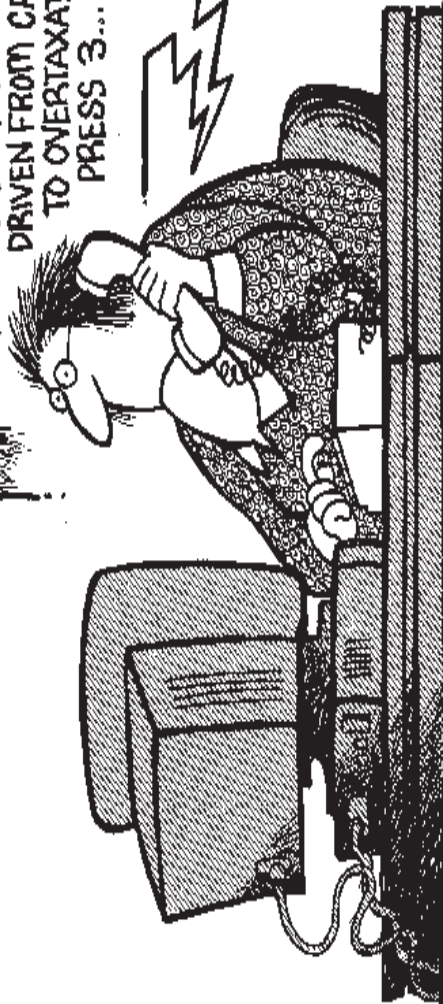


REVENUE CANADA

HELLO, YOU HAVE REACHED BOB.
IF YOU ARE CALLING TO ENQUIRE
AS TO WHY I'M NOT PAYING MY
TAXES THIS YEAR, PRESS 1.
FOR A COMPLETE ACCOUNTING OF
THE OUTRAGEOUS HIDDEN FEDERAL
AND PROVINCIAL TAXES I PAID
LAST YEAR, PRESS 2.
FOR A LIST OF COMPANIES AND
INDIVIDUALS THAT HAVE BEEN
DRIVEN FROM CANADA DUE
TO OVERTAXATION,
PRESS 3...



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Sorry Virginia, income taxes are legal (and constitutional)

To be forced by desire into any unwarrantable belief is a calamity.

- I.A. Richards

Don't you know? Income taxes are illegal...

If I had a buck for every time someone e-mailed, called, or wrote to insist that “the federal government cannot legally collect income tax,” I would have long ago retired to sip red wine in an expensive villa in southern Italy. Out of any question (or assertion) that directors at the Canadian Taxpayers Federation receive, the bizarre claim that taxes are illegal or unconstitutional tops the list.

To be fair, it is a measure of Canadian's frustration with the tax burden that some people would buy the snake oil claim that income tax is illegal. Ottawa in particular has no end to the money it could waste without much of a penalty from voters. But want to give a lawyer plenty of work (and money) in the years ahead? Try not paying income tax for a season or two; the courts will not come to your aid.

The myth of illegal/unconstitutional income tax: It started down south

Like any conspiracy theory, it is impossible to track every strand of the origin of the belief that income tax is unconstitutional. But it appears that Canadian myths are mutations of similar American tales. South of the border, the myth that taxes are voluntary or a violation of the American Constitution has existed since the 16th Amendment to the U.S. Constitution was passed in 1913. That amendment cleared up any confusion and explicitly provided for federal income taxes to be levied, an opening quickly exploited by Congress that same year.^a

Before 1913, the ability of the federal government to uniformly tax incomes

throughout the United States was in doubt due to an 1895 Supreme Court decision. In *Pollock v. Farmers Loan & Trust Company*, a divided court found that the previous year's attempt by Congress to tax incomes (derived from property) was unconstitutional. *Some* forms of income tax were constitutional, for example, that which came from labour as opposed to income derived from property (i.e., rent). But the court voided the entire 1894 law on the grounds that Congress never intended to permit the entire "burden of the tax to be borne by professions, trades, employments, or vocations" after real estate and personal property were exempted.¹

Oddly, just 15 years earlier, the court unanimously upheld the right of Congress to levy a similar tax during the American civil war.² Regardless, after 1913, the federal government could levy a tax on income anywhere in the United States of America and promptly did so.

Despite the 16th Amendment, some Americans who wished to lighten their tax load have variously argued that to pay tax is voluntary, or that federal reserve notes (i.e., U.S. currency) do not count as income, that the *actual* U.S. consists only of the District of Columbia and federal territories (such as Puerto Rico and Guam) and therefore only those areas are subject to federal tax. And then there is the claim that a taxpayer is not a "person" as defined by the Internal Revenue Code and thus not subject to federal tax laws.

All of the above errant beliefs have been defeated in U.S. courts, but similar to the Energizer bunny, the income-tax-is-illegal myth just keeps on going. And if some of those claims sound familiar, it is because a mini-industry mushroomed in Canada with similar tall tales.

Canadian myths

In Canada, the myth that income tax is illegal and unconstitutional likely originated with the American tales and then grew unique Canadian versions. Every few years the myth is reborn, aided by frustration with a tax burden that rarely declines. The latest wave began in the mid- to late-1990s in Alberta and British Columbia when various "de-taxers" as they are known, held seminars to teach people the "secrets of Revenue Canada." Errant beliefs about the legality of taxes are not restricted to the Wild West though. A Quebec-based publication entitled the *Michael Journal* also proclaimed that "Canada's Federal Income Tax is Unconstitutional."

One of the more famous de-taxers, Calgary-based Eldon Warman, has a website with a litany of bizarre claims and *ad hominem* attacks. For example, judges, according to Warman's website, are "sleazebag racketeering thugs."

^a The 16th Amendment to the U.S. Constitution: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

Warman claims that if a court spells a defendant's name in upper-case letters instead of lower-case script, it has no authority. As we shall shortly see, the courts are not exactly frozen in their tracks by this argument.

One reason that the income-tax-is-illegal myth took on new life in the late 1990s is because peacetime taxes had never been higher. Another is that there is great money to be made in selling such snake oil cures to high taxes; most of the myth-makers charge people for their de-tax manuals or seminars. One pamphlet lists a \$25 fee for the first night climbing to \$100 by the third evening. Those who want an entire seminar and guide can fork over \$700. Another de-tax organization offers a swell deal for information on how to "cut your tax bill by 50%!" The price is \$600 payable via a money order.

De-tax seminars associated with Vancouver-area de-taxers Bruce Stellar, [Byrun Fox](#), and Sir Lawrence Leupol (or, known by their real names as Ken McMordie, Phil Naudi, and William Glen Kennay, respectively) claim to have taught 30,000 people how to "de-tax."³ If so, they make a decent living at it. The Canadian De-Tax Group, as they call themselves, charge \$250 for a home study kit, and \$900 if a taxpayer wants to become a "corporation sole," which they claim would make people exempt from income taxes. Seminars appear to have been well attended in western Canada where they ripped through like prairie wildfire in the late 1990s. Seminars were also held in the Toronto area.⁴

A tour through conspiracies

Many groups that promote the extreme tax avoidance methods offer to "expose" secrets of Revenue Canada. If participants received innocuous and perhaps potentially useful tips when dealing with federal tax collectors, it would be nothing more than any good accountant or tax lawyer might offer.

But the de-taxers also offer services straight from the twilight zone. Some promoters promise to reveal "Who really owns Canada?" (several good jokes could result from such a question); "Who really issues birth certificates?"; or the apparently important question: "What do your birth certificate, income tax and international banking cartels have in common?"

The back of one de-tax booklet displays a chart illustrating who *really* controls the United States and Great Britain. At the top: the "Order of the Illuminati" followed by the Council of Thirteen, the Grand Druid Council and the Bilderbergers. Arrows also point to the Central Committee Communist Party of the Soviet Union. (The author apparently was unaware of the 1991 implosion of the Soviet Union.) Similarly, the KGB, the repressive Soviet-era secret police and intelligence agency are still listed in the "who's who" of who really controls the planet.

Others in on the world-wide conspiracy are the Order of Yale, House of Rockefellers, the U.S. Central Intelligence Agency, Rand Corporation, Trilateral

Commission, National Students Association, U.S. Federal Reserve, United Nations, European Common Market, Club of Rome, British Labour party, World Bank, B.E.A.S.T. Computer, British Psychic Research and the London School of Economics. The National Lawyers Guild and the Maoist Progressive Labour party are also listed for good measure.

Closer readers might wonder how the KGB and the CIA co-operated so fabulously for years while their respective governments aimed nuclear-tipped weapons at each other. But then, conspiracy theories by definition do not have to make sense; they need only string together a few disparate strands and combine it with some all-encompassing theory that seems to explain a complex world.

The problem with conspiracy theories

Life is rarely so neat. On occasion, conspiracies exist and are tried; a few even succeed. For example, businesses that are supposed to compete have on occasion been convicted of conspiring to fix prices. Back in the 1950s, some U.S. radio stations and record labels were convicted in “payola” scandals where program managers were paid to play specific songs.

Almost anyone can “conspire” to control small events especially if the people involved are few in number. (People “conspire” all the time to get their favourite political candidates elected; it’s called electioneering.) But the larger a conspiracy is, the more impossible it is to pull off. Acts of God, human foibles and plain bad luck are usually enough to disrupt any attempt at large conspiracy. In fact, given what is at stake—usually money and power—the less likely that any conspiracy can hold together. Such schemes often easily break apart on the rock of ambition and greed.

Charles Colson, a Richard Nixon adviser in the early 1970s, once noted that the code of silence agreed to the president’s advisers as regards Watergate broke apart after only a few days. And those men had an immense motivation to maintain the conspiracy: power was at stake and, as it turned out, jail. Despite that, the conspiracy was quickly dashed.

In addition, conspiracy theories which assume mass participation—say, all tax lawyers, accountants, judges, and the entire federal bureaucracy—miss the rather key point that people with integrity in those fields value their own ethics and judgment and would not consent to the perpetration of a constitutional fraud.

But, of course, given the devotion with which some believe that income tax is illegal or unconstitutional, the only true explanation for my analysis is that this writer must also be part of the conspiracy.

The bizarre strategies offered by the various myth-makers is a mixture of wishful thinking, misrepresentation and a misunderstanding of Canada’s laws and Constitution, in addition to a woeful confusion about how government works. Throw in paranoia and conspiracy theories, and a dime paid to the

income-tax-is-illegal advocates is a worse investment than old Bre-X shares. At best, those Canadians who shell out cash for the various courses and materials waste their time and money; at worst, some de-tax followers have and will end up in court to face stiff fines and jail sentences.

By 2002, it appeared interest in the de-tax groups petered out, and civil war broke out between various factions (not surprising, given the money at stake). Some groups argued that *their* de-tax method is the “true” one. A survey of their literature reveals almost a religious-like passion about the issue and the purity of the de-taxing doctrine.

In addition, de-tax claims showed up in court and the results were not pretty for those taken in by the ridiculous claims. Various spokespeople from de-tax organizations still claim they do not file tax returns and that, because the federal government never prosecutes them for non-compliance, their de-tax advice works. The government’s public response is that de-taxers can claim whatever they care to; the Canadian Customs and Revenue Agency (CCRA), due to the federal privacy law, does not comment about ongoing investigations of anyone’s personal tax file.^b

Some common claims

There are too many false claims about the status of income tax to list them all, but here are the claims most often heard.

“Federal income tax is unconstitutional.”

This belief stems from the misunderstanding over what is written in the Constitution. A relevant section:

91.

It shall be lawful for the Queen, by and with the Advice and consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the *exclusive Legislative Authority of the Parliament of Canada extends to all Matters* (emphasis added) coming within the Classes of Subjects next hereinafter enumerated; that is to say...

And section 92, sub-section 2, which applies to the provinces and concerns

^b The Canadian Customs and Revenue Agency (CCRA) is now what was formerly called Revenue Canada.

direct taxation:

92.

In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

2. Direct Taxation within the Province in order to the raising of Revenue for Provincial Purposes.

Section 91 of the Constitution makes clear that any power not specifically delegated to the provinces by the Constitution belongs to the federal government (“The Queen”). So where is the confusion? Some argue that because Section 92 of the Constitution gives the power of “Direct Taxation within the Province in order to the raising of Revenue for Provincial Purposes,” then *only* the province can levy direct income tax.

The error in that argument is best deconstructed by the constitutional adviser to four British Columbia premiers, the late Mel Smith, Q.C., who noted that people misread the Constitution on this point:

The argument saying the federal income tax is illegal goes something like this. Since each level of government is afforded under the constitution exclusive jurisdiction on the subject matter listed to the exclusion of the other (true) and since income tax is direct taxation (true), then only provinces can impose income tax (false).

The fallacy lies in not reading fully what the provincial taxing powers section says. It does not say the provinces have the exclusive right to impose direct taxation. What it *does* say is that the provinces have exclusive right to impose direct taxation to raise “revenues for provincial purposes.” By contrast, when the federal government imposes an income tax it does so for federal purposes (obviously) and therefore it cannot be said to be infringing upon the provincial taxing power.... It means the federal government cannot impose direct taxation (including income tax) “for provincial purposes,” but why would it want to?⁵

Tax historian J. Harvey Perry took much the same view of the issue in his look at the subject:

It was early established in *Bank of Toronto v. Lambe*, and confirmed in *Caron v. the King*, that the existence of overlapping powers of direct taxation did not impede the use of this tax by the federal government.⁶

Beside the legal points noted above, the courts have heard the income-tax-is-unconstitutional shtick and thumped it in court. But those who make such claims at least provide entertainment for bored court clerks.

In 1999, Richard and Denise Rosenberg challenged the validity of the *Income Tax Act* and claimed that under common law “Canadians have control

of their own affairs and the federal government has no authority to collect taxes.”⁷ Revenue Canada seized the couple’s Winnipeg house, cabin, and even their canned food and toys due to an unpaid \$1.2-million bill in back taxes. The judge refused to allow two friends—a millwright and an aviation maintenance worker—to act as the Rosenbergs’ lawyers.

In 2001, Sir Daniel Lear, whose real name was Ralph Swim, was convicted in the largest case of tax evasion in Manitoba history. With over \$8.4 million in income from various pyramid schemes, and \$2.4 million in taxes evaded, Swim accumulated a sprawling estate on the Red River complete with luxury cars, and antique furniture. In his defence, he cited the King James Bible, the “doctrine of Philadelphia,” the “Tokyo rules,” the constitution of Ceylon, and the *British North America Act* to support his claim that the laws of Canada and the *Income Tax Act* did not apply to him.

God, he asserted, allowed him to create wealth without paying tax. Swim also claimed not to be a legal person, called the judge treasonous and noted that “destiny has brought flesh against the infidel.” The infidel judge didn’t buy it, and instead fined him \$2.4 million and sentenced Sir Lear to five years and eight months in prison.⁸

In 2002, David Butterfield of Penticton, B.C., was fined \$1,000 for failing to file a tax return. Butterfield held seminars in Okanagan area in 1999 and claimed that income tax was unconstitutional. He repeated the story that court cases prove this.⁹ The judge ordered him to file his 1997 and 1998 tax returns.¹⁰

“Income tax is voluntary.”

This is also a variation of the constitutional arguments. When governments note that filing income tax returns and reporting income is voluntary, it only means that citizens are free to file without *advance* coercion and that honesty is assumed: i.e., that the tax-filer is truthful about the amounts recorded as income, expenses, and deductions.

If the tax authorities have any reason to suspect that someone who did not file actually earned income, it is a different story, and that taxpayer should get ready to face an auditor and then the judge.

The Lord Nelson Myth

The Lord Nelson myth has become the Holy Grail of the income-tax-is-illegal crowd. The late Mel Smith also analysed the spurious logic behind the bizarre claim that the federal government cannot tax income.

The case concerns an attempt by the government of Nova Scotia to provide by enabling legislation the delegation of certain of its exclusive legislative powers to Parliament in Ottawa and also to provide Ottawa the power to delegate certain of its powers to the legislature of Nova

Scotia.

The bill was passed in 1947 and because doubts immediately arose as to its constitutionality it was referred to the courts for an opinion. Both the Supreme Court of Nova Scotia *en banc* and the Supreme Court of Canada found that legislation to be unconstitutional on the grounds that one level of government could not delegate its power to legislate on matters within its jurisdiction to other levels of government and vice versa. The subject matters over which Nova Scotia sought inter-government delegation dealt with employment in industries, works and undertakings. The legislation also attempted to delegate certain indirect taxation power to Nova Scotia.

Those claiming federal income taxes are illegal state that this case decided that one level of government cannot delegate its law-making power to the other (true). They then take a giant leap by declaring that since only the provincial government can impose direct taxes (false, because of reasons previously cited) it is unconstitutional for the federal government to impose the ultimate direct tax—income tax (false).

The Lord Nelson Case is one of the leading authorities on the question of interdelegation of legislative powers between the two levels of government, but it has absolutely no application to the question of whether the federal government can impose income tax. The power of the federal government to impose income tax for federal purposes is firmly grounded in Clause 3 of Section 91 of the Constitution referred to above. It does not depend on any interdelegation of legislative powers from the provinces.

The hoary mythology of misinterpretation that attaches itself to the Lord Nelson Hotel case has produced more barnacles than Nova Scotia's famous bluenose, a scant few miles away. Let's once and for all sink the myth and give it the burial it deserves.¹¹

“You can pay your Canadian taxes in pesos because the \$ sign is the recognized symbol for pesos as well as the Canadian dollar.”

Nice try. In 2000, Calgaryian James Weber tried to pay a \$110,650 tax bill with 110,650 Columbian pesos—worth about CAN\$75. The judge congratulated Weber on raising an intriguing argument but had this to say:

The whole exercise may be summed up by saying that neither the Canadian tax system nor indeed, the Canadian economy, ought to be held hostage to a typesetter's selection, at any given time, of what is considered a pleasing and useful typeface for a dollar sign. Were Mr. Weber's gambit to have been successful, one might, in April, expect a

high demand in Canada for Colombian pesos, pushing the Colombian peso far beyond the present worth of less than a thousandth of a cent. As it is, taxpayers, including [Mr. Weber] will have to pay taxes this year in Canadian dollars.

The court then seized Weber's BMW motorcycle along with his helmet and pants.¹²

“You should request that tax auditors from CCRA show you an *official Income Tax Act* and not merely a privately printed copy, and if they cannot, they have no legal standing.”

This is another argument that misunderstands how laws are created and updated. Some Acts of Parliament are relatively simple, rarely changed and may only run to a few pages. Others, such as the *Income Tax Act*, constantly evolve over time. For example, if the government changes the corporate or personal tax rates in a budget, an amendment to legislation is required. If the government creates or abolishes a tax deduction or tax credit, the law must once again be altered.

Given constant revisions, governments then publish up-to-date versions of legislation. If someone requests an “official” copy of the *Act*, they would in fact be requesting the last consolidated version, along with any changes that have occurred since then.

Thus, when de-taxers request an “official” *Income Tax Act*, they are in fact requesting the last consolidated version, which currently runs to over 1,400 pages, plus any additions and deletions to that *Act* passed by Parliament since the last consolidation. And then of course, there are the *interpretations* to the *Act*.

Naturally, no one carries around the “official” version of the *Act*. Moreover, it does not matter if someone from the Canadian Customs and Revenue Service can show a taxpayer the actual legislation; it is still in force. For example, police always write out tickets to speeding motorists without also handing over a copy of the provincial traffic Act. If police carried a copy of every law they are empowered to enforce, they would have to attach U-Hauls to the back of their patrol cars.

“If you paid income tax once, you have voluntarily consented to become a ‘taxpayer’ and changed your status from a ‘Natural Person’ to the fictitious and artificial entity known as a ‘taxpayer.’”

This is one of the more outlandish claims on the already bizarre evolutionary scale of weird fringe legends about income tax.

This particular claim was tested in court in 2000 when a retired Ottawa schoolteacher, Thomas Kennedy, argued that income tax was voluntary, and only applied to a business (an “artificial person”) and not “natural persons,” or

as some de-taxers called themselves, “corporation sole” persons.

Confused? Bafflegab is the hallmark of a badly thought out argument. And the judge didn't buy it. Justice Gordon Sedgwick of the Superior Court in Ottawa found that “a ‘person’... includes both a natural person and an artificial person. It follows that the applicant is a ‘person’ and a ‘taxpayer.’ His obligations include the filing of annual income tax returns and the payment of any income tax owing under his returns.” The judge also ruled that there is no support in the common law for the idea taxes are merely voluntary.¹³

Summary: Want a 30-percent GST?

Lastly, if some court somewhere in Canada magically declared federal income tax illegal in Canada tomorrow, the federal government would simply raise the goods and services tax to 30 percent to obtain the same amount of revenue.

If taxpayers in Canada want lower taxes, then they must constantly pressure governments to lower their spending or keep spending increases below the rate of economic growth. For those scenarios to come about means that taxpayers themselves must lower their expectations about what they want government to provide, how often, and at what price. It also necessitates private involvement and market-based reforms to widely desired income-support programs for example. An incantation in front of a judge about how federal income tax is illegal will not do it.