 and 8 of the *Charter of Rights and Freedoms*. Second, the taxpayer argued that he was treated unfairly by the judge in the judicial review, because the judge should have counseled and helped him throughout the process given the fact that he was self-represented.

The Federal Court of Appeal dismissed the taxpayer's appeal. The Court found that in these circumstances it was entirely reasonable for the CRA to presume that the taxpayer would have had the benefit of legal advice regarding the parameters of the program. The Court also held that it would have been unethical for the Minister or the Minister's counsel to contact the taxpayer directly, and that the taxpayer had the duty to provide full disclosure of all income from all sources without being warned of the consequences of incomplete disclosure.

The Federal Court of Appeal held that the taxpayer's complaint regarding his treatment during the judicial review was not supported by the record as a whole, and that the taxpayer, as a sophisticated businessman, took action during the proceeding that showed some knowledge of the procedure. The Federal Court of Appeal also refused to second guess the credibility assessment made by the Federal Court judge in respect of the taxpayer, on the basis that the Federal Court judge had the benefit of seeing and hearing the taxpayer.

6. ***Les Peintres Filmar v. Canada Revenue Agency*, 2007 FC 560**

The corporate taxpayer applied for judicial review after being denied access to the VDP on the basis that the disclosure submitted was not complete. The taxpayer applied to the Federal Court for: (i) an interim order prohibiting the assessment of penalties under subsection 163(2) of the Act or instituting a criminal investigation or laying criminal charges, pending the outcome of the judicial review proceedings; and (ii)

an order giving the taxpayer access to all documents in the hands of the CRA regarding the investigation of the taxpayer.

The Federal Court dismissed the application for the interim order on the basis that there would be no irreparable prejudice to the taxpayer if the interim order was not granted. In addition, if criminal charges were laid, the protective provisions of the Act and the *Criminal Code* would be at the disposal of the taxpayer. The balance of convenience did not favour the taxpayer in this application, since granting the order would frustrate the Minister's investigative process under the Act. With regards to the documents requested, a taxpayer cannot go beyond the evidence provisions in the *Criminal Code* to obtain evidence in the possession of the CRA that is being used in the investigative process.

7. ***Wong v. Canada*, 2007 FC 628**

In this Federal Court of Canada case, the taxpayer ran a retail seafood sole proprietorship. The CRA informed the taxpayer that his GST return for the first quarter of 2005 had been selected for audit. On the same day, the taxpayer telephoned the CRA regarding the VDP, which he had heard about on the radio. The CRA informed the taxpayer that he would not qualify for the VDP for 2005 because there was an audit. From this telephone call, the taxpayer understood that he qualified for the VDP for the years other than 2005. The taxpayer's affidavit evidence disclosed that the CRA had informed him that since it was reviewing his 2005 taxation year, he did not qualify for the VDP for 2005; however, his voluntary disclosure for periods prior to 2005 would be "okay". There was no warning made by the CRA to the taxpayer as to the negative consequences associated with making a voluntary disclosure. The taxpayer, thinking he was covered under the VDP, disclosed unreported taxable income for the years 2000-2004 from his wholesale business. He was subsequently advised that he did not qualify for the VDP's protection.

The first and second level taxpayer review decisions by the CRA refused to grant relief to the taxpayer on the basis that the CRA officials did not mislead the taxpayer. The first and second level taxpayer review decisions concluded that it was the auditor's contact which had motivated disclosure of unreported income for the years 2000-2004. The taxpayer then applied to the Federal Court for judicial review.

The Federal Court granted the taxpayer's application for judicial review and directed that the disclosure of the taxpayer for the years 2000-2004 be treated as voluntary and his request for inclusion in the VDP be re-determined on that basis. The Federal Court found that taxpayers are entitled to know the consequences of what they are about to embark upon before they take an irretrievable step. In this case, the taxpayer received neither warnings nor the advice that the IC00-1R3 call for, and that

the failure to accord minimal fairness led to the highly prejudicial disclosure. The Court held that while the CRA is entitled to ignore the IC00-1R3 regarding the VDP, they do so at their own peril and that the simple presentation of the VDP-1 Form advising the taxpayer of the negative consequences of making such a disclosure may have eliminated all the problems in this proceeding. The Court concluded that the requirements for promissory estoppel were met, and as a result, the Minister was estopped from denying that the Applicant had met the voluntariness condition of IC00-1R3.

8. *Crocione v. Minister of National Revenue*, 2008 FC 793

In this Federal Court of Canada case, the taxpayer applied for judicial review after being denied access to the VDP for his 2002-2004 taxation years. The taxpayer disclosed to the CRA that he had failed to report his income and GST obligations for the five taxation years 1997 to 2001. He sought relief under the VDP. The CRA official with whom the taxpayer spoke did not register and process the call as a call under the VDP. Therefore, the usual process of exchanging correspondence between the parties regarding the conditions required for the disclosure to be accepted as voluntary, and establishing a timeframe for the filing of the delinquent returns, was not followed. As a result, the taxpayer failed to properly expedite the filing of his delinquent returns and did not file these returns for another three years. The CRA accepted that a voluntary disclosure was made by the taxpayer for the five taxation years 1997-2001, but did not include as part of the VDP the taxpayer's returns for 2002-2004.

The Federal Court dismissed the application on the basis that the decision of the CRA in refusing to consider the returns filed for 2002-2004 as part of the initial voluntary disclosure was reasonable because: (i) these returns were not due when the initial disclosure was made in 2002; (ii) there was no evidence that these returns could not have been filed on time alongside his returns for 1997-2001 when they were filed in 2005; and (iii) enforcement action by the CRA had commenced prior to the filing of the 2002-2004 returns.

9. *Poon v. R* , 2009 FC 432

In this Federal Court of Canada case, the taxpayer owned a corporation that operated a consulting business. The corporation was contacted by the CRA regarding the filing of missing corporate tax returns. After the Minister notified the consulting business, the taxpayer filed a voluntary tax disclosure disclosing payments received by him from the company, as well as payments from other companies, rental income, and investment income. The CRA did not accept the voluntary disclosure, determining that the consulting business' tax returns would have disclosed the taxpayer's unreported

income, and therefore the voluntary disclosure was invalid. The taxpayer requested a judicial review of the decision.

The Federal Court set aside the Minister's decision on the basis that the CRA had not provided sufficient reasons for disallowing the benefits of voluntary disclosure with regards to the taxpayer's income that did not arise from the consulting business. The Federal Court held that the definition of enforcement action requires a rational connection to all of the voluntarily disclosed income, and that the CRA had failed to meet this burden. As a result, the decision was set aside, and sent back to be redetermined with full reasons provided.

10. *Robinson v. The Queen*, 2010 FC 795

In this Federal Court of Canada case, the taxpayer sought judicial review of the CRA's second level review decision, refusing his request for the cancellation of penalties under the VDP.

In April 2005, the taxpayer's solicitor applied on the taxpayer's behalf for relief under the VDP with respect to unpaid payroll remittances, income tax and GST. The second level review decision concluded that the taxpayer's file, while under the care of the VDP officer, was never closed and no correspondence was sent to the taxpayer advising that the disclosure was accepted. The CRA also relied upon more than one action taken by its officials in late 2004 and early 2005 prior to the taxpayer's disclosure, whereby the CRA contacted the taxpayer for failing to remit the correct amount of employee source deductions for the 2003 and 2004 taxation years and indicated that it would be conducting a payroll audit of the taxpayer's books and records.

The taxpayer argued that the second level review was unreasonable on the basis that: (i) the taxpayer allegedly had reached an agreement with the CRA regarding the voluntary disclosure prior to the first level review, during a meeting that took place on May 9, 2006 with a VDP officer; (ii) the CRA's actions prior to the taxpayer's disclosures were limited to payroll issues; and (iii) a refusal to accept voluntary disclosure for payroll should not affect voluntary disclosures for income tax and GST.

The Federal Court of Canada upheld the second level review decision as reasonable and dismissed the taxpayer's application for judicial review. The Federal Court held that the CRA's decision was reasonable on the basis that the May 9, 2006 meeting was not mentioned in the second level submissions, and did not form part of the record placed before the CRA second level review fairness officer. The Federal Court also found that there was a correlation among the payroll, income tax and GST disclosures and that it was reasonable to assume that during their audit the CRA would be looking beyond just the payroll remittances. The Federal Court concluded that the

significant non-compliance with respect to the income tax and GST issues over many years would have been discovered with the payroll audit.

11. *McCracken v. R.*, 2009 FC 1189

In this Federal Court case, the taxpayer applied for a judicial review of a decision by the CRA denying the taxpayer interest and penalty relief under the VDP. The taxpayer sold goods through an online auction site. It was estimated that between 2000 and 2006, the taxpayer's transactions amounted to $1,000,000. The taxpayer did not keep good records and did not pay income tax or GST in respect of the transactions.

In October 2007, the taxpayer's solicitors contacted the CRA to make a voluntary disclosure on a no-name basis. In December 2007, the solicitors disclosed the taxpayer's identity to the CRA and renewed a previous request for a 90-day extension to file returns on the taxpayer's behalf. In January 2008, the CRA granted the taxpayer a 60-day extension and advised that if all returns and adjustments were not provided by March 2008, then the request under the VDP would be closed.

In March 2008, the taxpayer's solicitors asked for an additional 60-day extension on the basis that the online auction company had still not provided the records that had been requested. The CRA denied the request for further extensions and indicated that a second review could be undertaken. The taxpayer's solicitors requested a second level review as well as a further extension of time of 60 days from receipt of the outstanding auction records.

The Federal Court dismissed the taxpayer's application on the grounds that the CRA arrived at their decision within the bounds of reasonableness. The Federal Court found that while it was not the taxpayer's fault that he could not access the auction records, he had other means and records so as to make a reasonable effort in completing his disclosure. The Federal Court held that the CRA had given the taxpayer ample opportunities to make submissions and provide evidence.

12. *Livaditis v. Canada Revenue Agency*, 2012 FCA 55

In this Federal Court of Appeal case, the taxpayer was the president of a corporation that was in the business of developing new residential condominium projects. In 2003, the taxpayer and his family members personally acquired condominium units. In 2006, they resold the units, but did not report the gains from the sale.

On October 28, 2008, the taxpayer received a telephone call from a CRA official, the nature of which was in dispute. While the taxpayer claimed the discussion was in

regards to buyers of condominium units, the CRA official claimed that the taxpayer was informed of an "unnamed person requirement" that would be served on the corporation to obtain the names of persons who bought and sold condominium units without reporting proceeds of sale either as capital gain or as income. Three days after the disputed telephone call, the taxpayer and his family members made a voluntary disclosure request in relation their unreported income. Shortly after, an order was served on the corporation requiring the production of information and documents in respect of the group of unnamed persons who had acquired condominium units. The CRA denied the taxpayer's request for waiver or cancellation of penalty and interest under the voluntary disclosure program for the 2006 tax year. The denial also applied to the taxpayer's family members. Furthermore, the taxpayer's second level application was also denied on the basis that the disclosure was not voluntary. The taxpayer applied for judicial review.

At the Federal Court of Canada, the issue was whether the decision made by the Minister was unreasonable. The Court held that the decision was reasonable and dismissed the application for judicial review. In its decision, the Federal Court stated that the two questions to be asked on voluntariness are as follows:

(i) Was any direct contact by a CRA employee, other authority or administration, for any reason relating to non-compliance made with the taxpayer or is the taxpayer likely to have been aware of the enforcement action?

(ii) Was any enforcement action initiated against a person associated with, or related to, the taxpayer or a third party, where the enforcement action is sufficiently related to the present disclosure and is likely to have uncovered the information being disclosed?

In respect of the first question, the Court criticized the Minister for agreeing with the CRA official's version of events in the second level decision. The Minister had concluded that the taxpayer was aware of the information requested and how that information would disclose the unreported gains. However, there was no explanation given as to why the CRA official's version of events was accepted over that of the taxpayer's. Without any genuine reason for favoring one side over the other, the Minister acted unfairly in making its decision.

Unfortunately for the taxpayer, in respect of the second question, the Court held that the Minister's decision was reasonable as the Minister's second ground for finding the disclosure "not voluntary" did not involve the issue of taxpayer awareness of the existence of an enforcement action. The Court found that: (i) the enforcement action was against a person (i.e. the corporation) that was associated with the taxpayer, as he was both a shareholder and officer of the corporation; and (ii) the enforcement action

had been initiated before disclosure and it would have uncovered the same information as was disclosed. Essentially, once enforcement action commenced against the corporation, the taxpayer could not seek protection under the voluntary disclosure program in regards to any issue connected to the enforcement action. The taxpayer appealed to the Federal Court of Appeal.

The Federal Court of Appeal dismissed the taxpayer's appeal on the basis that the Minister's decision was reasonable and was supported by the evidence on record. It was reasonable for the Minister to conclude that the taxpayer was aware of the CRA's enforcement action, and that such action would have uncovered the information disclosed by the taxpayer.

13. *Amour International Mines d'Or Ltee v. A-G Canada*, 2010 FC 1070

In this Federal Court case, the taxpayer's voluntary disclosure request was denied on the basis that: (i) the disclosure was not voluntary; and (ii) the Minister had already commenced enforcement proceedings before the taxpayer's request. The enforcement action at issue was an internal CRA memo that indicated that the taxpayer was to be audited. The taxpayer applied for judicial review of the Minister's decision.

The Federal Court held that an internal CRA memo that stated that the taxpayer was to be audited did not constitute enforcement proceedings. In addition, the existence of the internal memo did not mean that the CRA had already discovered the information that the taxpayer was disclosing. Thus, the Federal Court held that the Minister's decision was not reasonable, and referred the matter back to the Minister.

14. *Charky v. Canada (Attorney General)*, 2010 FC 1327

In this Federal Court of Canada case, the taxpayer was the president of Allianz Madvac Inc. ("Allianz"). Allianz had deducted expenses from its income that were the taxpayer's personal expenses. The CRA informed an accountant at Allianz that there would be a general audit, and two months later, it extracted computerized data from Allianz's accounting system. One month later, the CRA received an anonymous request for voluntary disclosure from the taxpayer, and learned the taxpayer's identity one month after that. The Minister denied the voluntary disclosure request at both the first and second levels on the basis that: (i) it could not be considered voluntary, as it was made in response to a tax audit of a related person; and (ii) the CRA had initiated enforcement action against Allianz that was likely to have uncovered the information the taxpayer disclosed. The taxpayer applied for judicial review of the Minister's decision.

The Federal Court dismissed the taxpayer's application. The taxpayer argued that there was a discrepancy in a particular paragraph of the CRA's internal VDP

guidelines, as one paragraph referred to enforcement action set to be conducted by the CRA, and another referred to enforcement action that has already been taken. The Court held that the guidelines do not create law and cannot fetter the discretion granted by the Act to the holder of the discretion. The Court then considered whether or not the Minister's decision was reasonable, and determined that it was. The Court noted that it was impossible for the CRA to determine whether the taxpayer had actual knowledge of the audit, but nevertheless held that the facts tended to show that, given the close relationship between Allianz and the taxpayer, its president, and the sequence and timing of events, the taxpayer was or could have been aware of the enforcement action. Thus, the Minister's determination that the disclosure was not voluntary was reasonable and should not be disturbed.

15. ***Williams v. Minister of National Revenue*, 2011 FC 766**

In this Federal Court of Canada case, the taxpayer's application for judicial review of the Minister's decision that he did not qualify under the VDP was dismissed. The taxpayer had not filed income tax returns for 1997, 1998 and 2000 to 2003, or GST returns for 1997 to 2002. He received Demand to File Notices for his income tax returns, and had periodic contact with officers at the CRA's Non-Filer Division. After several years of contact, the taxpayer applied for VDP relief, and his first and second level requests for review were denied on the basis that his disclosure was neither voluntary nor complete. The taxpayer applied for judicial review of the Minister's decision, arguing that the decision was unreasonable, that he was not afforded procedural fairness, and that the decision infringed his rights to security of the person under section 7 of the *Charter of Rights and Freedoms*.

The Federal Court dismissed the taxpayer's application, determining that the Minister's decision was reasonable. The Court determined that the Demands to File and the contact between the taxpayer and the Non-Filer Division constitute enforcement action, and the Minister's conclusion that the disclosure was not voluntary was therefore reasonable. The taxpayer had also been informed by the CRA that he had 90 days from the date of disclosure to submit all documentation, which he failed to do. Therefore, his disclosure was incomplete. With regards to procedural fairness, the Court held that although the officers responsible for the first and second level review decisions knew one another, there was no indication that their independence was compromised or that there was any other breach of procedural fairness. Finally, with respect to the taxpayer's section 7 claim, the Court held that there was no evidence that his security of the person had been infringed, as the taxpayer had not submitted any affidavit evidence to support his claim. Therefore, the Minister's decision was upheld and the taxpayer's application dismissed.

16. ***Bontje v. Canada*, 2012 FCA 53**

In this Federal Court of Appeal decision, the taxpayer and his two companies made voluntary disclosure requests, which were denied by the CRA. The taxpayer was the sole director, officer and shareholder of two corporations that paid all their income to him. The taxpayer had not filed a tax return since 1999, and had not paid the taxes owed for either the 1998 or 1999 taxation years. The corporations had never filed returns. The taxpayer arranged a payment schedule with the CRA but defaulted on his obligations. The taxpayer changed his residence several times but did not advise the CRA, and the CRA lost contact with the taxpayer for four years. The CRA sent multiple requests asking the taxpayer to file his returns but received no responses. The CRA completed arbitrary assessments for the 2000 to 2004 taxation years and sent them to the taxpayer, but he did not receive them. In March 2008, the CRA send requests for the taxpayer's 2006 return. On May 28, 2008, the taxpayer filed his 2006 return, showing nothing owing, but the CRA issued a Notice of Assessment showing a balance of $396,350. In August 2008, the taxpayer filed requests for VDP relief on behalf of himself and the corporations, and these requests were denied at the first and second level reviews. The taxpayer appealed to the Federal Court of Canada.

The Federal Court dismissed the taxpayer's appeal, applying the reasonableness standard of review to the Minister's decision. The Court noted that the VDP is discretionary, and that disclosure is not considered voluntary if enforcement action has been initiated by the CRA. The Court held that CRA requests for unfiled returns and direct contact between the taxpayer and CRA officers regarding non-compliance constitute enforcement actions. Contrary to the taxpayer's assertion, enforcement actions have no expiry dates. Therefore, the CRA's request for the taxpayer's 2006 return in March 2008 was an enforcement action, and as a result, the taxpayer's disclosure in August 2008 was not voluntary.

The Court also held that the arbitrary assessments were not enforcement actions, as they "simply create liability and make it possible to start collections procedures". However, the requests for the taxpayer's returns and the conversations regarding the taxpayer's non-compliance constituted enforcement actions. Thus, it was reasonable for the Minister to conclude that the taxpayer's disclosure was not voluntary. The taxpayer appealed to the Federal Court of Appeal.

The Federal Court of Appeal dismissed the taxpayer's appeal, and held that the Federal Court judge correctly stated the standard of review, namely reasonableness, and that the judge applied that standard properly. Therefore, there was no basis for the Federal Court of Appeal to intervene.

1 St. Clair Ave. East, Suite 900 Toronto, Canada M4T 2V7 Tel: 416-923-0809 Fax: 416-923-1549 www.alpertlawfirm.ca

17. ***Bozzer v. MNR*,, 2011 FCA 186**

In this Federal Court of Appeal case, the taxpayer requested second level fairness relief with regards to interest owed on tax debts. The debts were incurred in 1989 and 1990, and the relief application was not filed until 2005. The CRA did not accept the application, determining that it would be improper and outside their discretion to waive the interest because subsection 220 (3.1) of the Income Tax Act prevents them from waiving tax debts older than 10 years, and the debt was 15 years old at that time. The taxpayer requested a judicial review of the decision, claiming that he should still be able to have the interest obligations from the past ten years waived, even if the full tax debt could not be discharged. The Federal Court denied the application for judicial review, and the taxpayer appealed to the Federal Court of Appeal.

Justice Stratas of the Federal Court of Appeal, set aside the Minister's interpretation of subsection 220(3.1) on the basis that the interpretation unjustly prevented relief provisions from being available in a fair manner. The Federal Court of appeal held that the Minister's interpretation of the subsection would prevent a hypothetical claimant dealing with a severe injury and a long recovery from accessing the equitable relief provisions, and that therefore the taxpayer's interpretation was fairer. The result of this decision is that where the tax debt precedes the established 10 year threshold, a Voluntary Disclosure may still be sufficient to discharge interest that would have been payable in the intervening years.

18. ***Toastmaster Inc v. MNR* , 2011 FC 1309**

In this Federal Court case, the taxpayer company was badly advised and neglected to file a Canadian Tax return as a result of their honest belief that they did not have a permanent establishment in Canada. Upon changing representation, the company realized that they needed to file a return, and entered the Voluntary Disclosure Program with regards to their unremitted taxes. The Minister waived the company's penalties, but determined that they would still be required to pay the interest that had accrued on the tax debt. The Minister relied upon the Guidelines in finding that the company had not met the standard required for a Ministerial waiver of arrears. The taxpayer company requested a judicial review of the decision.

The Federal Court dismissed the taxpayer company's application for judicial review, holding that the Minister was permitted to use the Guidelines as one part of their decision, so long as they did not apply them as binding the Minister's discretion. The Federal Court held that the Guidelines were not applied in this manner, and found that the decision to deny relief from arrears was justified in the circumstances.

19. *Sifto Canada Corp. v. Minister of National Revenue* , 2014 FCA 140

In this Federal Court of Appeal case, the taxpayer company had reached a voluntary disclosure agreement with the Minister of National Revenue, and had agreed to a transfer pricing arrangement in exchange for no penalties being assessed against the company by the Minister. The Minister reassessed the taxpayer company based on a different transfer price, and assessed penalties. The Minister indicated that they did not believe they were bound by the terms of the original agreement. The taxpayer company applied for judicial review of this decision at both the Tax Court of Canada and Federal Court, the second of which the Minister attempted to have struck out. The taxpayer company was successful at the prothonotary, and Federal Court levels. The Minister appealed to the Federal Court of Appeal, asking that the Federal Court judicial review application be struck out as a duplicative parallel proceeding.

The Federal Court of Appeal dismissed the Minister's appeal on the basis that the agreement between the taxpayer company and the Minister had two separate aspects; an attempt to find the penalties invalid, and a claim that the Minister's decision to renege on the agreement was unreasonable. The first aspect is the jurisdiction of the Tax Court of Canada, while the second can only be dealt with at the Federal Court. As a result, the Federal Court of Appeal found that both parallel proceedings should be allowed to continue.

L. LATE FILING PENALTIES

The VDP may also be used by a taxpayer to seek relief for penalties imposed for the late filing of forms, in addition to penalties and interest for failure to pay income taxes and fraud.

1. *Leclerc v. R.*, 2010 TCC 99

In this Tax Court of Canada case, the taxpayer appealed reassessments made for the 2003 and 2006 taxation years. The taxpayer was late in filing his tax returns for these two taxation years. The Minister imposed penalties of $2,500 for each of these two taxation years for the late filing of Form T1135 "Foreign Income Verification Statement".

The taxpayer argued that: (i) his failure to meet the filing-due date for Form T1135 was an involuntary omission, as he was preoccupied with his return to school and his mother's mental illness; (ii) he was misled by section 162 of the Act, which provided that there was no penalty for a late return if no tax is payable or unpaid; (iii) he

never intended to conceal his foreign income; and (iv) he never committed any kind of fraud.

The Tax Court of Canada dismissed the taxpayer's appeals on the grounds that: (i) the penalty under subsection 162(7) was imposed correctly; (ii) due diligence was not a defence applicable in this situation; and (iii) the taxpayer could have avoided paying the penalties by applying to the VDP. The Tax Court held that the program could apply to taxpayers who did not commit fraud, who had reported all of their income and who were simply late in filing a form.

2. ***Worsfold v. Minister of National Revenue*, 2012 FC 644**

In this Federal Court of Canada decision, the taxpayers' application for judicial review of the Minister's decision was allowed on the basis that the decision was unreasonable. The Minister had refused to waive penalties and interest for the late filing of income tax returns, stating the taxpayers' disclosures were invalid under the VDP because they were not voluntary. The primary taxpayer, Mr. Worsfold, and his wife had moved to Canada in 2001, but had not filed any tax returns. On September 6, 2005, Mr. Worsfold contacted a law firm regarding his eligibility for the VDP. Mr. Worsfold met with a lawyer at the firm on October 5, and the firm submitted a voluntary disclosure to the CRA on his behalf on the same day. Meanwhile, on October 3, the CRA had contacted Stoneridge Management Services Inc. ("Stoneridge"), a real estate company of which Mr. Worsfold was a director and shareholder, and informed the company's secretary that the company would be audited. On October 5, several hours before the voluntary disclosure was sent, the CRA faxed an audit letter to the company's accountant.

On September 25, 2007, the CRA informed Mr. Worsfold, his wife, Stoneridge, and a UK-based trust of which the Worsfolds were settlors, trustees and beneficiaries ("the Worsfold Trust"), that their VDP applications had been denied. The taxpayers' second level requests for review were denied on the basis that the disclosure was not voluntary. The Minister accepted October 5, 2005 as the effective date of disclosure for all four taxpayers for the sake of consistency, although Mrs. Worsfold, Stoneridge and the Worsfold Trust had submitted their disclosures at a later date. The Minister concluded that on the date of disclosure, the CRA had already commenced an enforcement action against Stoneridge, and it was reasonable to expect that upon learning of the CRA's intention to audit Stoneridge, the secretary and accountant would have informed all of the company's shareholders and directors. For this reason, the Minister determined that the disclosures were not voluntary. The taxpayers applied to the Federal Court for judicial review of the Minister's decision.

The Federal Court allowed the taxpayers' application and ordered the Minister to reconsider their VDP requests. The Federal Court applied the reasonableness standard

1 St. Clair Ave. East, Suite 900 Toronto, Canada M4T 2V7 Tel: 416-923-0809 Fax: 416-923-1549 www.alpertlawfirm.ca

of review to the Minister's decision, and held that there was no evidence that would lead to the conclusion that any of the taxpayers were aware of the audit at the time they made the disclosure. On the contrary, the evidence indicated that there was no such knowledge, as there was no evidence that the secretary had spoken to any of the taxpayers, and the communications between the law firm and Mr. Worsfold made no mention of the audit. Mr. Worsfold had initiated the process of voluntary disclosure on September 6, nearly a month before the CRA indicated its intention to audit Stoneridge. The Federal Court characterized the Minister's assumption that the secretary and accountant would have immediately informed the shareholders and directors of the audit as "mere conjecture" for which there was no evidentiary basis. Therefore, the Minister's conclusion that the disclosures were not voluntary was unreasonable.