

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

---

## INTERIM ORDER PO-3006-I

Appeals PA07-409 and PA08-127

Ministry of Finance and Ministry of Revenue

October 27, 2011

**Summary:** The requester sought access to all records with respect to itself in respect of an audit and proposed reassessment under the *Corporations Tax Act* for the fiscal years ending December 28, 2002, January 3, 2004 and January 1, 2005. The Ministries granted partial access to the responsive records, some of which were withheld in whole or in part, pursuant to sections 12(1) (Cabinet records), 13(1) (advice or recommendations), 15 (relations with other governments), 17(2) (tax information), 18(1) (economic and other interests), and 19 (solicitor-client privilege) of the *Act*. This order partially upholds the Ministries' decisions to withhold the responsive information in the records.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 12(1), 13(1), 15, 17(2), 18(1) and 19.

**Orders and Investigation Reports Considered:** P-876, P-1619, PO-1832, PO-2059-I, PO-2068, PO-2249, PO-2253.

**Cases Considered:** *Minister of Finance (Ont.) v. Smith*, 2011 ONSC 2030, leave to appeal granted (C.A. M39961), *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564.

## **OVERVIEW:**

[1] The Ministry of Finance received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) for access to the following information:

1. All records from/to [named individual] (Senior Tax Avoidance Auditor, Ministry of Finance) including indexes, file lists, file plans, letters, memoranda, working papers, worksheets and emails in respect of the audit and proposed reassessment under the *Corporations Tax Act (CTA)* of the Taxpayer [the requester] for fiscal years ended December 28, 2002, January 3, 2004 and January 1, 2005. These records include, but are not limited to:

a) all drafts (annotated or not) of a document titled "Summary Position Paper Finco – Tax Compliance and Regional Operations Branch Tax Avoidance Audit";

b) the final and complete version (i.e. not summary) of a document from which the document titled "Summary Position Paper Finco – Tax Compliance and Regional Operations Branch Tax Avoidance Audit" was extracted or summarized; and

c) the records containing the findings of the Taxpayer's audit and recommendations to reassess the Taxpayer.

2. All records from/to [named individual] (Manager, Tax Avoidance Audit, Ministry of Finance) including indexes, file lists, file plans, letters, memoranda, working papers, worksheets and emails in respect of the audit and proposed reassessment under the *CTA* of the Taxpayer for fiscal years ended December 28, 2002, January 3, 2004 and January 1, 2005.

3. All records from/to [named individual] (Director, Western Region, Taxpayer Compliance & Regional Operations Branch, Ministry of Finance) including indexes, file lists, file plans, letters, memoranda, working papers, worksheets and emails in respect of the audit and proposed reassessment under the *CTA* of the Taxpayer for fiscal years ended December 28, 2002, January 3, 2004 and January 1, 2005.

4. All records from any other official of the Ministry of Finance including indexes, file lists, file plans, letters, memoranda, working papers, worksheets and emails in respect of the audit and proposed reassessment under the *CTA* of the Taxpayer for fiscal years ended December 28, 2002, January 3, 2004 and January 1, 2005.

5. All records between the Ministry of Finance (Ontario) and any other federal or provincial taxing authority (including the Canada Revenue Agency and the Ministry of Finance for Alberta).

6. All records including preparatory drafts, submissions and any internal memoranda in respect of the amendment made to subsection 2(2) of the *CTA* by 2005, c.28, Sch. D, s.2(1).

We also request that you consider this request a continuous one for a period of two years pursuant to subsection 24(3) of the *Freedom of Information and Protection of Privacy Act* (Ontario).

[2] The Ministry of Finance had split into two Ministries (on February 21, 2007) just before the request was made. These two ministries consisted of the Ministry of Revenue (MOR) and the Ministry of Finance (MOF), and are jointly referred to in this order as "the Ministries". The MOR located responsive records and issued an interim access decision containing a fee estimate of \$740.00. In this decision, the MOR advised that a significant number of records may be exempt from disclosure pursuant to the exemptions in sections 15, 17(2), and 18(1) of the *Act*.

[3] The requester submitted the deposit and the MOR issued a final decision, granting partial access to the responsive records, some of which were withheld in whole or in part, pursuant to sections 13(1) (advice or recommendations), 15 (relations with other governments), 17(2) (tax information), 18(1) (economic and other interests), and 19 (solicitor-client privilege) of the *Act*.

[4] In a subsequent letter, the MOR advised the requester of the following in relation to the request for continuous access:

A request for continuous access is granted when the type or nature of the records being requested are such that they are routinely scheduled for production or issued in a series by the Ministry of Revenue.

Given the nature of the responsive records recently provided to you are such that they are not produced on a regular basis or issued in a series by the two program areas involved, which are the Tax Advisory Services Branch – Corporations Tax Section, and the Tax Compliance Regional Operations Branch, it would be inappropriate to proceed with your request on a continuous access basis in regards to this request.

[5] The requester (now the appellant) appealed the Ministry of Revenue's decision to this office, which then opened appeal file PA07-409.

[6] During the mediation of appeal PA07-409, responsive records were also located within the Ministry of Finance and a decision letter was also issued by the MOF. The

MOF granted partial access to the responsive records and denied access to others pursuant to sections 12(1)(e) and (f) (cabinet records), 13(1) (advice or recommendations), 15(a) (prejudice to intergovernmental relations), 17(2) (tax information), 18(1)(d) (injury to financial interests), and 19 (solicitor-client privilege) of the *Act*. This decision was also appealed by the requester (the appellant in file PA07-409), which resulted in file PA08-127 being opened by this office.

[7] During mediation, the MOF issued a revised decision dated March 20, 2008. In this decision, the MOF granted partial access to some of the previously withheld records and advised that additional records had been located. The MOF continued to rely on sections 13, 17, 15, 18 and 19 of the *Act* to withhold records, in full or in part. The MOF also claimed section 21(1) (personal privacy) of the *Act* to withhold information contained within some of the records.

[8] The MOF subsequently issued an additional revised decision on April 16, 2008. In that decision, the MOF advised that additional records had been located in three separate branches: Tax Advisory Services Branch, Corporations Tax Administration Branch and Legal Services Branch. Exemptions claimed to withhold these records, in full or in part, are sections 12(1), 13(1), 15, 17(2), and 19 of the *Act*.

[9] The appellant's representative advised that he wished to pursue access to all of the records that were withheld in full or in part. However, the appellant's representative clarified that he is not pursuing access to records or parts of records that were deemed to be non-responsive to the request. The appellant's representative is also not pursuing access to any information in the records that was withheld pursuant to the personal privacy exemption in section 21(1) of the *Act*.

[10] The appellant's representative also clarified with the Ministries that he does not take issue with the MOR's decision with respect to the continuing access aspect of the request.

[11] As further mediation was not possible, the files were transferred to me to conduct an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in these appeals to the Ministries seeking their representations. I received representations and supporting documents from the Ministries. The Ministries also provided the appellant with a further decision letter dated May 29, 2009, disclosing additional records to the appellant. Portions of the Ministries' representations and supporting documents were withheld due to confidentiality concerns.

[12] I received representations from the appellant and sent a complete copy of these representations to the Ministries seeking reply representations. I then sent a copy of the representations to the appellant and received surreply representations. I then had a staff member clarify with the Ministries which records or portions of records were subject to the mandatory section 17(2) exemption. In response, the Ministries withdrew its reliance on section 17(2) for Records P7C, P7E, P7G, P8A, P8B, P8D, P8G,

P8I, P8K, P8L, P8P and P8R. In addition, the Ministries decided to disclose Record Y6A to the appellant.

## **RECORDS:**

[13] The records at issue in this appeal are listed in the Index of Records attached as an appendix to this order. They include emails, draft legislation, draft option papers, notes, meeting notes, position papers and other related records.

[14] I will be making an access decision in this appeal on all of the records listed in the Index of Records except for Records O47, O48, O49, O51 and O71 as the Court of Appeal of Ontario<sup>1</sup> will be considering an appeal as to the applicability of the section 13(1) exemption to these five records. I have included Record O51 in this group of records, even though the Ministries have not claimed section 13(1) for this record in this appeal. Disclosure of Record O51 in this appeal would make the judicial review proceedings on this record moot.

## **ISSUES:**

- A. Can the Ministries raise discretionary exemptions late?
- B. Does the mandatory exemption at section 12(1)(f) (Cabinet records) apply to Records Y4, O4, O5, O7, O11, O12, O18, O20 to O25, and P5F?
- C. Does the discretionary exemption at section 13(1) (advice or recommendations) apply to Records O13, O46, O74, O76 to O80, G22B and pages 1 and 2 of P8U, pages 41 and 42 of Record P9A and pages 45, 56, 116-117, 129, and 133 of Record P9B?
- D. Does the mandatory exemption at section 17(2) (tax information) apply to Records Y3, Y7, G8, G9A, G19, G22E, P7D, P7J, P7K, P8F, P8H, P8M, P8N, P8Q, and P8S to P8V?
- E. Does the discretionary exemptions at sections 15(a) and/or (b) (relations with other governments) apply to Records G8, G9A, G18A, G19, G22E, O46, O50, P7C, P7D, P7E, P7G, P7H, P7I, P8A to P8T, P8V, and the attachment to Record P8U?
- F. Does the discretionary exemption at section 18(1)(d) (economic and other interests) apply to Records Y7, O10, O50, P7C, P7H, P7K, P8B, P9B, G22A, and G22C?

---

<sup>1</sup> *Minister of Finance (Ont.) v. Smith*, 2011 ONSC 2030, leave to appeal granted (C.A. M39961)

G. Does the discretionary exemption in section 19 (solicitor-client privilege) apply to Records Y4, Y8C, P8B, P8D, P8E, P8I, P8T, and the first page of Records O11 and P5F?

H. Did the Ministries exercise their discretion in a proper manner under sections 13(1), 15(a) and/or (b), 18(1)(d) and 19?

## **BACKGROUND TO THE APPEAL:**

[15] The Ministries provided the following information concerning the creation of the records in this appeal:

Generally, a corporation in Ontario or another province ("Parentco") incorporates a subsidiary in a tax haven ("Captiveco"), typically registered in either the British Virgin Islands or in the US state of Delaware. Parentco provides capital to Captiveco by subscribing for its shares - in our theoretical example \$1 million in Captiveco shares was issued to Parentco. Captiveco sets up an office in Ontario (a "permanent establishment"), and locates its central management and control there. Captiveco then lends the \$1 million back to the Parentco as "specialty debt," and Parentco pays Captiveco interest on the loan, in our example \$50,000 per year.

Because Captiveco has an office in Ontario, it can allocate the \$50,000 in interest it receives from Parentco to its Ontario office. Normally, this would have the effect of making the income from interest that Captiveco receives taxable in Ontario, as "passive income" from an investment. However, prior to the 2005 amendments to the *Corporations Tax Act*, a loophole existed which allowed Captiveco, as a foreign corporation with a permanent establishment in Ontario, not to pay tax on passive income. The loophole allowed Captiveco to avoid paying taxes on the \$50,000 in interest it received from Parentco. The tax avoidance savings realized by Parentco arise from Parentco claiming a deduction for the \$50,000 in interest it paid to Captiveco (the deduction of interest payments is permitted by law). The ultimate result of all of the steps in this transaction is a significant reduction of corporate tax liability.

In 2005, the alleged loophole was closed legislatively going forward by making residency (having a permanent establishment in Ontario) rather than location of corporate registration of the company the qualifier for providing tax jurisdiction of Ontario. This way the Fincos [foreign affiliates] who had permanent establishments in Ontario could not hope to avoid tax merely by registration of the Ontario corporation in the British Virgin Islands. As a result, taxpayers could no longer use the above scheme to avoid paying taxes. The amendment gave rise to records of

draft legislation with attendant policy statements and instructions for Legislative Counsel and Ministry of Finance Counsel, [name].

The tax leakage was also stopped for past years through reassessment under various technical provisions and under the General Anti-Avoidance Rule (GAAR)...

In this case, the province issued a 42-page analysis (the "Summary Position Paper") to the [appellant] at the time of the assessment...

[16] In response, the appellant submits:

By way of background, this matter relates to a joint process undertaken by the Canada Revenue Agency ("CRA"), the Alberta Tax Revenue Administration ("TRA") and Ontario's Ministry of Finance ("MOF") and the Ministry of Revenue of Ontario ("MOR"). Succinctly, the three tax administrations jointly undertook the review of certain transactions involving a number of Canadian corporations, including the [appellant] (and its predecessor). The review in question led the tax administrations in question to make a joint proposal to the taxpayers [including the appellant] involved (through their respective accounting firms) and in the event of the proposal being refused, advise the taxpayers of their intent to audit and reassess taxpayers individually. Subsequently, the [appellant] was reassessed on May 2, 2007 by the MOF for substantial sums, which reassessments are being challenged through the applicable redress mechanisms. Parallel to these reassessments, the CRA [Canada Revenue Agency] (acting on behalf of British Columbia, Manitoba and Saskatchewan) and the TRA also reassessed the [appellant] for substantial amounts and those reassessments are also being challenged...

## **DISCUSSION:**

### **A. Can the Ministries raise discretionary exemptions late?**

[17] The Ministries advised in their representations and in their May 29, 2009 decision letter that they wished to claim the discretionary exemptions in section 18(1)(d) to Record Y7 and sections 19 and 13(1) to Record P9A. The *Code of Procedure* for appeals under the *Act* (the *Code*) sets out basic procedural guidelines for parties involved in an appeal before this office. Section 11 of the *Code* (New Discretionary Exemption Claims) sets out the procedure for institutions wanting to raise new discretionary exemption claims. Section 11.01 is relevant to this issue and reads:

In an appeal from an access decision an institution may make a new discretionary exemption within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period

shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

[18] Previous orders have identified that the objective of the 35-day policy established by this office is to provide government organizations with a window of opportunity to raise new discretionary exemptions, but to restrict this opportunity to a stage in the appeal where the integrity of the process would not be compromised or the interests of the appellant prejudiced (Order PO-2113). However, the 35-day policy is not inflexible. The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period (Orders PO-2113 and PO-2331).

[19] Furthermore, in Order PO-1832, Adjudicator Donald Hale stated as follows in reviewing this issue:

In determining whether to allow the Ministry to claim this discretionary exemption at this time, I must balance the maintenance of the integrity of the appeals process against any evidence of extenuating circumstances advanced by the Ministry (Order P-658). I must also balance the relative prejudice to the Ministry and to the appellant in the outcome of my decision.

[20] The appellant was asked to consider the following:

1. Whether the appellant has been prejudiced in any way by the late raising of discretionary exemptions to the records. If so, how? If not, why not?
2. Whether the Ministries would be prejudiced in any way by not allowing it to apply the additional discretionary exemptions in the circumstances of this appeal. If so, how? If not, why not?
3. By allowing the Ministries to apply additional discretionary exemptions to the records, has the integrity of the appeals process been compromised in any way? If so, how? If not, why not?

[21] The Ministries submit that:

One of the primary reasons why these exemptions were not claimed at an earlier time is because of the complexity of the records at issue. The complexity of these records, which involve complicated taxation and finance issues, meant that the Ministry's FOI [Freedom of Information] office was unable to identify these additional records within the time



limited prescribed by the IPC's Code of Procedure. The Ministry's FOI office was acting in good faith vis-à-vis the [appellant] and the IPC and did not want to claim inapplicable exemptions which would burden the IPC's decision-making process. The number and difficulty of records was a challenge in itself. As a result, exemptions were not claimed for some records to which exemptions did in fact apply. This oversight was exacerbated by the fact that the staff in the Ministry's FOI office, who do not have legal training and were all in transition to other positions at the time, were often not in a position to know which exemptions applied...

[T]he prejudice to this Ministry is much more serious because disclosing this information could have a significant impact on Ontario's economy, since approximately [specific number] million in revenue is potentially at risk, as argued under s. 18(1)(d). The [appellant] will not be substantially prejudiced by the Ministry's claim of a later exemption because (1) the [appellant] is not required to produce any documents and (2) the [appellant] is not required to undertake any significant work with regards to the Ministry's representations on the newly claimed exemptions because they will be substantially the same as the Ministry's representations with regards to other records for which exemptions have already been claimed. Furthermore, the Ministry has unilaterally conceded more claims for exemption than it has added.

[22] The appellant did not provide representations on the late raising of discretionary exemptions by the Ministries to the two records at issue. The Ministries have not added any new discretionary exemptions and withdrew their claim for certain discretionary exemptions with respect to a number of records. The Ministries also claimed these exemptions prior to the time that the appellant was invited to provide representations. Accordingly, I find that the appellant will not be prejudiced by the inclusion of the additional discretionary exemptions and I will, therefore, allow the Ministry to claim them.

[23] I will now consider whether the records are subject to the exemptions claimed by the Ministries. I will determine whether they are subject to the mandatory exemptions in sections 12(1) and 17(2). I will also determine whether they are subject to the discretionary exemptions in sections 13(1), 15(a) and/or (b), 18(1) and 19. Then I will proceed to consider whether the Ministries exercised their discretion in a proper manner with respect to the records that I have found to be subject to any discretionary exemptions.

## **B. Cabinet Records**

[24] I will now determine whether the mandatory exemption at section 12(1)(f) applies to Records Y4, O4, O5, O7, O11, O12, O18, O20 to O25, and P5F.

[25] Section 12(1)(f) reads:

A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

draft legislation or regulations.

[26] The Ministries provided both confidential and non-confidential representations on this issue. In their non-confidential representations, they submit that:

The draft legislation leading up to the first reading and prepared in the months immediately before it would if disclosed detract from Cabinet speaking with authority in the bill which ultimately became legislation. It is the Treasurer's duty to recommend tax policy to the Executive Council...

The orders do not provide reasoning or tests on the draft legislation exemption, and therefore it can be assumed that this is a categorical or class exemption which does not require a harms analysis or indeed other reasoning. It only requires a look at the records to confirm that they are draft legislation and a date on which their substance was the subject of the deliberations of Cabinet committees or the Executive Council itself.

In regard to the cover pages to the draft legislation, the Ministry does not claim that the cover pages are exempt under section 12, but ...that cover pages with very little content are not to be cut into snippets, when the spirit of the *Act* is not fulfilled by their disclosure. The cover pages provide the reader with the source and path of the documents. Very little or no content appears in the cover pages, and when it does, it is privileged, since these records are escorted between lawyers and between solicitor and client. Generally the draft legislation is either a draft from [named lawyer] (Legal Services Branch, Finance) to [name] (Legislative Counsel), or vice versa and then on to the client, [name] of Tax Design Branch, for further decision, approval or instructions. This Ministry is unusual among ministries in doing some of the drafting itself, because of the expertise necessary to understand and draft tax legislation.

There is one document called "Legal Specifications", Record O7, written by a client who defines what the Ministry wants in terms of draft legislation. This document is called the legal specifications for the draft legislation. It is a request for legal services to draft something to fit the need, and, as such, disclosing it would disclose the substance of the draft legislation which fills or responds to the specifications. In short, one could draw a reasonable inference about what was in the draft legislation by

reading the specifications. Therefore the Ministry claims this record as exempt under s. 12(1)(f) by inference.

[27] The appellant submits that:

To the extent you are satisfied that this exemption is met in fact based on the review of the documents you have but that we are unable to examine, we would seek no disclosure of records in question.

### **Analysis/Findings**

[28] Based upon my review of the records at issue, I agree with the Ministries that the records at issue (Y4, O4, O5, O7, O11, O12, O18, O20 to O25 and P5F) consist of entirely draft legislation, with the exception of certain portions of Records Y4, the cover page of O11 and P5F. Therefore, other than portions of Records Y4, the cover pages of O11 and P5F, I conclude that Records Y4, O4, O5, O7, O11, O12, O18, O20 to O25 and P5F are exempt by reason of section 12(1)(f) as they consist only of draft legislation.

[29] I will now determine whether portions of Records Y4, O7, the cover page of O11 and P5F contain information that would bring it within the ambit of section 12(1)(f), as follows:

#### ***Record Y4***

[30] The Ministries state that draft legislation is found in this record at pages 7-9, 11, 12, 15-18, 20-22, 24-26, 28-30, 35, 36, 38-42, 44-48, 50-56, 58-64, 66-75, and 77-170. I agree with the Ministries that these pages of Y4 contain draft legislation. In addition, I find that pages 32-33 also contain draft legislation.

[31] The Ministries also state that pages 2-5 contain the instructions for the draft legislation by Tax Design Branch, which, if disclosed, would reveal the draft legislation itself. I agree with the Ministries that disclosure of these pages would reveal the actual content of the attached draft regulation and that these pages are exempt (see Order PO-2068).

[32] Accordingly, I conclude that pages 2-5, 7-9, 11, 12, 15-18, 20-22, 24-26, 28-30, 32-33, 35-36, 38-42, 44-48, 50-56, 58-64, 66-75, and 77-170 of Record Y4 are also exempt by reason of section 12(1)(f).

[33] As the Ministries have claimed that this record is also exempt by reason of section 19, I will consider below the application of section 19 to the remaining information at pages 1, 6, 10, 13, 14, 19, 23, 27, 31, 34, 37, 43, 49, 57, 65 and 76 of Record Y4.

***Page 1 of Record O11***

[34] This is a cover email from the legal counsel at the Ministry of Finance. In Order PO-2068, former Assistant Commissioner Tom Mitchinson stated the following concerning covering documents and section 12(1)(f):

Clearly, the covering memorandum is not a draft regulation. I have reviewed the information in this memorandum and, although it speaks to the same general subject matter, in my view, its disclosure would not reveal the actual content of the attached draft regulation. Accordingly, I find that page 1 of Record 26, which constitutes the cover memorandum to the draft regulation, does not qualify for exemption under section 12(1)(f) and should be disclosed.

[35] I agree with this reasoning of the former Assistant Commissioner and find that the covering email (page 1 of Record O11) does not reveal the actual content of the draft legislation. However, as the Ministries have claimed that this page is exempt by reason of section 19, I will consider this portion of Record O11 in my discussion below concerning the application of the solicitor client exemption in section 19.

***Page 1 of Record P5F***

[36] I agree with the Ministries that the draft legislation is found at pages 2 to 4 of this record and that it is exempt under section 12(1)(f), accordingly. With respect to page 1, they submit that:

Of the covering email (one page), only the first three sentences of the first email reflect changes to the draft legislation and are thereby strictly exempt under 12(1)(f). The rest of the page of emails are of no interest to the requester, but other orders have agreed that any neutral cover page should take on the exemption of the material which follows since the cover page gives the path of the other document and is mere snippets when separated from it. Under the authority of Order PO-2068, the draft legislation content reflected in the cover page is exempt..

[37] Based upon my review of the cover page of this record, I am unable to agree with the Ministries that disclosure, even of the first three sentences, would reveal the actual content of the attached draft regulation. Therefore, I find that page 1 is not exempt by reason of section 12(1)(f) (see Order PO-2068). However, as the Ministries have claimed that this page is exempt under section 19, as well, I will consider that exemption to page 1 below.

## **Section 12(2): exceptions to the exemption**

[38] I will now consider whether the exceptions in section 12(2) apply to the records or portions of records that I have found to be subject to section 12(1)(f). This section reads:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where,

- (a) the record is more than twenty years old; or
- (b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given.

[39] Concerning section 12(2)(a), none of the records are more than 20 years old, therefore this exception does not apply.

[40] Concerning section 12(2)(b), this section grants the Ministries discretion to ask Cabinet whether or not it consents to disclosure [Orders P-771 and P-1146]. The Ministries state that they considered and chose not to ask Cabinet for consent, because this may undermine future projects contained in the records (Order PO-2344). They provided confidential submissions on why they chose not to seek consent under section 12(2). Based upon my review of these representations and the records, I agree with the Ministries that section 12(2)(b) does not apply.

## **Conclusion regarding section 12(1)(f)**

[41] The following records are exempt by reason of the mandatory exemption in section 12(1)(f):

- Pages 2-5, 7-9, 11, 12, 15-18, 20-22, 24-26, 28-30, 32-33, 35-36, 38-42, 44-48, 50-56, 58-64, 66-75, and 77-170 of Record Y4;
- Records O4, O5, O7, O12, O18, O20 to O25;
- Records O11 (except page 1);
- P5F (except page 1).

[42] I will consider below whether the solicitor client exemption in section 19 applies to the information in pages 1, 6, 10, 13, 14, 19, 23, 27, 31, 34, 37, 43, 49, 57, 65 and 76 of Record Y4 and pages 1 of Records O11 and P5F. These pages consist of covering emails to draft legislation. I find that the connection between the content of these covering pages and the draft legislation is too remote to bring them within the scope of section 12(1)(f), which is quite specific and narrowly defined (see Order PO-2068).

### C. Advice or Recommendations

[43] I will now determine whether the discretionary exemption at section 13(1) applies to all of Records O13, O46, 074, 076 to O80, G22B, and to pages 1 and 2 of P8U, pages 41 and 42 of Record P9A and pages 45, 56, 116-117, 129, 133, of Record P9B. This section reads:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

[44] The purpose of section 13 is to ensure that persons employed in the public service are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making. The exemption also seeks to preserve the decision maker or policy maker's ability to take actions and make decisions without unfair pressure [Orders 24, P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.)].

[45] "Advice" and "recommendations" have a similar meaning. To qualify as "advice or recommendations", the information in the record must reveal a suggested course of action that will ultimately be accepted or rejected by its recipient during the deliberative process of government policy-making and decision-making. Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563]; see also Orders PO-2028 and PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564.

[46] Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit one to accurately infer the advice or recommendations given

[Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563]

[47] Examples of the types of information that have been found *not* to qualify as advice or recommendations include

- factual or background information
- analytical information
- evaluative information
- notifications or cautions
- views
- draft documents
- a supervisor's direction to staff on how to conduct an investigation

[Order P-434; Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2004] O.J. No. 224 (Div. Ct.), aff'd [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563; Order PO-2115; Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.); Order PO-2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564]

[48] Sections 13(2) and (3) create a list of mandatory exceptions to the section 13(1) exemption. If the information falls into one of these categories, it cannot be withheld under section 13. Sections 13(2) and (3) state:

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

- (a) factual material;
- (b) a statistical survey;
- (c) a report by a valuator, whether or not the valuator is an officer of the institution;
- (d) an environmental impact statement or similar record;
- (e) a report of a test carried out on a product for the purpose of government equipment testing or a consumer test report;

(f) a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy;

(g) a feasibility study or other technical study, including a cost estimate, relating to a government policy or project;

(h) a report containing the results of field research undertaken before the formulation of a policy proposal;

(i) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program, whether or not the plan or proposal is subject to approval, unless the plan or proposal is to be submitted to the Executive Council or its committees;

(j) a report of an interdepartmental committee task force or similar body, or of a committee or task force within an institution, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to the Executive Council or its committees;

(k) a report of a committee, council or other body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;

(l) the reasons for a final decision, order or ruling of an officer of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution, whether or not the enactment or scheme allows an appeal to be taken against the decision, order or ruling, whether or not the reasons,

(i) are contained in an internal memorandum of the institution or in a letter addressed by an officer or employee of the institution to a named person, or

(ii) were given by the officer who made the decision, order or ruling or were incorporated by reference into the decision, order or ruling.



(3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where the record is more than twenty years old or where the head has publicly cited the record as the basis for making a decision or formulating a policy.

[49] The Ministries provided both initial and reply representations on this issue. In their initial representations, the Ministries provided both confidential and non-confidential representations on the section 13 exemption. The appellant provided both initial and surreply representations. I will summarize the parties' representations as they apply to each record or group of records and then determine whether section 13(1) applies to each record or group of records or whether the exceptions in sections 13(2) or 13(3) apply.

[50] I have already considered the applicability of the section 13(1) exemption to Records O47 to O49, O71 and O74 in Orders PO-2872 and PO-2899-R. Records O47 to O49, O71 and O74 are identical to Records I, II, III, V and VI respectively in appeal file PA09-140, in which I issued Orders PO-2872 and PO-2899-R to the Ministry of Finance. Record O51 is identical to Record IV in appeal file PA09-140. The Ministries did not claim the application of section 13(1) for Record O51 in this appeal.

[51] Orders PO-2872 and PO-2899-R were the subject of a judicial review application in *Minister of Finance (Ont.) v. Smith*, 2011 ONSC 2030, leave to appeal granted (C.A. M39961). In Orders PO-2872 and PO-2899-R, I found that Records I to VI were not exempt under section 13(1). In *Minister of Finance (Ont.) v. Smith*, the Divisional Court upheld my findings concerning Records I to V, but reversed my decision concerning the application of section 13(1) to Record VI, which is Record O74 in this appeal. Accordingly, as stated above, as the Court of Appeal of Ontario will be considering an appeal as to the applicability of the section 13(1) exemption to Records O47, O48, O49, O51 and O71, I will not make a determination in this appeal on these five records until these proceedings are concluded. I have included Record O51 in this group of records, even though the Ministries have not claimed section 13(1) for this record in this appeal. Disclosure Record O51 in this appeal would make the judicial review proceedings on this record moot.

### **Record O13**

[52] The Ministries describe this record as a cover page email from the Director, Corporate and Commodity Taxation Branch, Office of the Budget and Taxation to the Assistant Deputy Minister, Office of Budget and Taxation with an attachment described in the Ministries' Index of Records as "Tax Haven Corporations, Redistributing Revenue to Other Provinces" prepared by a Ministry of Finance employee in the Corporate Tax Design department. They state in their non-confidential representations that this record contains advice on resisting a course of action and that this record is to be considered in conjunction with Records 046 to 51, 071 and 074 as the retroactivity record group.

Record O13 is described by the Ministries as the longest, most comprehensive and sophisticated and includes excerpts from these other records.

[53] The appellant submits that even if this record consists of "advice or recommendations", it would nonetheless not be exempt due to the exceptions in sections 13(2)(a), (k) and (l).

*Analysis/Findings re: Record O13*

[54] I agree with the Ministries that disclosure of this record would reveal the advice or recommendations contained therein. The information in this record reveals a suggested course of action that will ultimately be accepted or rejected by the person being advised. Both the cover email and the attachment contain such information. I have also considered this record in conjunction with Records O47 to O51, O71 and O74. In Record O13, the information reveals a suggested course of action that will ultimately be accepted or rejected by the person being advised. Furthermore, it is clear from the record that the information in this record was communicated to the decision-maker.

[55] None of the exceptions in section 13(2) apply to Record O13. Accordingly, subject to my review of the Ministries' exercise of discretion, I find that Record O13 is exempt from disclosure under section 13(1).

***Record O46***

[56] According to the Ministries, Records O46 to O49 are all versions of the same paper identified in the Ministries' Index of Records as "Draft Option Paper: Tax Haven Corporations - Timing of Implementation". As discussed later, both the title and the contents of Record O46 differ from the title and contents of Records O47 to O49. The Ministries submit that although the information revealed in Record O46 is a discussion of options, which are not normally exempt, "all sections of the paper reveal the proposal..." identified in the Ministries' confidential representations. Therefore, they submit that revealing any part of this record would reveal the advice given by a civil servant to a decision maker. They state that all of these records contain a discussion of options (which are not normally exempt), and that this record reveals a proposal. They then state that revealing any parts of this record would reveal advice given by a civil servant to a decision-maker.

[57] The appellant did not provide specific representations on this record.

*Analysis/Findings re: Record O46*

[58] Despite what is set out in the Ministries' Index of Records, Record O46 is an entirely distinct record from Records O47 to O49. Record O46 is an undated document and is identified in the Ministries' Index of Records as "Draft Option Paper: Tax Haven Corporations - Timing of Implementation". However, both the title and the contents of

this record differ significantly from the other records (Records O47 to O49) also identified by the Ministries as "Draft Option Paper: Tax Haven Corporations - Timing of Implementation". The title of Record O46 is "Eliminate Tax Haven Loophole".

[59] I agree with the Ministries' submission that Record O46 contains a specific proposal as described in their confidential representations. This record contains information about the specific proposal identified in the Ministries' confidential representations. Record O46 contains a discussion of options concerning that proposal but does not reveal a suggested course of action that is expressly identified.

[60] As stated above, in order to qualify as "advice or recommendations", the information in the record must reveal a suggested course of action that will ultimately be accepted or rejected by the person being advised [Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, (cited above); see also Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, (cited above).

[61] Furthermore, there is no indication, either in the Ministries' representations or in the record, that the information in this record was communicated to the person being advised. In order to qualify for exemption as advice or recommendations, there must be satisfactory evidence establishing that the information was communicated to the decision maker during the deliberative process<sup>2</sup>.

[62] Therefore, I find that Record O46 does not contain "advice or recommendations" within the meaning of section 13(1). Disclosure of Record O46 would not reveal the advice given by a civil servant to a decision maker. It is, therefore, not subject to the section 13(1) exemption. I will consider below whether Record O46 is subject to sections 15(a) or 18(1)(d).

### **Record O74**

[63] Record O74 is a note prepared by a Ministry of Finance employee in the Corporate Tax Design department with the main text being prepared by the Manager of the Ministry of Finance's Tax Avoidance Unit. The Ministries claim that only the portions

---

<sup>2</sup> Order PO-2264, *Ministry of Public Safety & Security*, [2004] O.I.P.C. No. 100 at para. 16-17

Order MO-1547, *City of Toronto*, [2002] O.I.P.C. No. 91 at para. 96

Order P-1341, *Ontario Human Rights Commission*, [1997] O.I.P.C. No. 32 at para. 19

Order P-1037, *Ministry of Health*, [1995] O.I.P.C. No. 425 at p. 5

Order P-551, *Ministry of Health*, [1993] O.I.P.C. No. 275 at p. 4

Order 94, *Ministry of Labour*, [1989] O.I.P.C. No. 58 at p. 3

that contain the recommendations of this Manager to take two particular courses of action are exempt.

[64] The appellant did not provide specific representations on this record.

*Analysis/Findings re: Record O74*

[65] In *Minister of Finance (Ont.) v. Smith* (cited above), the Divisional Court stated the following concerning the application of section 13(1) to Record O74.

[10] Record VI [Record O74] stands apart. The Minister proposed to redact three phrases in the document. The rest was to be released. The Adjudicator determined that the redactions should be made public. We disagree. Record VI [Record O74] opens with the phrase: "We agree with..." and then goes on to identify the subject of that agreement. On its face, this is a recommendation. The other redactions contain further advice as to how the issue could be dealt with. The communication of the advice or recommendation found in the document, within the deliberative process, was not contested.

[11] The author, Simon Thompson, offered an opinion on two options and expressed his advice and recommendation to his director, Ann Langleban, who was to prepare the briefing note to the final decision-maker.

[12] The redactions to Record VI [Record O74] proposed by the Minister are properly the subject of the exemption found in s. 13(1) of FIPPA. They are to be withheld.

[66] Concerning Record O74, I adopt and agree with the reasoning of the Divisional Court in *Minister of Finance (Ont.) v. Smith* (cited above), and find that the severed information in this record is subject to section 13(1).

***Records O76 to O80***

[67] These are multiple versions of the same record identified in the Ministries' Index of Records as "Slide package: Addressing Threats to the Tax Base". The entire record is entitled "Confidential Advice to the Minister". The Ministries submit that:

...a broader meaning of "advice" should [be] adopted for the purpose of this appeal, encompassing the entire document and not only the "recommendation" (see *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, cited above). Advice to the Minister of this nature is a key component of permitting civil servants to advise and make recommendations freely and frankly. The specific recommendations are located on slides 21 and 28, however the content of

the remaining slides is such that disclosure would limit the free and frank advice interwoven throughout the discussion and analysis of various options.

The IPC, in Orders P-72, P-167, and P-2091, has stated in the context of a failed section 12 claim that section 13(1) would normally apply to briefing materials such as this record:

It would only be in rare and exceptional circumstances that a record which had never been placed before the Executive Council or its committees, if disclosed, would reveal the "substance of deliberations" of Cabinet... [d]ocuments, such as draft reports or briefing materials not intended to be placed before Cabinet, would normally fall within the scope of the discretionary exemption provided by subsection 13(1) [advice or recommendations] of the Act.

[68] The appellant did not provide specific representations on these records.

*Analysis/Findings re: Records O76 to O80*

[69] Records O77 to O80 are drafts of Record O76. Each record contains information presented to the Minister. I agree with the Ministries that the content of each record is such that the advice they contain is interwoven throughout. I find that the information in Records O76 to O80 qualifies as "advice or recommendations". The information in these records reveals a suggested course of action that will ultimately be accepted or rejected by the person being advised or the information, if disclosed, would permit one to accurately infer the advice or recommendations given in the record. None of the exceptions in section 13(2) apply to them. Accordingly, subject to my review of the Ministries' exercise of discretion, Records O76 to O80 are exempt from disclosure under section 13(1).

***Pages 1 and 2 of Record P8U***

[70] This record is a two-page note and a draft letter regarding collaboration on interprovincial tax avoidance. The Ministries rely on section 13(1) for pages 1 and 2 of this record and submit that:

...the "Considerations" and "Recommendation" sections of the recommendation entitled "Collaboration on Inter-Provincial Tax Avoidance" should be exempted under subsection 13(1) because the discussion of the recommendation in the "Considerations" section reveals the recommendation made. This is so especially given that the discussion clearly emphasizes accepting the proposal and the positive outcome of

accepting the proposal. These recommendations are fully intertwined with the stated facts and outcomes.

[71] The appellant did not provide specific representations on this record.

*Analysis/Findings re: Pages 1 and 2 of Record P8U*

[72] Page 2 of Record P8U contains a portion entitled "Recommendation", which includes a recommendation about the proposal set out in this record. The information in this record reveals a suggested course of action that will ultimately be accepted or rejected by the person being advised.

[73] I agree with the Ministries that any factual information contained in pages 1 and 2 of this record is so intertwined with the advice and recommendations that it is not severable (Order PO-2097). Therefore, I find that disclosure of the information on pages 1 and 2 would permit an accurate inference to be made regarding the recommendations given in this record. In addition, I find that none of the exceptions listed in section 13(2) apply to the information withheld in pages 1 and 2 of Record P8U.

[74] Accordingly, subject to my review of the Ministries' exercise of discretion, pages 1 and 2 of Record P8U are exempt from disclosure.

***Pages 41 and 42 of Record P9A***

[75] This record is a 43-page document described by the Ministries as a "Summary Position Paper Finco, Captiveco Passive Interest Income". The Ministries describe this record in their discussion of section 18(1)(d) as follows:

Record P9A is a draft of the Summary Position Paper and is responsive to part 1(a) of the request for information. It does not contain any taxpayer-specific information. Record P9A is nearly identical to Record P9C, which has already been disclosed to the Requester. The main difference between these two records is that P9C contains taxpayer specific information of the [appellant]. Because most of Record P9A is identical to P9C, it is being disclosed, save for the section titled "summary of positions" on page 41 of Record P9A. That section sets out different possible reassessment strategies for the Ministry.

[76] The appellant submits that this record lays out the reasons regarding the Ministries final position in the reassessment matter and provides the factual findings made in coming to its reassessment decision. Therefore, even if this record consists of "advice or recommendations", it would nonetheless not be exempt due to the application of the exceptions in section 13(2)(a), (k) and (l).

[77] In reply, the Ministries submit that:

[Record] P9A [is] almost identical to what was disclosed during the original audit, namely P9C. P9A is the template for all taxpayers for the P9C document addressed to each, and it contains the various reasons which apply differently to different taxpayers. The half page that did not apply to [the appellant] is now taken out as exempt as it would be misleading in the context of his request. It is advice for other taxpayers which advice does not apply to [the appellant]. P9C is the Summary Position Paper which does reveal the final assessment position of the Ministry in regard to this taxpayer. These would be the reasons for the final decision not a sanitized one that the appellant refers to in relation to [section] 13(2)(l).

[78] In response to these reply representations, I had a staff member contact the appellant's representative to confirm that the appellant was still interested in obtaining disclosure of the information at issue in Record P9A.

*Analysis/Findings re: Pages 41 and 42 of Record P9A*

[79] Pages 41 and 42 of Record P9A contain the concluding statements to this record, the remainder of which has been disclosed to the appellant. Although the Ministries' claim that the information at issue is specific to a specific taxpayer, this is not evident from a reading of Record P9A. The information at issue in this record, however, contains advice and recommendations and comes within section 13(1).

[80] The appellant has raised the application of section 13(2) to this record. I have reviewed the exceptions in section 13(2) and find that none of them apply. This record is a draft record. The information that has been disclosed has been incorporated in the final report that has been disclosed to the appellant in the form of Record P9C. Withheld from Record P9A is the "summary of positions" on page 41 of Record P9A. That section sets out a number of proposed reassessment strategies for the Minister of Finance.

[81] In my view, none of the severed information falls within the exceptions in section 13(2), in particular those raised by the appellant.

[82] With respect to the exceptions raised by the appellant in sections 13(2)(a), (k) and (l), the information at issue is not factual material, as it is not a coherent body of facts separate and distinct from the advice and recommendations contained in the record [Order 24].

[83] Concerning section 13(2)(k), this section has three essential requirements:

- (1) the record must be a "report" of a "committee, council or other body";

- (2) the committee, council or other body must be "attached to" an institution;
- (3) the committee, council or other body must have been established "for the purpose of undertaking inquiries and making reports or recommendations to the institution" [Order PO-2681].

[84] Section 13(2)(k) applies to any entity, body or organization similar to a committee or council, as long as the other elements of paragraph (k) are met. A body may be considered "attached" to an institution, even if it maintains some degree of independence from the institution. If the body reports to a minister, it will be considered to report to an "institution" [Order PO-2681; PO-1709, upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v. Goodis*<sup>3</sup>; Order PO-1823].

[85] This record is not a report of a committee, council or other body. Therefore, the exception in section 13(2)(k) does not apply.

[86] With respect to section 13(2)(l), this record also does not contain the reasons for a final decision, order or ruling of the MOF, but rather only a consideration of the reassessment options along with recommendations for steps that could be taken by the Minister in response.

[87] Therefore, subject to my review of the Ministries' exercise of discretion, the concluding statements on pages 41 and 42 of Record P9A are exempt from disclosure under section 13(1).

***Pages 45, 56, 116-117, 129 and 133 of Record P9B***

[88] This record is a 135-page position paper. The Ministries submit that:

The sidebarred conclusion and recommendation sections of the Position Paper contain the recommended approach that the Minister should take with respect to the issues set out in the main document.

[89] The appellant submits that this record lays out the reasons behind the Ministries final position in the reassessment matter and provides the factual findings made in coming to its reassessment decision. Therefore, even if this record consists of "advice or recommendations", it would nonetheless not be exempt due to the exceptions in section 13(2)(a), (k) and (l), according to the appellant.

---

<sup>3</sup>[2000] O.J. No. 4944, Toronto Doc. 684/99 (Div. Ct.)



[90] In reply, the Ministries submit that:

P9B has been treated confidentially as it was not, despite its hopeful name, the final position paper of the Ministry but a discussion paper with contradictory options. It certainly was not taxpayer specific on any page.

When looking at the record and the reps on it, please note that the word "discussion" appears many times. Far from being the definitive or final report, much was repudiated following further discussions. Section 13(2)(l) does not provide for the release of the repudiated and unused reasons for a decision by the Ministry. These pieces of analysis are only the advice of one civil servant and were never fully accepted and were never escalated to the stature of reasons for final decision. The portions which are definitive and final which the Ministry has stood behind and aired is P9C (44 pages) which is made a little bit taxpayer specific to reflect the individual differences of each taxpayer.

[91] In surreply, the appellant submits that the Ministries' own description of the contents of P9B does not satisfy the exemption requirement of being "advice" or "recommendation" and therefore must be disclosed forthwith.

*Analysis/Findings re: Pages 45, 56, 116-117, 129 and 133 of Record 9B*

[92] This record was created by the Senior Tax Advisory Specialist, Tax Advisory, Corporations Tax Branch at the Ministry of Finance. Adopting my analysis for Record P9A, I agree with the Ministries that the excerpts on pages 45, 56, 116-117 and 129 contain information that consists of advice or recommendations. However, I do not agree with the Ministries that the information on page 133 contains advice or recommendations.

[93] With respect to the appellant's claim that the exceptions in section 13(2) apply, I find that none of these exceptions apply. In particular, this record does not contain the reasons for a final decision within the meaning of section 13(2)(l).

[94] Therefore, subject to my review of the Ministries' exercise of discretion, the identified excerpts on pages 45, 56, 116-117 and 129 of Record P9B are exempt from disclosure under section 13(1).

[95] I will consider below whether the information at issue on page 133 of Record P9B is exempt by reason of the application of sections 18(1)(d) or 19.

***Record G22B***

[96] This record is an email from a Ministry of Revenue employee to the Senior Manager, Tax Advisory Corporations Tax Branch, the Manager, Interpretations and

Legislative Training Corporations Tax Branch and the Senior Tax Advisory Specialist Tax Advisory Corporations Tax Branch. The Ministries submits that the quote contained in this email reveals the suggested course of action given by the Director of the Office of Budget and Taxation, Strategic Quantitative Research Branch, Ministry of Finance to a decision-maker.

[97] The appellant submits that even if this record consists of "advice or recommendations", it would nonetheless not be exempt due to the exceptions in section 13(2)(a), (k) and (l).

*Analysis/Findings re: Record G22B*

[98] This is an email to the MOF's Senior Manager, Tax Advisory Corporations Tax Branch with a copy sent to two other MOF employees. It contains a recommendation about a suggested course of action and is, therefore, subject to section 13(1). None of the exceptions in section 13(2) apply. Therefore, subject to my review of the Ministries' exercise of discretion, Record G22B is exempt from disclosure under section 13(1).

***Conclusion regarding section 13(1)***

[99] Therefore, subject to my review of the Ministries' exercise of discretion, the following records or portions of records are exempt by reason of section 13(1):

- Records O13, O76 to O80, G22B;
- the concluding statements on pages 41 and 42 of Record P9A;
- pages 1 and 2 of Record P8U;
- the identified excerpts on pages 45, 56, 116-117, and 129 Record P9B;
- the severed information in Record O74.

**D. Tax Information**

[100] I will now determine whether the mandatory exemption at section 17(2) applies to Records Y3, Y7, G8, G9A, G19, G22E, P7D, P7J, P7K, P8F, P8H, P8M, P8N, P8Q, and P8S to P8V. This section reads:

A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

[101] I note that the exception to section 17(2) in section 17(3) does not apply in this appeal, except as it concerns the appellant. This section reads:

A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure.

**Record Y3**

[102] This record is a copy of a CRA proposal sent to a named company to assess a Captiveco arrangement and outlines the application of GAAR to this situation. A copy of the proposal was sent to the Manager, MOF Tax Avoidance Unit from the Counsel, MOF Legal Services Branch.

[103] The Ministries submit that this record contains information:

...that was obtained on a tax return or was "gathered for the purpose of determining tax liability or collecting a tax" and thus is exempt from disclosure.

The fax cover page and attached letter refers to specific taxpayers by name. The attached letter from the CRA to a specific taxpayer outlined facts, legal arguments, and position with respect to tax liability.

A set of facts relating to a named taxpayer, including the legal arguments put forward on its behalf, contained in a document entitled "Special Cases" is exempt from disclosure under section 17(2) (Order PO-1832, at p. 8).

This is similar to Order PO-2059-1, p. 13-15, where the IPC held that records gathered as part of an audit under the *Retail Sales Tax Act* relating to a taxpayer company's taxable status and its tax liability are exempt from disclosure under section 17(2).

[104] The appellant did not provide representations on this record.

*Analysis/Findings re: Record Y3*

[105] Section 17(2) does not prevent the taxpayer to which the tax liability accrues from obtaining this information upon request [Order PO-2059-I]. However, this record does not contain information concerning the appellant but concerns other corporations who face reassessments.

[106] I agree with the Ministries' position that section 17(2) applies to Record Y3 and that both Orders PO-1832 and PO-2059-I are relevant in this appeal.

[107] In Order PO-1832, Adjudicator Donald Hale applied section 17(2) to a portion of a record that contained information relating to a named taxpayer, the legal arguments put forward on behalf of that taxpayer and an abridged version of a legal opinion prepared by Ministry counsel in response to the taxpayer's position. He determined that disclosure would reveal information that was gathered by the Ministry from a taxpayer for the purpose of determining tax liability of that particular corporation.

[108] In Order PO-2059-I, Adjudicator Laurel Cropley determined that information gathered as part of an audit under the *Retail Sales Tax Act* relating to a company's taxable status and its tax are exempt from disclosure under section 17(2). Disclosure of the records at issue would reveal information gathered for the purpose of determining tax liability.

[109] Accordingly, I find that section 17(2) applies to both the proposal and the cover fax in Record Y3. Both documents contain information that was gathered for the purpose of determining tax liability or collecting a tax concerning corporations other than the appellant. The exception in section 17(3) does not apply. This section reads:

A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure.

[110] As I have determined that section 17(2) applies it is unnecessary for me to determine whether sections 15(a) and/or (b) also apply to this record.

### ***Record Y7***

[111] This record is a string of emails between the MOF's Manager, Tax Avoidance Unit, Ottawa Tax Office and MOF's Counsel, Legal Services Branch and others. The Ministries submit that:

...the whole record contains information that was obtained on a tax return or was "gathered for the purpose of determining tax liability or collecting a tax" and thus is exempt from disclosure.

Y7-2 and Y7-3 contain specific names of taxpayers and information that was obtained on a tax return or was "gathered for the purpose of determining tax liability or collecting a tax".

Records gathered as part of an audit under the *Retail Sales Tax Act* relating to a taxpayer company's taxable status and its tax liability are exempt from disclosure under s. 17(2) (Order PO-2059-1, pp. 13-15).

[112] The appellant did not provide representations on this record.

[113] When asked to identify which portion of the record was exempt by reason of section 17(2), the Ministries only claimed that the list of corporations on page 5 of this record was exempt under this section.

*Analysis/Findings re: Record Y7*

[114] This record refers to a number of taxpayer corporations and contains information gathered for the purpose of determining their tax liability. There is also information in this record about the appellant. By reason of section 17(3), I find that the information concerning the appellant does not fall within the ambit of section 17(2). In Order PO-2059-I, Adjudicator Laurel Cropley stated that:

In view of the Legislature's intent, and the purpose underlying section 17 generally, it would be inconsistent and contrary to proper statutory interpretation to apply the protection in section 17(2) to prevent the taxpayer to which the tax liability accrues from obtaining this information upon request.

This view is reinforced by section 17(3), which provides the head of an institution with the discretion to disclose a record otherwise exempt from disclosure under certain circumstances.

This section reads as follows:

A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure.

...[S]ection 17(2) cannot be used to bar a taxpayer requester from obtaining information gathered for the purposes of determining that taxpayer's tax liability or collecting a tax.

[115] I agree with this reasoning of Adjudicator Cropley and find that section 17(2) does not apply to a portion of Record Y7 that concerns the appellant. However, I conclude that this exemption does apply to other companies listed on page 5 of this record. I will consider below whether this record is also exempt by reason of sections 19 or 18(1)(d).

***Record G8***

[116] This record is an email from an MOF employee to the Senior Tax Advisory Specialist Corporations Tax Branch (Finance group) regarding a named company & Provincial Tax Avoidance Scheme. In addition, Record G8 includes an email with string of attached emails and documents from the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division to certain named persons, including members of CRA/ARC (Avoidance Review Committee), the CRA Manager, Identification, the Detection and Legislation Co-ordination Section of the Tax Avoidance and Special Audits Division, the CRA Chief, Provincial Legislative Amendments, the Legislative Policy Directorate and a MOF employee.

[117] The Ministries submit:

...that the whole record contains information that was obtained on a tax return or was "gathered for the purpose of determining tax liability or collecting a tax" and thus is exempt from disclosure.

Pages 1 to 3 contain the name of a taxpayer. The rest of the email is a discussion about the taxpayer's assessment.

The attachment starting at page 5 sets out a detailed analysis of the taxpayer's assessment and tax liability.

Names of taxpayers and the position they take with respect to tax liability contained in records are exempt from disclosure under s. 17(2). (Order PO-1832, at p. 8).

This is similar to Order PO-2059-1, p. 13-15, where the IPC held that records gathered as part of an audit under the *Retail Sales Tax Act* relating to a taxpayer company's taxable status and its tax liability are exempt from disclosure under s. 17(2).

This is similar to Order PO-2235, at p. 10, where the IPC held that a briefing note that clearly contains and describes the information that was gathered for the purpose of determining the tax liability and collection of taxes from an institution is exempt from disclosure under s. 17(2).

[118] The appellant submits that the entire record is not exempt under section 17(2) as it refers to the appellant.

[119] Later in adjudication, the Ministries withdrew its reliance on section 17(2) for part of two emails on page 1 of this record.

*Analysis/Findings re: Record G8*

[120] I find that those portions of this record for which section 17(2) has been claimed were "gathered for the purpose of determining tax liability." None of this information refers to the appellant; it is all related to another corporate taxpayer. The exception in section 17(3) does not apply. Accordingly, this record, other than the portions of two emails on page 1 for which the Ministries withdrew its reliance on section 17(2), is exempt under section 17(2). I will consider below whether sections 15(a) and/or (b) apply to the information in this record.

**Record G9A**

[121] This record is an email from a CRA employee to a MOF employee regarding a named company and is entitled "Provincial Tax Avoidance Scheme."

[122] The Ministries submit:

...that the whole record contains information that was obtained on a tax return or was "gathered for the purpose of determining tax liability or collecting a tax" and thus is exempt from disclosure.

This record is a discussion of a specific taxpayer's tax liability. It contains an excerpt of correspondence between taxpayer and accountant which discusses tax liability which was obtained in the course of assessing the taxpayer's liability.

Names of taxpayers and the position they take with respect to tax liability contained in records are exempt from disclosure under s. 17(2). (Order PO-1832, at p. 8).

This is similar to Order PO-2059-1, p. 13-15, where the IPC held that records gathered as part of an audit under the *Retail Sales Tax Act* relating to a taxpayer company's taxable status and its tax liability are exempt from disclosure under s. 17(2).

[123] The appellant submits that the entire record is not exempt under section 17(2) as it refers to the appellant.

[124] Subsequently, the Ministries claimed section 17(2) for only portions of this record.

*Analysis/Findings re: Record G9A*

[125] I find that the names of individual corporate taxpayers were "gathered for the purpose of determining tax liability." None of this information refers to the appellant. It is all related to another corporate taxpayer. The exception in section 17(3) does not apply. Accordingly, the names of corporate taxpayers in this record are exempt under section 17(2). I will consider below whether sections 15(a) and/or (b) apply to the information in this record.

**Record G19**

[126] This record is a presentation regarding Captiveco Interest Income presented at a meeting with the Alberta Treasury.

[127] The Ministry submits that:

...the whole record contains information that was obtained on a tax return or was "gathered for the purpose of determining tax liability or collecting a tax" and thus is exempt from disclosure.

Slides at the back of page 1, and pages 7-11, refer to specific taxpayer by name, outlining facts and contains charts summarizing the taxpayer's avoidance activities, including legal arguments supporting their position. Slide at p. 2 contains information relayed by an informant relating to a taxpayer.

A set of facts relating to a named taxpayer, including the legal arguments put forward on its behalf, contained in a document entitled "Special Cases" is exempt from disclosure under s. 17(2) (Order PO-1832, at p. 8).

This is similar to Order PO-2059-I, p. 13-15, where the IPC held that records gathered as part of an audit under the *Retail Sales Tax Act* relating to a taxpayer company's taxable status and its tax liability are exempt from disclosure under s. 17(2).

This is similar to P-876, at p. 2, where the IPC held that the minutes of an interprovincial meeting that reveals the identity of corporations and other information gathered to enable the Minister to determine tax liability is exempt from disclosure under s. 17(2).

This is similar to Order PO-2235, at p. 10, where the IPC held that a briefing note that clearly contains and describes the information that was gathered for the purpose of determining the tax liability and collection of taxes from an institution is exempt from disclosure under s. 17(2).

[128] The appellant submits that the entire record is not exempt under section 17(2) as it refers to the appellant.

[129] Subsequently, the Ministries identified that they were only claiming section 17(2) for specific slides or portions of slides that contain the names of corporate taxpayers.

*Analysis/Findings re: Record G19*

[130] Record G19 is a slide presentation that contains information about the creation of Captivecos and the circumstances surrounding the avoidance and collection of taxes through the use of these corporations.

[131] One specific corporation and its subsidiary are mentioned in the slide presentation that comprises this record. This corporation is not the appellant



corporation. It is apparent from a review of Record G19 and the Ministries representations that the information in this record concerning this named corporation was gathered for the purpose of determining tax liability.

[132] Accordingly, I find that section 17(2) applies to the portions of this record that specifically refers to the named corporation and its subsidiary. I find that section 17(2) does not apply to the remainder of the information in this record for which section 17(2) is claimed, as this is general information or refers to court cases. I will consider below whether sections 15(a) or 19 apply to Record G19.

### ***Record G22E***

[133] This record consists of an email from the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office to the MOF Manager, Interpretations and Legislative Training Corporations Tax Branch and the MOF Senior Tax Advisory Specialist Corporations Tax Branch. The Ministries submit that:

Taxpayer specific information is conveyed as would have been collected on a federal and Nova Scotia and British Columbia tax return. Taxpayer is not named in one case but is identifiable by situation, and another taxpayer is named in connection with a particular avoidance arrangement which would have been declared on an Ontario tax return.

[134] The appellant submits that the entire record is not exempt under section 17(2) as it refers to the appellant

[135] Later on, the Ministries only claimed section 17(2) for a portion of this record.

### ***Analysis/Findings re: Record G22E***

[136] There is only one specific corporation mentioned in this record, which is not the appellant. This information concerns the collecting of tax from this corporation. I find that a specific taxpayer is not identifiable from the information contained in the rest of this record as it only refers to the other corporations by their province of origin. Therefore, I find that Record G22E, other than the name of one corporation, is not exempt by reason of section 17(2). I will consider below whether sections 15(b) or 18(1)(d) apply to this record.

### ***Records P7D***

[137] Record P7D consists of meeting notes from a meeting attended by representatives of CRA, Alberta, Quebec and Ontario.

[138] The Ministries submit that Record P7D consists of minutes from a meeting with other taxing authorities in preparation for an inter-governmental meeting with

representatives of taxpayers and relates to the assessment of taxpayers. Page 1 of this record contains taxpayer names.

[139] The Ministries also state that:

Order P-876, at p. 2 indicates that the minutes of an interprovincial meeting that reveals the identity of corporations and other information gathered to enable the Minister to determine tax liability is exempt from disclosure under section 17(2).

Further, in order PO-1832 at pp. 9-10, details of the assessment disputes of two taxpayers including the positions taken by each taxpayer and the Ministry's stance on the issue, as well as a recommendation as to how the Ministry should proceed on the reassessment of one of the taxpayers, contained in a memorandum from a Ministry official to an Assistant Deputy Minister are exempt from disclosure under section 17(2).

[140] The appellant submits that the entire record is not exempt under section 17(2) as it refers to the appellant.

[141] Subsequently, the Ministries identified only two corporate taxpayers' names as being subject to section 17(2).

*Analysis/Findings re: Record P7D*

[142] This record does not mention the appellant. Record P7D is similar to the record in Order P-876. In that order, the record consisted of the minutes of a meeting attended by representatives of Revenue Canada, the Alberta Treasury and the Quebec and Ontario Ministries of Revenue and contained information about named corporations as well as information provided by other government bodies. Inquiry Officer Mumtaz Jiwan stated that:

I have reviewed those portions of the record which the Ministry claims are exempt from disclosure under section 17(2) of the Act. I find that the record contains information respecting the identity of various corporations and other information which was gathered to enable the Ministry to determine tax liability or ultimately collect a tax. I find that the portions of the record for which the Ministry has claimed section 17(2) are properly exempt from disclosure under that section of the Act.

[143] I adopt this reasoning and find that the names of two corporate taxpayers in Record P7D are exempt under section 17(2). This information was gathered for the purpose of determining tax liability or collecting a tax. I will determine below whether this record is exempt under sections 15(a) or 18(1)(d).

***Record P7J***

[144] This record is described in the Ministries representations as a string of emails between the Ministry of Finance Manager, Tax Avoidance Unit, Ottawa Tax Office and a named Ministry of Finance employee, etc. regarding Captiveco tax avoidance cases involving extra provincial corporations. However, on my review, I find that this record is only one email between these two Ministry of Finance employees. The Ministries submit that:

...the identified portion of the record contains information that was obtained on a tax return or was "gathered for the purpose of determining tax liability or collecting a tax" and thus is exempt from disclosure.

Pages 1, 2, and 3 contain the names of taxpayers and steps they have taken to avoid paying taxes.

The names of taxpayers and the position they take with respect to tax liability contained in records are exempt from disclosure under s. 17(2). (Order PO-1832, at p. 8)

Records gathered as part of an audit under the Retail Sales Tax Act relating to a taxpayer company's taxable status and its tax liability are exempt from disclosure under s. 17(2) (Order PO-2059-I, pp. 13-15).

Further, the taxpayer information is contained in an email that summarizes issues, and is exempt from disclosure following the reasoning in Order PO-1832, at p. 8.

[145] The appellant submits that the entire record is not exempt under section 17(2) as it refers to the appellant.

[146] Subsequently, the Ministries only claimed section 17(2) for a portion of this record.

***Analysis/Findings re: Record P7J***

[147] Based on my analysis for Records Y7 and P7D, I agree with the Ministries that the names of taxpayers other than the appellant are exempt by reason of section 17(2). I find that the remaining information for which the Ministries have claimed section 17(2) in this record is not exempt as this information does not reveal the identity of the named corporate taxpayers. Nor does it make reference to the positions these corporate taxpayers have taken regarding their liability for taxation (Order PO-1832). I will determine below whether this record is exempt under section 18(1)(d).

**Record P7K**

[148] This record is a string of emails from the MOF's Manager, Tax Avoidance Unit, Ottawa Tax Office to a named MOF employee regarding "Dissolved Captivecos".

[149] The Ministries provided identical general representations to those provided for Record P7J. They also submit that Pages 2 and 3 contain the names of taxpayers and their tax assessment status.

[150] The appellant did not provide representations on this record.

[151] Subsequently, the Ministries only claimed section 17(2) for a portion of this record.

*Analysis/Findings re: Record P7K*

[152] Based on my analysis for Records Y7 and P7D, I agree with the Ministries that the names of taxpayers other than the appellant are exempt by reason of section 17(2), however the name of the appellant is not exempt by reason of this section. Furthermore, I find that the remaining information for which the Ministries have claimed section 17(2) in this record is not exempt as this information does not reveal the identity of the named corporate taxpayers. I will determine below whether this record is exempt under section 18(1)(d).

**Record P8F**

[153] This record is a string of emails between an Alberta employee, the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division, the Director, MOF London Regional Tax Office and Mississauga and the Manager, Tax Avoidance Unit, Ottawa Tax Office.

[154] The Ministries submit that:

This record is similar to those at issue in Order PO-1832, at p. 9-10, where the IPC held that details of the assessment disputes of two taxpayers including the positions taken by each taxpayer and the Ministry's stance on the issue, as well as a recommendation as to how the Ministry should proceed on the reassessment of one of the taxpayers are exempt from disclosure under s. 17(2). It is also similar to Order P-876, at p. 2, where the IPC held that the minutes of an interprovincial meeting that reveals the identity of corporations and other information gathered to enable the Minister to determine tax liability is exempt from disclosure under s. 17(2).

[155] The appellant submits that the entire record is not exempt under section 17(2) as it refers to the appellant.

[156] Subsequently, the Ministries only claimed section 17(2) for a portion of this record.

*Analysis/Findings re: Record P8F*

[157] No specific taxpayers are named or identifiable from this record. I find that this record does not contain information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax. Accordingly, section 17(2) does not apply. I will determine below whether this record is exempt under sections 15(a) and/or (b), 18(1)(d) or 19.

***Record P8H***

[158] This is a string of emails from an MOF employee and the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division regarding "Ontario Finco Case Alberta taxpayer" to the Tax Avoidance Unit, Ottawa Tax Office.

[159] The Ministries submit that:

... the identified portions of the record contains information that was obtained on a tax return or was "gathered for the purpose of determining tax liability or collecting a tax" and thus is exempt from disclosure.

Page 1 contains a list of taxpayer names. The record contains the names of different taxpayers throughout.

The names of taxpayers and the position they take with respect to tax liability contained in records are exempt from disclosure under s. 17(2). (Order PO-1832, at p. 8)

This is similar to Order PO-2059-I, p. 13-15, where the IPC held that records gathered as part of an audit under the Retail Sales Tax Act relating to a taxpayer company's taxable status and its tax liability are exempt from disclosure under s. 17(2).

This is similar to Order PO-1832, at p. 9-10, where the IPC held that details of the assessment disputes of two taxpayers including the positions taken by each taxpayer and the Ministry's stance on the issue, as well as a recommendation as to how the Ministry should proceed on the reassessment of one of the taxpayers, contained in a record are exempt from disclosure under s. 17(2) (Order PO-1832, at pp. 9-10).

It is also similar to Order PO-1832, at p. 14, where the IPC held that a letter from a taxpayer setting out its submissions on a tax assessment issue is exempt from disclosure under s. 17(2). While the record is not a letter itself, it contains information that was communicated between the Ministry and the taxpayer in question.

[160] The appellant submits that the entire record is not exempt under section 17(2) as it refers to the appellant.

[161] Subsequently, the Ministries only claimed section 17(2) for portions of this record.

*Analysis/Findings re: Record P8H*

[162] Based on my analysis for Records Y7 and P7D, I agree with the Ministries that the names of corporate taxpayers are exempt by reason of section 17(2). The appellant is not named in this record. I find that the remaining information for which the Ministries have claimed section 17(2) in this record is not exempt as this information does not reveal the identity of the named corporate taxpayers. Although some of this information may refer to the named corporations' province or territory of origin this, in my opinion, does not result in these corporate taxpayers being rendered identifiable, in the absence of their names being disclosed. I will determine below whether this record is exempt under sections 15(a) and/or (b), 18(1)(d) or 19.

***Record P8M***

[163] This is a string of emails between the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division and the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office regarding "Provincial Tax Avoidance".

[164] The Ministries submit that:

The Ministry submits that the whole record contains information that was obtained on a tax return or was "gathered for the purpose of determining tax liability or collecting a tax" and thus is exempt from disclosure.

Pages 6 and 8 of the record contain the names of taxpayers and sets out its position on one of the issues in the assessment. The rest of the record contains information about the Ministry's position and the taxpayer's position in the tax dispute. It is similar to Order PO-1 832, at p. 9-10 where the IPC held that details of the assessment disputes of two taxpayers including the positions taken by each taxpayer and the Ministry's stance on the issue, as well as a recommendation as to how the

Ministry should proceed on the reassessment of one of the taxpayers, contained in a record was exempt from disclosure under s. 17(2).

This is similar to Order PO-2059-I, p. 13-15, where the IPC held that records gathered as part of an audit under the Retail Sales Tax Act relating to a taxpayer company's taxable status and its tax liability are exempt from disclosure under s. 17(2).

It is also similar to Order PO-1832, at p. 14, where the IPC held that a memorandum from an appeals officer to the Assistant Deputy Minister that sets out the position taken by a taxpayer on the issue of the assessment of taxation on certain aspects of its business is exempt from disclosure under s. 17(2).

It is also similar to Order PO-1832, at p. 8, where the IPC held that names of taxpayers and the position they take with respect and its tax liability are exempt from disclosure under s. 17(2).

It is also similar to Order PO-1832, at p. 9-10, where the IPC held that details of the assessment disputes of two taxpayers including the positions taken by each taxpayer and the Ministry's stance on the issue, as well as a recommendation as to how the Ministry should proceed on the reassessment of one of the taxpayers, contained in a record are exempt from disclosure under s. 17(2).

[165] The appellant submits that the entire record is not exempt under section 17(2) as it refers to the appellant.

[166] Subsequently, the Ministries only claimed section 17(2) for two sentences of this record.

*Analysis/Findings re: Record P8M*

[167] Based on my analysis for Records Y7 and P7D, I agree with the Ministries that the names of taxpayers are exempt by reason of section 17(2). The appellant is not named in this record. Furthermore, I find that the remaining information for which the Ministries have claimed section 17(2) in this record is not exempt as this information does not reveal the identity of the named corporate taxpayers. Although some of this information may refer to the named corporations province or territory of origin this, in my opinion, does not result in these corporate taxpayers being rendered identifiable, in the absence of their names being disclosed. I will determine below whether this record is exempt under sections 15(a) and/or (b), 18(1)(d) or 19.

### ***Records P8N and P8Q***

[168] These records are a continuation of Record P8M and the Ministries rely on their representations for that record.

[169] The appellant submits that these records are not exempt under section 17(2) as they refer to the appellant.

[170] Subsequently, the Ministries only claimed section 17(2) for two sentences in each of these records.

#### *Analysis/Findings re: Records P8N and P8Q*

[171] Based on my analysis for Records Y7 and P7D, I agree with the Ministries that the names of taxpayers are exempt by reason of section 17(2). The appellant is not named in these records. Furthermore, I find that the remaining information for which the Ministries have claimed section 17(2) in these records is not exempt as this information does not reveal the identity of the named corporate taxpayers. Although some of this information may refer to the named corporations province or territory of origin this, in my opinion, does not result in these corporate taxpayers being rendered identifiable, in the absence of their names being disclosed. I will determine below whether these records are exempt under sections 15(a) and/or (b), 18(1)(d) or 19.

### ***Record P8S***

[172] This is a string of emails between the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office and the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division regarding "Provincial Tax Avoidance". The Ministry submits that:

Page 2 identifies the taxpayer by name. Names of taxpayers and the position they take with respect to tax liability, contained in record are exempt from disclosure under s. 17(2) (Order PO-1832 at p.8).

[173] The appellant submits that the entire record is not exempt under section 17(2) as it refers to the appellant.

[174] Subsequently, the Ministries only claimed section 17(2) for a portion of this record.

#### *Analysis/Findings re: Record P8S*

[175] Based on my analysis for Records Y7 and P7D, I agree with the Ministries that the names of taxpayers are exempt by reason of section 17(2). The appellant is not named in this record. Furthermore, I find that the remaining information for which the



Ministries have claimed section 17(2) in this record is not exempt as this information does not reveal the identity of the named corporate taxpayers. I will determine below whether this record is exempt under sections 15(a) and/or (b) or 18(1)(d).

***Record P8T***

[176] This record is a string of emails between the Manager, Field Audit, Corporate Tax Audit Division of Alberta Finance and the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office regarding "List of companies using Ontario to Avoid Alberta Provincial Taxes."

[177] The Ministries submit that:

... the identified portions of the record contains information that was obtained on a tax return or was "gathered for the purpose of determining tax liability or collecting a tax" and thus is exempt from disclosure.

Page 4 of the record names a taxpayer and sets out its tax liability. Page 1 contains information regarding its tax return. This is similar to Order PO-2059-I, p. 13-15, where the IPC held that records gathered as part of an audit under the Retail Sales Tax Act relating to a taxpayer company's taxable status and its tax liability are exempt from disclosure under s. 17(2).

Names of taxpayers and the position they take with respect to tax liability, contained in record are exempt from disclosure under s. 17(2) (Order PO-1832, at p. 8).

This is similar to Order PO-2235, at p. 10, where the IPC held that a briefing note that clearly contains and describes the information that was gathered for the purpose of determining the tax liability and collection of taxes from an institution is exempt from disclosure under s. 17(2). The record itself is not a briefing note, but it contains similar information.

[178] The appellant did not provide representations on this record.

***Analysis/Findings re: Record P8T***

[179] The Ministries have claimed section 17(2) for three portions of this record. Based upon my analysis for Records Y7 and P7D, I find that only the name of a corporate taxpayer on page 4 reveals information that is subject to the section 17(2) exemption. The remaining information at issue is general information or is not related to an identifiable corporate taxpayer. I will determine below whether this record is exempt under sections 15(a) and/or (b) or 19.

***Record P8U***

[180] This record consists of a note and a draft letter regarding "Collaboration on Inter Provincial Tax Avoidance", to the National Director, Tax (named accounting firm) from the Director General, Director General's Office regarding a meeting on a specific date.

[181] The Ministries submit that:

Page 2 of the record names a taxpayer. Page 3 identifies taxpayer representatives. While the record does not specify the taxpayer in question, the taxpayer's identity could be inferred from the representatives.

Names of taxpayers and the position they take with respect to tax liability, contained in record are exempt from disclosure under s. 17(2) (Order PO-1832, at p. 8).

This is similar to Order PO-2235, at p. 10, where the IPC held that a briefing note that clearly contains and describes the information that was gathered for the purpose of determining the tax liability and collection of taxes from an institution is exempt from disclosure under s. 17(2). The record itself is not a briefing note, but it contains similar information.

[182] The appellant did not provide representations on this record.

[183] Subsequently, the Ministries withdrew its claim concerning the application of section 17(2) to the information on page 3 of this record.

*Analysis/Findings re: Record P8U*

[184] Based on my analysis for Records Y7 and P7D, I agree with the Ministries that the name of the corporate taxpayer on page 2 of this record is exempt under section 17(2). I do not agree that the remaining information is exempt as it is general information. I will determine below whether this record is exempt under sections 15(a) and/or (b), 18(1)(d) or 19.

***Record P8V***

[185] This record is a chart regarding "Ontario Shuffle Audits." The Ministries claimed the section 17(2) exemption for the name of one corporate taxpayer on the last page of this record. The Ministries initially claimed the application of section 17(2) to the entire record. They did not provide specific submissions regarding the name of the taxpayer. The appellant also did not provide representations on this record.

*Analysis/Findings re: Record P8V*

[186] Based on my analysis set out above, I agree with the Ministries that the name of the corporate taxpayer (which is not the appellant's name) on the last page of this record is exempt under section 17(2). I will determine below whether this record is exempt under sections 15(a) and/or (b), 18(1)(d) or 19.

***Conclusion regarding section 17(2)***

[187] The following records or portions of records are exempt by reason of section 17(2):

- Record Y3
- The names of corporations on page 5 of Record Y7 (except the appellant's name)
- Record G8 (except parts of two emails on page 1),
- The names of corporations other than the appellant in Records G9A, G19, G22E, P7D, P7J, P7K, P8H, P8M, P8N, P8Q, P8S, P8T, P8U, P8V.

**E. Relations with Other Governments**

[188] I will now determine whether the discretionary exemptions at sections 15(a) and/or (b) apply to Records G8, G9A, G18A, G19, G22E, O46, O50, P7C, P7D, P7E, P7G, P7H, P7I, P8A to P8T, P8V and the attachment to Record P8U. As the Ministries have claimed the application of section 18(1)(d) to the entirety of Record P9B and have only claimed section 15(a) for a small portion of Record P9B, I will address the application of section 18(1)(d) first to Record P9B.

[189] Sections 15(a) and (b) state:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;
- (b) reveal information received in confidence from another government or its agencies by an institution;

and shall not disclose any such record without the prior approval of the Executive Council.

[190] Section 15 recognizes that the Ontario government will create and receive records in the course of its relations with other governments. Section 15(a) recognizes the value of intergovernmental contacts, and its purpose is to protect these working

relationships. Similarly, the purpose of sections 15(b) and (c) is to allow the Ontario government to receive information in confidence, thereby building the trust required to conduct affairs of mutual concern [Order PO-1927-I; see also Order P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.)].

[191] For this exemption to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

[192] If disclosure of a record would permit the drawing of accurate inferences with respect to information received from another government, it may be said to "reveal" the information received [Order P-1552].

[193] The Ministries provided both confidential and non-confidential representations on sections 15(a) and (b). In their non-confidential representations, they submit that concerning section 15(a) that the records at issue are the subject matter of intergovernmental meetings. They state that the records include emails reflecting on, or preparing for, these meetings as well as notes, minutes and agendas of the meetings themselves. They submit that disclosure of the records would be prejudicial to government relations since there is a reasonable expectation of confidentiality between governments when discussing the matter of tax avoidance and the General Anti-Avoidance Rule (GAAR). They also state that disclosure of these discussions would result in harm to further frank and open communication with other governments (Order PO-1927-I).

[194] Concerning section 15(b), the Ministries submit that the records at issue reveal information received in confidence from another government or its agencies, either Quebec, Alberta, or Canada's CRA, except for certain individual communications in the records, such as correspondence sent by Ontario in reply to requests of another government. However, the Ministries submit that section 15(b) still applies as the records reveal information received from another government (PO-1883).

[195] The Ministries further submit that there exists an expectation of confidentiality on the part of both Ontario and other governments (mainly Canada, Alberta and Quebec). Either the information itself is marked as confidential or confidentiality is established by the Tax Protocol or implied given the nature of the information and how it is treated (PO-2019). Specifically; the records refer to assessment strategies, taxpayer information, settlement, etc. that have an impact on the revenue of the various taxing authorities, and as such was considered confidential information not to be disclosed by Ontario. Concerning the Tax Protocol, the Ministries state that:

The protocol of intergovernmental non-disclosure derives from confidentiality provisions in access legislation in regard to taxpayer specific information which is freely discussed among governments who must often manage and legislate equitably to allow for proceeds to all jurisdictions that have a reasonable nexus to a taxpayer. The protocol is also supported by intergovernmental exemptions like section 15 of FIPPA. Historically as well, taxing statutes provided the confidentiality or non-disclosure provisions, however these provisions are now superseded by *FIPPA* where they demand more confidentiality than *FIPPA* allows. Nonetheless most of those at the negotiating table consider them to be intact. The tax acts still provide viable disclosure provisions allowing for agreements for intergovernmental discussions as exceptions to the overall protocol of confidentiality. The understanding is that the overall rule is secrecy, and intergovernmental discussions being an exception, the discussions, emails and papers are to remain undisclosed outside of the meeting group. This understanding, or confidentiality protocol, predates *FIPPA* but remains vibrant in practice. It is reinforced among national governments by treaties.

The expectation of confidentiality is reasonable because intergovernmental discussions include strategies, instructions for draft legislation, and taxpayer-specific audit information and possibly joint audits, while the meetings lend themselves to an open environment in which newcomers can ask any question and where all answers are not official policy.

[196] The Ministries provided a list of the ten information exchange agreements that Ontario has with nine provinces, Canada and the Yukon. They state that the purposes of these agreements include giving authority to share taxpayer-specific information and to encourage confidential communication among governments to increase co-operation in the administration of fiscal or tax laws by exchanging information of reciprocal interest.

[197] The appellant submits that:

...when a tax administration reassesses a taxpayer, that it must fully disclose "the findings of facts and rulings of law" that have given rise to the controversy (i.e., the reassessment). This principle has been followed for the last 60 years. It is an application of the "case to meet" principle. If multiple tax administrations decide to cooperate and join forces in reassessing the taxpayer, surely their cooperation should not allow them to do an end-run of the above-mentioned principles.

Similarly, all tax statutes contain confidentiality restrictions to prevent tax authorities from divulging information received under the applicable

legislation. However, these confidentiality restrictions do not apply when this information relates to the taxpayer in question. In this regard, the statutes maintain and reflect a policy of transparency vis-à-vis the taxpayer concerned. It follows that the tax administrations have no expectations of confidentiality when they deal with the taxpayer. Again, the fact that the tax administrations have decided to cooperate cannot create an expectation of privacy when in the first place there was none. Further, all the tax administrations have completed their reviews so it is hard to see how the disclosure could reasonably have a negative impact on intergovernmental relations.

[198] In reply, the Ministries' entire submission on the section 15(a) and (b) exemption states that:

I can now provide further evidence from each province and from the federal government which were provided to me by the governments for another *FIPPA* appeal on Captiveco records requested by another Appellant. The endorsements of the other governments of the Ontario *FIPPA* position are worded in a fairly generic manner, as many such appeals are anticipated on Captiveco records. For that reason, the statements of the governments show the views of other Canadian jurisdictions towards intergovernmental anti-avoidance records generally. At the very least the universal response demonstrates that there was a reasonable expectation of confidentiality among the parties to these Captiveco discussions, whether through meetings or emails. And clearly, the other governments do not want these discussions disclosed. Since this is a mandatory section, assuming with perfect safety that Cabinet won't reverse on the matter, the Ministry had no discretion to disclose these records. Section 15 must be applied.

[199] In surreply, the appellant submits that the records should not be withheld simply because multiple tax administrations decide to cooperate and join forces in reassessing the appellant. It states that:

...The fact that the tax administrations have decided to cooperate cannot now create an expectation of privacy when in the first place there was none. The tax administration clearly held a false expectation of privacy and have no substantive foundation upon which to base such an expectation.

[200] I will now determine the applicability of the sections 15(a) and (b) exemptions to each individual record. I will also refer to the Ministries' non-confidential representations on each record. The appellant did not provide submissions on each individual record.

### ***Record G8***

[201] Most of this record is exempt under section 17(2), other than portions of two emails on page 1. One email is from a MOF employee to the Senior Tax Advisory Specialist Corporations Tax Branch (Finance group) regarding a named company & Provincial Tax Avoidance Scheme. The second email is from the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division to certain named persons, including members of CRA/ARC (Avoidance Review Committee), the CRA Manager, Identification, the Detection and Legislation Co-ordination Section of the Tax Avoidance and Special Audits Division, the CRA Chief, Provincial Legislative Amendments, the Legislative Policy Directorate and a MOF employee.

[202] The Ministries are claiming the application of sections 15(a) and (b). Concerning section 15(a), they submit that the subject matter was intergovernmental relations since the emails concern the CRA and several provincial tax authorities and that the Tax Protocol dictates an expectation of confidentiality about how Ontario handles interprovincial meetings and issues. They submit that:

This sensitive subject matter of tax avoidance and the GAAR (General Anti-Avoidance Rule) affects intergovernmental relations, and its disclosure to taxpayers and their counsel would be prejudicial to these relations. The harm would be that further frank and open communications among the governments would be inhibited.

Records of discussions among governments are exempt because the disclosure could reasonably be expected to prejudice the conduct of intergovernmental relations [Order PO-1927-I].

[203] Concerning section 15(b), they submit that the emails were received from the CRA and that the Tax Protocol creates an expectation of confidence. Further, they submit that the subject matter of the documents (assessment strategies of various tax authorities) is by its nature confidential [PO-2019].

### *Analysis/Findings re: Record G8*

[204] Remaining at issue from Record G8 are portions of two emails on page 1. This record addresses strategies to be employed to deal with tax avoidance issues between the provinces and the federal government. The remainder of this record was found to be exempt under section 17(2).

[205] Based upon the nature of the information remaining at issue in this record, I find that disclosure of this information could reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution or reveal information received in confidence from another government or its agencies

by an institution. Therefore, I find that the two emails at issue are subject to sections 15(a) and (b).

### ***Record G9A***

[206] This record is an email from a CRA employee to a MOF employee regarding a named company and a provincial tax avoidance Scheme. I found above that the names of corporate taxpayers in this record are exempt under section 17(2).

[207] The Ministries claim the application of sections 15(a) and (b) to this record. With respect to section 15(a), they provided similar representations to those in Record G8, other than stating that the subject matter of this record concerns the assessment strategies of the CRA and Ontario

[208] With respect to section 15(b), they provided identical representations to that provided for Record G8.

### ***Analysis/Findings re: Record G9A***

[209] This record contains a discussion of taxation strategies under consideration by the federal government and the provinces. Based upon my review of this record, I agree with the Ministries that both sections 15(a) and (b) apply. I find that disclosure of this information could reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution or reveal information received in confidence from another government or its agencies by an institution.

### ***Record G18A***

[210] This record is an email entitled, "GAAR Referrals - provincial tax avoidance", from the MOF's Senior Group Manager, Field Audit to the MOF's Manager, Interpretations and Legislative Training Corporations Tax Branch (FIN) and other MOF employees, forwarding an email and attachments from the CRA Chief, Provincial Legislative Amendments, Legislative Policy Directorate. These attachments are memorandums to the GAAR Committee Chairperson from the CRA's Tax Avoidance and Special Audits Division regarding "Generic Provincial Tax Avoidance".

[211] The Ministries claimed the application of sections 15(a) and (b) to this record. With respect to section 15(a), they provided similar representations as in Record G8 other than stating that matters concerning the CRA and several provincial tax authorities are interlaced throughout the record and that the CRA has requested that the attachments be treated as confidential.

[212] With respect to section 15(b), the Ministries state that attachments were originally sent from the CRA Chief, Provincial Legislative Amendments, Legislative Policy



Directorate to the MOF and that one of the emails in this record contains the phrase that the, "CRA has requested that we treat these documents as very confidential and that we limit their distribution."

*Analysis/Findings re: Record G18A*

[213] This record in its entirety discusses intergovernmental tax avoidance strategies between Ontario, the CRA and other provinces. I find that this record falls within the ambit of both sections 15(a) and (b). I find that disclosure of this information could reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution or reveal information received in confidence from another government or its agencies by an institution.

**Record G19**

[214] This record is a presentation regarding Captiveco Interest Income presented at a meeting with the Alberta Treasury. I found above that section 17(2) applies to the names of corporate taxpayers in this record.

[215] The Ministries have only claimed the application of section 15(a) to this record. They have provided similar representations to those in Record G8. They did state that this record contains matters concerning the Ministries relationship with the CRA and Alberta. The Ministries rely on Order PO-2249, in which agendas and other records, which documented working relationships between governments, were found to be exempt.

*Analysis/Findings re: Record G19*

[216] In Order PO-2249, Adjudicator Sherry Liang applied section 15(a) to agendas and minutes of meetings between provincial and territorial medical directors. She stated that:

Based on the representations before me, I am satisfied that the records relate to intergovernmental relations. The meetings of the provincial and territorial medical directors that are documented in the records represent working relationships between their governments used as a vehicle to discuss issues of common concern surrounding the payment for medical services.

I am also satisfied that disclosure of much of the information in the records could reasonably be expected to prejudice the conduct of intergovernmental relations. The general purpose of the meetings is the exchange of information about payment for medical services under the different provincial and territorial health insurance plans. I accept the representations of the Ministry and other provinces and territories that

during the course of the discussions, government representatives provide information about negotiations, funding and management issues related to their plans. Although much of the information provided is factual, in the sense of reporting on the treatment of particular medical services under the different health insurance plans, participants may also provide information that departs from the official position of the provinces they represent, or that reports on ongoing negotiations or shares initial policy thinking or planning.

I also accept that the participants in these meetings have a shared expectation that their discussions are "in camera", and this permits them to be frank in providing their views and information on the issues discussed. The minutes are quite detailed in recording the input of the provincial and territorial representatives on the matters under discussion. I find that disclosure of the information in the records could reasonably be expected to result in less candour at the meetings, less sharing of information and generally less of an inclination to continue with these informal exchanges.

The representations of the provinces and territories establish that these meetings are a valuable means for these governments to share information and make use of informal working relationships to assist in developing their own policies on payment for medical services. Disclosure of the proceedings of the meetings could reasonably be expected to undermine these relationships and, therefore, to prejudice the conduct of intergovernmental relations.

I am therefore satisfied that section 15(a) would apply to exempt disclosure of the agendas, minutes and supporting material found in the records.

[217] In this appeal, Record G19 contains information presented by Ontario to Alberta in a meeting about Captiveco arrangements and various taxation scenarios, both federally and provincially. I agree with the findings of Adjudicator Liang in Order PO-2249 and find that disclosure of the information in the record could reasonably be expected to prejudice the conduct of intergovernmental relations. I also find that disclosure of the information in the record could reasonably be expected to result in less candour at future meetings, less sharing of information and generally less of an inclination to continue with these informal exchanges. Disclosure of the record could reasonably be expected to prejudice the conduct of intergovernmental relationships. Accordingly, I find that section 15(a) applies to this record.

### ***Record G22E***

[218] This record consists of an email from the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office to the MOF Manager, Interpretations and Legislative Training Corporations Tax Branch and the MOF Senior Tax Advisory Specialist, Corporations Tax Branch. I found above that the name of one corporate taxpayer contained in this record is exempt by reason of section 17(2). The Ministries have claimed only section 15(b) for this record. They submit that this record contains information from tax returns submitted to British Columbia, Nova Scotia and the CRA. They also submit that the Tax Protocol creates an expectation of confidence.

#### *Analysis/Findings re: Record G22E*

[219] Based upon my review of this record, I agree with the Ministries that disclosure could reasonably be expected to reveal information received in confidence from British Columbia, Nova Scotia and the CRA. Therefore, I find that section 15(b) applies to this record.

### ***Record O46***

[220] As stated above, both the title and the contents of this record differ significantly from the other records (Records O47 to O49) also identified by the Ministries as "Draft Option Paper: Tax Haven Corporations - Timing of Implementation". The actual title of this record is "Eliminate Tax Haven Loophole". The Ministries only claimed section 15(a) for this record. In their non-confidential representations, the Ministries submit that this record relates to relations with the other provinces and that even internal records are not excluded from the exemption if they reflect matters in which another government has an interest (Order P-961). They also submit that disclosure would be harmful to the relationship between Ontario and the other provinces, as this record discusses options, all rejected at present, of what to do about changing revenues as a result of closing the tax haven loophole.

#### *Analysis/Findings re: Record O46*

[221] This record is an internal document. The information in this record concerns the relationship of Ontario with other provinces should various options discussed in the record be implemented. Disclosure of this information could reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution. Accordingly, I find that disclosure would reasonably be expected to result in harm to interprovincial relations and that section 15(a) applies to this record.

### ***Record O50***

[222] This record is undated and is entitled, "Tax Haven Corporations, Background Information". The Ministries claimed section 15(a) for only a portion of this record.

They submit that the subject matter is intergovernmental relations as the severed portion relates to relations with the other provinces, specifically the provincial allocation of first year revenue gain. They submit that internal records that did not flow between governments are not excluded from the exemption if they reflect matters in which another government had an interest [P-961].

[223] The Ministries also submit that disclosure of the estimated allocation of dollars among the provinces would be harmful to the relationship of Ontario with other provinces, especially since these are not final numbers, nor have they been given to the other provinces.

*Analysis/Findings re: Record O50*

[224] I agree with the Ministries that the subject matter of the record is intergovernmental. However, I do not agree with the Ministries that disclosure could reasonably be expected to prejudice the conduct of intergovernmental relations. The information concerns estimated figures for revenue for a period that has long since passed. These estimated figures have not been shared with the other provinces. The Ministry has not provided the requisite evidence as to how intergovernmental relations could reasonably be expected to be prejudiced by the disclosure of the specific information at issue. Therefore, I find that section 15(a) does not apply to the information. I will consider below whether section 18(1)(d) apply to this record.

***Record P7C***

[225] This record is described as "pre-meeting handwritten notes and post mortem." The Ministries applied only section 15(a) to this record. The Ministries submit that this record includes issues to be discussed, questions to be asked, and the conclusions of a meeting between the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division and taxpayer representatives. At this meeting, Alberta and Quebec were mentioned. They state that:

Formal and informal exchanges of information in joint projects are confidential according to Order PO-1927-I. Agendas and content of the meetings are exempt under [Order] PO-2249...

It would prejudice future relations between Ontario and the other taxing authorities to disclose what the tax avoidance issues or conclusions were. Order PO-1927-I holds that records of discussions among governments are exempt.

*Analysis/Findings re: Record P7C*

[226] This record contains notes of a meeting where intergovernmental subjects were discussed. This was not a pre-meeting but a meeting attended by representatives of

the CRA, the MOF and individuals from accounting and law firms representing corporate taxpayers. I do not agree with the Ministries' position that disclosure of this record could reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario. In Order PO-2249, the meeting was amongst government representatives only. Due to the composition of the attendees to the meeting in the record, the information at this meeting was discussed among several non-government individuals in addition to representatives of governments other than Ontario. Therefore, section 15(a) does not apply to this record. I will determine below whether section 18(1)(d) applies to this record.

***Record P7D***

[227] Record P7D consists of meeting notes. I found above that the names of two corporate taxpayers were exempt under section 17(2).

[228] The Ministries submit that Record P7D are the minutes from a meeting between federal, Quebec, Alberta and Ontario taxing authorities in preparation for an inter-governmental meeting with representatives of taxpayers and relates to the assessment of taxpayers. They also submit that disclosure of the tax avoidance issues or conclusions set out in this record would prejudice future relations between Ontario and the other taxing authorities (Order PO-1927-I).

*Analysis/Findings re: Record P7D*

[229] I agree with the Ministries that section 15(a) applies to this record. This record contains the notes of a meeting between several governmental representatives as outlined by the Ministries. Disclosure of the information from this meeting could reasonably be expected to prejudice intergovernmental relations as these notes reflect the strategy that these taxing authorities intend to undertake at the meeting and subsequent to this meeting (Order P-1552).

***Record P7E***

[230] This record consists of emails between the MOF's Director, London Regional Tax Office and Mississauga, the Senior Manager, Tax Advisory Corporations Tax Branch, the Director, Corporations Tax Branch and the Manager, Tax Avoidance Unit, Ottawa Tax Office regarding the "Meeting July 14, 2006 - Tax Avoidance Arrangement Exploiting Ontario Tax Provisions".

[231] The Ministries submit that this record includes internally circulated emails discussing the meeting and providing suggested changes to a letter and the process. Two emails in this record are from the CRA to Quebec and Ontario. One email predates the meeting and lists the issue to be discussed at the meeting and the objective of the meeting. Another email was written following the meeting.

[232] The Ministries state that while certain emails are not conversations with another jurisdiction, they include reactions to another jurisdiction that decided things at the interjurisdictional meeting. They rely on Orders P-1137 and P-961, which held that internally generated records qualified for exemption under section 15(a) if interjurisdictional issues were discussed. With respect to the internal emails in this record, they submit that:

It would prejudice intergovernmental relations to provide non-authoritative reactions to the federal position spoken in confidence in-house.

[233] With respect to the emails circulated between Ontario and other governments, the Ministries submit that these emails concern a confidential meeting held to discuss particular tax avoidance situations and rely on Order PO-2369, which held that positions, views and policies of representatives of intergovernmental committees are exempt. They state that:

... under the [Tax] protocol all taxpayer information is confidential and intergovernmental discussions are confidential because the records, if disclosed, would prejudice relations among the government. Individuals should be able to share freely without intrusion... Names of persons at the meetings will be disclosed in a list following Order P-1629. This is sensitive information which would be received in confidence under Order P1619 and P-263.

*Analysis/Findings re: Record P7E*

[234] I find that this record is subject to section 15(a) as its disclosure would result in prejudice to intergovernmental relations since it contains proposals for tax collection that were shared between the provinces and the CRA. This record contains information about strategies for assessment and negotiating settlement with tax avoiders, along with an evaluation of strengths and weaknesses of options. The fourth page contains a detailed description of the status of various files under audit and objection.

[235] I also find that section 15(b) applies to this record, as the information would have been received in confidence. Accordingly, I find that this record is subject to both sections 15(a) and (b).

***Record P7G***

[236] This record consists of emails between the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office and the Director, London Regional Tax Office and Mississauga, regarding "Provincial Tax Avoidance utilizing provisions within the *Ontario Corporation Act*". The Ministries submit that the record shows communication of positions back and forth between Ontario and CRA under section 15(a) and that it would prejudice

intergovernmental relations to disclose discussions about confidential positions regarding particular tax avoidance situations (Orders PO-1927-I and PO-2369).

[237] Concerning section 15(b), the Ministries rely on Orders P-263 and P-1619 and the Tax Protocol and state that the emails were received in confidence.

*Analysis/Findings re: Record P7G*

[238] The Ministries have applied sections 15(a) and (b) to portions of two emails in this record. Based upon my review of this information, I agree that these exemptions apply. I find that this information is an email exchange between the CRA and MOF where intergovernmental matters regarding particular tax avoidance situations are being discussed. I further find that this information would have been received in confidence. Therefore, I find that sections 15(a) and (b) apply to the portions of two emails in this record.

[239] The Ministries have also applied section 18(1)(d) to the first of these two emails; however, as sections 15(a) and (b) apply, it is unnecessary for me to consider the application of section 18(1)(d). The Ministries withdrew its claim that section 17(2) applies to two severances on page 1 of this record. As no other exemption has been claimed for the severances on page 1, I will order this information disclosed.

***Record P7H***

[240] This record consists of emails within the MOF between the Manager, Tax Avoidance Unit, Ottawa Tax Office, Ministry of Finance employees, the Manager, Interpretations and Legislative Training Corporations Tax Branch Group Manager, Field Audit, the Senior Manager, Tax Advisory Corporations Tax Branch, the Senior Tax Advisory Specialist Tax Advisory Corporations Tax Branch regarding "Captiveco's request for change in year-end." The Ministries have applied sections 15(a) and (b) to one email on page 1 of this record, submitting:

Section 15(a)

This is an Ontario report of a conversation with CRA representative [name], with respect to a new issue and a planned exchange of information on that issue...

It would prejudice intergovernmental relations to disclose discussions about confidential positions re: particular tax avoidance situations (Order PO-1927-I)... Also the positions, views and policies of representatives in the intergovernmental committees are exempt according to Order PO-2369.

Section 15(b)

...The information was received by the CRA... The phone call described [in this record] was received by Ontario... [The record] if disclosed, would prejudice relations among the government. Individuals should be able to share freely without intrusion.

*Analysis/Findings re: Record P7H*

[241] I do not agree with the Ministries that sections 15(a) and (b) apply to the email at issue on page 1 of this record. This email refers to information about a phone call from the CRA; however, this is only general information. No specific taxpayers are named or even mentioned. I find that disclosure could not reasonably be expected to either prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution nor, under section 15 (b), reveal information received in confidence from another government or its agencies. I will consider below whether the severances on pages 2 and 3 of this record are subject to section 18(1)(d).

***Record P7I***

[242] This is a 20-page record. Page 1 consists of emails between the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office and the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division, regarding "Provincial Tax Avoidance utilizing provisions within the *Ontario Corporation Tax Act.*" Pages 2 to 19 are described as a "Draft Federal Generic Position Paper". The Ministries rely on their representations for Record P7H and submit that:

The only sensitive [email] is the last one on page 1 from Ontario to CRA ...but the Ministry submits that the whole cover page should shelter under the exemption for the main document..

The Canada Revenue Agency draft position paper was received in confidence by Ontario and is a sensitive tax position document, at an unofficial stage. As such it is clearly within the four corners of the class described by s. 15(b). Order P-263 and P-1619 conclude that if the information received from the other government is sensitive, it is exempt.

*Analysis/Findings re: Record P7I*

[243] Page 1 of this record consists of an email chain that contains information in several of the emails concerning the CRA's position on the tax avoidance arrangements of the Fincos. The cover email page attaches the CRA's draft position paper on these tax avoidance arrangements.

[244] Under section 15(b), I agree with the Ministries that this record contains sensitive information, and I accept the Ministries' position that it is the type of



information that would be received in confidence (Order P-1619). I also agree with the Ministries that due to the information in the draft position paper and cover email, which were communicated between the CRA and the MOF (Canada and Ontario), that disclosure could reasonably be expected to prejudice intergovernmental relations under section 15(a). Accordingly, I find that both sections 15(a) and (b) apply to this record.

### ***Record P8A***

[245] This record consists of emails to which is attached a draft letter. The emails are between Quebec, the CRA, the MOF and Alberta (as described in the index) regarding "Meeting July 14, 2006 Tax Avoidance Arrangement Exploiting Ontario Tax Provisions." The draft letter is to a named accounting firm from the CRA Director General, Director General's Office.

[246] With respect to section 15(a), the Ministries submit that matters concerning the CRA and provincial tax authorities are included throughout the record and that the sensitive subject matter of tax avoidance and the GAAR (General Anti-Avoidance Rule) affects intergovernmental relations. They state that disclosure would inhibit further frank and open communications among the governments (Order PO-1927-1).

[247] Concerning section 15(b), the Ministries submit that the emails were received in confidence by MOF from the CRA in confidence. They state that the Tax Protocol creates an expectation of confidentiality. The Ministries conclude that the subject matter of the records (assessment strategies) is by its nature confidential (Order PO-2019) and that it does not matter that Ontario appears to not have specifically responded to these emails.

### ***Analysis/Findings re: Record P8A***

[248] Based upon my review of the emails, for the same reasons that I applied in Record P7I, I find that the attachment (the draft letter) and pages 1 to 3 and part of one email on page 4 contain information that comes within the sections 15(a) and (b) exemptions. The remaining information in the emails contains general information such as about arrangements for the meeting and does not come within sections 15(a) or (b). I will order this remaining information disclosed, as no other exemptions have been claimed for this record.

### ***Record P8B***

[249] This record consists of emails between the Manager, Tax Avoidance Unit, Ottawa Tax Office and the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division, the Alberta Director, Audit, Tax and Revenue Administration and others regarding, "Ontario Financing Arrangement - Statute Barred Status 152(4)." The Ministries provided similar representations for this record as it did for Record P8A.

*Analysis/Findings re: Record P8B*

[250] Based upon my review of the record, for the same reasons that I applied in Records P7I and P8A, I find that only portions of certain emails in this record contain information that comes within the sections 15(a) and (b) exemptions. The remaining information in the emails contains general information such as about arrangements for the meeting or emails with accounting firms and does not qualify for exemption under sections 15(a) or (b). I will consider below whether this remaining information is exempt under sections 18(1)(d) or 19.

***Record P8C***

[251] This record consists of one email from the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division to various CRA and MOF, Alberta and Quebec employees regarding, "Ontario Financing Arrangement - Oct. 3 meeting." The Ministries provided similar representations for this record as it did for Records P8A and P8B.

*Analysis/Findings re: Record P8C*

[252] The Ministries have applied sections 15(a) and (b) to this record. Based upon my review of this record, I agree that these exemptions apply. Record P8C consists of an email from the CRA to the provinces where intergovernmental matters regarding particular tax avoidance situations are being discussed. This information would have been received in confidence. Therefore, I find that sections 15(a) and (b) apply to this record.

***Record P8D***

[253] This record consists of emails between Quebec, the CRA, the MOF and Alberta regarding "Ontario Financing Arrangement – Oct. 3 meeting." There is also an attachment of a sample letter that was sent to various corporate taxpayers' representatives. The Ministries did not provide representations on the attachment. Concerning the emails, the Ministries provided similar representations that they did for records P8A to P8C, but added for section 15(b) that:

The emails were received from the CRA and Alberta. Where emails were sent by [MOF] or other Ontario employees one can draw accurate inferences of what was discussed in the emails from other taxing authorities, and the record is thus exempt ([Order] PO-1883).

*Analysis/Findings re: Record P8D*

[254] For the same reasons as set out for Record P8C, I agree with the Ministries that the emails in this record are subject to sections 15(a) and (b). However, I find that the sample letter is not subject to these exemptions. This letter was sent to numerous accounting firms and cannot be said to be "confidential". The Ministries claimed section 19 for the entire record including the attachment, but did not claim section 18(1)(d) for the letter. I will consider below whether the letter is subject to section 19.

***Record P8E***

[255] This record consists of emails between the Alberta Manager, Tax Audit, the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office and other individuals regarding, "Fincos and Extra-Provincial Limited." The Ministries provided identical representations as in relation to Record P8D, except these records concern the MOF and Alberta, not the MOF and the CRA.

*Analysis/Findings re: Record P8E*

[256] Based upon my review of the emails, for the same reasons that I applied in Records P7I and P8A, I find that most of the emails contain information that comes within the sections 15(a) and (b) exemptions. The remaining information in the emails contains general information such as arrangements for the meeting and does not come within sections 15(a) or (b). I will consider below whether section 19 applies to this information.

***Record P8F***

[257] This record is a string of emails between an Alberta employee, the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division, the Director, MOF London Regional Tax Office and Mississauga and the Manager, Tax Avoidance Unit, Ottawa Tax Office.

[258] The Ministries provided identical representations as in relation to Record P8A, with additional information concerning section 15(b) as to their position that accurate inferences can be drawn from the email from the MOF as to what was discussed and requested in the emails from Alberta and the CRA (Order PO-1883). They also state that subject matter of the record (Quebec proposal and assessment strategies) is, by its nature, confidential (Order PO-2019).

*Analysis/Findings re: Record P8F*

[259] This record discusses intergovernmental tax avoidance strategies concerning Ontario, the CRA and other provinces. I find that the information in this record comes within both sections 15(a) and (b). Disclosure of this information could reasonably be

expected to prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution or reveal information received in confidence from another government or its agencies by an institution.

***Record P8G***

[260] This record is described as the Meeting Notes and Agenda of CRA/ Provincial Tax Authorities Meeting with Tax Advisers. The Ministries submit concerning section 15(a) that matters concerning Quebec, Alberta and the CRA are contained in the record and that the sensitive subject matter of tax avoidance and the GAAR affects intergovernmental relations (Order PO- 1927-1). They state that:

Agendas and content of the meetings were exempt where records documented working relationships between governments (in this situation on the payment for medical services) [Order PO-2249].

[261] Concerning section 15(b), they state that the records are Ontario's notes of discussions in which the CRA, Alberta, and Quebec participated and that the subject matter of the records (settlement discussions and assessment strategies) is by its nature confidential (Order PO-2019). They submit that:

Conversations between officials of different governments which were committed to notes were entirely exempt under s. 15(b), even the Ontario portions, since there was an understanding of confidentiality during the conversation on the part of all parties. Officials will be unable to share freely unless all information shared is held to be confidential (Order P-1030).

*Analysis/Findings re: Record P8G*

[262] There are two portions to this record, namely, the meeting notes and the pre-meeting notes with a draft agenda. The meeting referred to in the record was attended by representatives of at least four accounting firms representing various corporate taxpayers. I find that the meeting notes do not come within sections 15(a) or (b). The information contained in the meeting notes was not received in confidence, nor could its disclosure reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution as this information was shared with numerous non-governmental parties. As no other exemption has been claimed for the meeting notes, I will order this portion of the record disclosed.

[263] However, I find that the pre-meeting notes and draft agenda are subject to both sections 15(a) and (b). This information was received in confidence by Ontario from other governments and disclosure could reasonably be expected to prejudice the conduct of intergovernmental relations. This portion of the record would reveal the

discussion of the anticipated tax assessment and collection strategies considered by Ontario and the other governments.

***Record P8H***

[264] This is a string of emails from a MOF employee and the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division regarding "Ontario Finco Case Alberta taxpayer" to the Tax Avoidance Unit, Ottawa Tax Office. I found above that the names of the corporate taxpayers in this record are exempt by reason of section 17(2)

[265] The Ministries provided similar representations as it has for Record P8F.

*Analysis/Findings re: Record P8H*

[266] This record discusses intergovernmental tax avoidance strategies concerning Ontario, the CRA and other provinces. I find that the information in this record comes within the ambit of both sections 15(a) and (b). Disclosure of this information could reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution or reveal information received in confidence from another government or its agencies by an institution.

***Record P8I***

[267] This record consists of emails between the MOF Director, London Regional Tax Office and Mississauga, the Alberta Director, Audit, Tax and Revenue Administration, the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division, a named Quebec employee and the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office, regarding "Request for meeting re: July 24th letter." The Ministries provided similar representations that it did for Record P8H.

*Analysis/Findings re: Record P8I*

[268] Based upon my review of the emails, for the same reasons that I applied in Record P7I, I find that portions of the emails contain information that comes within the sections 15(a) and (b) exemptions. The remaining information in the emails consists of general information relating to arrangements for the meeting and does not come within sections 15(a) or (b). I will consider below whether section 19 applies to the information I have not found subject to sections 15(a) or (b).

***Record P8J***

[269] This record consists of emails between the Alberta Director, Audit, Tax and Revenue Administration and the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office

regarding "Application of subsection 152(4) of the *Federal Income Tax Act.*" The Ministries provided similar representations as they did for Record P8E.

*Analysis/Findings re: Record P8J*

[270] This record discusses intergovernmental tax avoidance strategies concerning Ontario, the CRA and other provinces. I find that the information in this record comes within both sections 15(a) and (b). Disclosure of this information could reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution or reveal information received in confidence from another government or its agencies by an institution.

***Record P8K***

[271] This record is a letter to a named accounting firm and a named law firm from the CRA Director General, Director General's Office, regarding "Meeting of July 21 – reassessments." The Ministries submit that this is a draft letter. They provided similar representations for this record as for other records where they have claimed the section 15(a) and (b) exemptions. For section 15(a), they state that the record discusses matters concerning the CRA and provincial tax authorities and disclosure of the record is prejudicial to government relations as the Tax Protocol dictates an expectation of confidentiality (Order PO-1927-I).

[272] For section 15(b), they state that this letter was received by the MOF and others from the CRA and that the Tax Protocol creates an expectation of confidence. They submit that:

...the subject matter of the records (letter to taxpayer representatives re: settlement) is by its nature confidential (PO-2019).

*Analysis/Findings re: Record P8K*

[273] This letter contains only one correction from the final version, the correction of a minor typographical error, being the deletion of one letter. This letter is addressed to a named accounting firm and a named law firm. It does not reveal the names of any corporate taxpayers. Although the Ministries claimed that this record contains settlement discussions, they withdrew their claim of the application of the privilege exemption in section 19 to this record.

[274] According to the Ministries, this record is the same as the final letter that was sent to numerous accounting firms. Based upon my review of the information in this record and on the fact that this information was widely communicated outside of government, I find that disclosure of this record could not reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario nor reveal information received in confidence from the CRA. Accordingly, I find that the

Record P8K is not subject to sections 15(a) and (b). As no other exemptions have been claimed for this record, I will order it disclosed.

***Record P8L***

[275] This record consists of emails between the MOF Director, London Regional Tax Office and Mississauga, Senior Manager, Tax Advisory Corporations Tax Branch, Senior Tax Advisory Specialist Tax Advisory Corporations Tax Branch and the CRA Manager, Tax Avoidance Unit, Ottawa Tax Office regarding "Federal Provincial Meeting" with attachments. The attachments consist of a list of participants at the meeting and a draft agenda. Part of this record has been disclosed. The Ministries applied only section 15(a) to this record. They submit that certain tax issues of concern to Quebec, Alberta and the CRA are present in the emails and that the Tax Protocol dictates an expectation of confidentiality about how Ontario handles interprovincial meetings and issues. They state that:

This sensitive subject matter of tax avoidance and the GAAR (General Anti-Avoidance Rule) affects intergovernmental relations, and its disclosure to taxpayers and their counsel would be prejudicial to these relations. The harm would be that further frank and open communications among the governments would be inhibited (Order PO-1927-1).

Agendas and content of the meetings were exempt where records documented working relationships between governments (in this situation on the payment for medical services) (Order PO-2249).

*Analysis/Findings re: Record P8L*

[276] Most of the information in the emails in this record concerns the logistical arrangements for the meeting. I find that this information in the emails does not come within section 15(a) as disclosure could not reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario. The Ministries have not provided "detailed and convincing" evidence to establish a "reasonable expectation of harm" should this information be disclosed. Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.); see also Order PO-2439].

[277] With respect to the attachment consisting of the List of Participants, I note that elsewhere in the Ministries representations, they state, "Names of persons at the meetings will be disclosed in a list following Order P-1629." In conjunction with the index of records, the Ministries provided a list of many of the government employees referred to in the records; however, they have not disclosed the actual list of participants in this record. Following Order P-1629, I find that the list of participants is

not subject to section 15(a). As the Ministries have not claimed section 18(1)(d) or any other exemption for this emails and list of participants, I will order them disclosed.

[278] However, I find that the portions of the emails identified by the Ministries as being subject to section 18(1)(d) are also subject to section 15(a). This information reveals tax avoidance strategy arrangements discussed between the governments in the record. According to the emails in this record, the agenda is the final agenda that was distributed at the meeting attended by the government officials. I also find that this agenda, because of the detailed information contained therein, is also subject to section 15(a). Disclosure of this information could reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution. As I have found the information for which the Ministries have claimed section 18(1)(d) to be subject to section 15(a), therefore, it is unnecessary for me to consider whether section 18(1)(d) also applies to this information.

### ***Record P8M***

[279] This record is a string of emails between the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division and the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office regarding "Provincial Tax Avoidance". I found above that section 17(2) applies to the names of corporate taxpayers in this record. The Ministries provided similar representations for this record as they did for Record P8A.

#### *Analysis/Findings re: Record P8M*

[280] This record discusses intergovernmental tax avoidance strategies concerning Ontario, the CRA and other provinces. I find that the information in this record comes within the ambit of both sections 15(a) and (b). Disclosure of this information could reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution or reveal information received in confidence from another government or its agencies by an institution.

### ***Records P8N, P8Q and P8S***

[281] Records P8N and P8Q are described by the Ministries as continuations of Record P8M, which are all emails regarding "Provincial Tax Avoidance." P8S is also an email string on the same subject. I found above that the names of corporate taxpayers were exempt under section 17(2). The Ministries provided similar representations for these records as they did for Record P8A.

#### *Analysis/Findings re: Records P8N, P8Q and P8S*

[282] These records discuss intergovernmental tax anti-avoidance strategies concerning Ontario, the CRA and other provinces. I find that the information in these



records comes within both sections 15(a) and (b). Disclosure of this information could reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution or reveal information received in confidence from another government or its agencies by an institution.

***Record P80***

[283] This record is a string of emails between the MOF Tax Avoidance Unit, Ottawa Tax Office and others and CRA employee regarding "Federal Provincial Meeting". The Ministries provided similar representations for this record as they did for Record P8A.

*Analysis/Findings re: Record P80*

[284] Based upon my review of the emails, for the same reasons that I applied in Records P7I, P8A and P8E, I find that a portion of one email contains information that comes within the sections 15(a) and (b) exemptions. The remaining information in the emails contains general information such as arrangements for the meeting and does not come within sections 15(a) or (b). As no other exemptions have been claimed for this information, I will order it disclosed.

***Record P8P***

[285] This record consists of an email to the MOF Director, London Regional Tax Office and Mississauga, Director, Corporations Tax Branch from the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office regarding "Possible Tri-party Meeting on Captiveco." The Ministries submit that the record discusses matters concerning the CRA and provincial taxing authorities. They state that:

This sensitive subject matter of tax avoidance and the GAAR (General Anti-Avoidance Rule) affects intergovernmental relations, and its disclosure to taxpayers and their counsel would be prejudicial to these relations. The harm would be that further frank and open communications among the governments would be inhibited (Order PO-1927-1).

Conversations between officials of different governments which were committed to notes were entirely exempt under s. 15(b), even the Ontario portions, since there was an understanding of confidentiality during the conversation on the part of all parties. Officials will be unable to share freely unless all information shared is held to be confidential (Order P-1030).

[286] With respect to section 15(b), they state that while the record was not received from another government's agency, one can draw accurate inferences of what was discussed with the CRA (Order PO-1883) and that the Tax Protocol creates an

expectation of confidence. Further, the subject matter of the records (tripartite meeting re: assessment strategy) is by its nature confidential (Order PO-2019).

*Analysis/Findings re: Record P8P*

[287] I agree with the Ministries that this record contains confidential information about tax anti-avoidance strategies received from the CRA and also discusses related information concerning several provinces. I find that the information in this record comes within both sections 15(a) and (b). Disclosure of this information could reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution or reveal information received in confidence from another government or its agencies by an institution.

***Record P8R***

[288] This record is a string of emails between the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division, a CRA Senior Program Officer, Tax Avoidance and Special Audits Division Compliance Programs Branch and the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office regarding "Documents attached." The Ministries provided similar representations as it did for Record P8F.

*Analysis/Findings re: Record P8R*

[289] I agree with the Ministries that this record contains confidential information about tax anti-avoidance strategies received from the CRA and also discusses related issues concerning several provinces. I find that the information in this record comes within both sections 15(a) and (b). Disclosure of this information could reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution or reveal information received in confidence from another government or its agencies by an institution.

***Record P8T***

[290] This record is a string of emails between the Manager, Field Audit, Corporate Tax Audit Division of Alberta Finance and the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office regarding "List of companies using Ontario to Avoid Alberta Provincial Taxes." I found above that section 17(2) exempts the name of a corporate taxpayer on page 4. The Ministries have claimed sections 15(a) and/or (b) for two severances on page 1 of the record and one severance on page 4 of the record.

[291] The Ministries submit that this record contains emails between Ontario and Alberta and discusses matters concerning Alberta. They state that the subject matter of tax avoidance and the GAAR affects intergovernmental relations, and its disclosure to taxpayers and their counsel would be prejudicial to these relations. The harm would be

that further frank and open communications among the governments would be inhibited (Order- PO- 1927-1).

*Analysis/Findings re: Record P8T*

[292] Based upon my review of the emails in this record, for the same reasons that I applied in Record P7I, I find that only the first and third severances for which section 17(2) was claimed contain information that comes within the sections 15(a) and/or (b) exemptions. The information in the remainder of this record contains general information such as arrangements for the meeting and does not come within sections 15(a) or (b). I will consider below whether section 19 applies to this information I have not found subject to sections 17(2) and 15(a) or (b).

***Attachment to Record P8U***

[293] I found above that pages 1 and 2 of Record P8U are subject to exemption under section 13(1). As well, I found that the name of the corporate taxpayer on page 2 was exempt by reason of section 17(2). The Ministries submit that this record was received from the CRA and concerns Alberta, Quebec and the CRA. They provided similar representations as in Record P8A concerning the prejudice that would be caused by disclosure and that the record was received in confidence, relying on Orders PO-1927-I and PO-2019.

*Analysis/Findings re: Attachment to Record P8U*

[294] The attachment is a draft letter to an accounting firm that represents corporate taxpayers. This attachment to Record P8U was drafted as a result of the advice or recommendations contain in the covering memo entitled "Collaboration on Inter Provincial Tax Avoidance." I found above that this covering memo was exempt under section 13(1). I find that disclosure of the draft letter could not reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario nor reveal information received in confidence from the CRA under both sections 15(a) and (b). This letter is addressed to a named accounting firm. It does not reveal the names of any corporate taxpayers.

[295] According to the Ministries, this record is the same as the final letter that was sent to numerous accounting firms. Based upon my review of the information in this letter and on the fact that this information was widely communicated outside of government, I find that disclosure of the attachment to Record P8U could not reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario nor reveal information received in confidence from the CRA. Accordingly, I find that attachment to Record P8U is not subject to sections 15(a) and (b). I will determine below whether this information is exempt under section 19.

### ***Record P8V***

[296] This record is a chart entitled, "Ontario Shuffle Audits." I found above that the section 17(2) exemption applied to the name of one corporate taxpayer on the last page of this record. With respect to sections 15(a) and (b), the Ministries submit that although this record was created by Ontario, much of the information contained therein concerns Alberta, Quebec and the CRA. (Order P-1350). They provided similar representations as in Record P8A concerning the prejudice that would be caused by disclosure and that the record was received in confidence, relying on Orders PO-1927-I and PO-2019.

#### *Analysis/Findings re: Record P8V*

[297] I agree with the Ministries that this record contains confidential information about tax anti-avoidance strategies received from the CRA, Alberta and Quebec. I find that the information in this record comes within both sections 15(a) and (b).

#### ***Conclusion regarding sections 15(a) and/or (b)***

[298] Therefore, subject to my review of the Ministries' exercise of discretion, the following records or portions of records are exempt by reason of sections 15(a) and/or (b):

- Records O46, P7D, P7E, P7I, P8C, P8F, P8H, P8J, P8M, P8N, P8Q, P8P, P8R, P8S, P8V, G9A, G19, G22E;
- the severances on pages 2 and 3 of Record P7G;
- The non-highlighted portions of Records P8B, P8E, P8I, P8L, P8O, P8T;
- The agenda in Record P8L;
- pages 1 to 3 and part of one email on page 4 and the attachment to Record P8A;
- the emails in Record P8D;
- pre-meeting notes and draft agenda in Record P8G;
- parts of two emails on page 1 of Record G8.

#### **F. Economic and Other Interests**

[299] I will now determine whether the discretionary exemption at section 18(1)(d) applies to Records Y7, O10, O50, P7C, P7H, P7J, P7K, P8B, P9B, G22A and G22C.

## ***General principles***

[300] Section 18(1)(d) states:

A head may refuse to disclose a record that contains,  
  
information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

[301] The purpose of section 18 is to protect certain economic interests of institutions. The report titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) explains the rationale for including a "valuable government information" exemption in the *Act*:

In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

[302] For section 18(1)(d) to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

[303] Given that one of the harms sought to be avoided by section 18(1)(d) is injury to the "ability of the Government of Ontario to manage the economy of Ontario", section 18(1)(d), in particular, is intended to protect the broader economic interests of Ontarians [Order P-1398 upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] 118 O.A.C. 108 (C.A.), leave to appeal to Supreme Court of Canada refused (January 20, 2000), Doc. 27191 (S.C.C.)].

[304] The Ministries provided extensive representations on the section 18(1)(d) exemption. In response, the appellant submitted that the Ministries have not provided the requisite detailed and convincing evidence to substantiate the application of section 18(1)(d).

[305] The harms that the Ministries claim they would suffer as a result of disclosure of the records can be summarized as follows:

Taxpayers will take advantage of any information disclosed to further their tax avoidance activities. Tax avoidance costs the Ministry millions of dollars in tax revenue through a decrease in the integrity of the tax system. The affidavit of [the Senior Corporations Tax Appeals Officer] provides evidence of the current estimate of Ministry's stake in this appeal. The Ministry must be able to discuss anti-avoidance approaches and assess the strengths and weaknesses of those approaches in confidence to determine the best method for counteracting tax avoidance. Releasing unofficial or incomplete information weakens the Ministry's official anti-avoidance position, is confusing and potentially misleading, and is contrary to the Ministry's service standards.

It discloses potential grounds for attacking the Minister's assessment decisions which would result in significant losses of tax revenue if the case were lost. Taxpayers would take advantage of this information to further their tax avoidance activities, which cost the Ministry millions of dollars in tax revenue. Taxpayers could use this information to challenge the Ministry's official position under the anticipated appeals of their tax assessments. The information is not contained in the official position, and could be used to undermine the Ministry's official position in court...

The Ministry has claimed the exemption under section [18(1)(d)] for individual records. It also claims the exemption for the records as a whole. If the [the Information and Privacy Commissioner's office (the Commissioner)] finds that a particular document for which section [18(1)(d)] has been claimed should be disclosed, the Ministry submits that the [Commissioner] should make a further inquiry to determine whether all of the records it holds should be disclosed would, as a whole, cause harm to the economic interests of the Ministry and to the Province. The records contain information, the sum of which represents harm to the Ministry as discussed in the previous sections under this part of the Section 18 Arguments...

Early disclosure of records would preclude the Minister's Public Interest protection from disclosure in the cases that go to court.

It is the Ministry's position that the underlying transactions that gave rise to this Request form a tax avoidance scheme. Those cases that have not been settled are currently under objection, and will likely be appealed to the Ontario Superior Court of Justice. If the Court holds that the transactions constitute an anti-avoidance scheme, not only should the records at issue be exempt from disclosure under [section 18(1)(d)] of

*FIPPA*, but it is also in the public interest to ensure that those documents are not released, or otherwise made available for use at ensuing trials..

Releasing information that could jeopardize the collection of taxes properly payable to the Crown is against the public interest. Section 8 of the *Proceedings Against the Crown Act (PACA)* ...states:

In a proceeding against the Crown, the rules of court as to discovery and inspection of documents and examination for discovery apply in the same manner as if the Crown were a corporation, except that,

(a) the Crown may refuse to produce a document or to answer a question on the ground that the production or answer would be injurious to the public interest;

If the records at issue which the Ministry claims are exempt from disclosure under [section 18(1)(d)] are released before the Ministry can avail itself of the public interest right under section 8 of *PACA*, it will render that right ineffective.

[306] I will now discuss the Ministries representations on individual records and my findings on each record.

### ***Record Y7***

[307] This record is a string of emails passing between the MOF's Manager, Tax Avoidance Unit, Ottawa Tax Office and MOF's Counsel, Legal Services Branch and others. I found above that the names of corporate taxpayers on page 5 of this record were exempt by reason of section 17(2).

[308] The Ministries submit that pages 1 and 2 of this record discuss issues relating to tax assessment strategies. Page 3 outlines the Ministries' theory of the tax avoidance activities of Captivecos and provides the basis for the analysis of the tax assessments. It also includes information relating to the estimated financial impact of tax avoidance schemes. Page 4 contains information relating to the status of the cases and next steps in assessment, as well as potential weaknesses if the Ministries choose to pursue a particular approach. Page 5 of this record contains information relating to the estimated financial impact of tax avoidance schemes.

### ***Analysis/Findings re: Record Y7***

[309] Based upon my review of this record, I agree with the Ministries that disclosure of this record, which contains detailed discussions of the strengths and weaknesses of

various anti-avoidance approaches, could reasonably be expected to be injurious to the financial interests of the Government of Ontario. I agree with the Ministries that taxpayers could take advantage of this information in this record to further their tax avoidance activities, which could cost the Government of Ontario significant tax revenue. Therefore, I find that section 18(1)(d) applies to this record.

### ***Record O10***

[310] At issue in this record are two paragraphs on pages 2 and 3 of the attachment to this record, a factsheet. The Ministries submit that disclosure of the information at issue would show taxpayers alternate ways of avoiding tax, contrary to the Ministries' interpretation of the law.

#### *Analysis/Findings re: Record O10*

[311] I disagree with the Ministries' position and find that the information at issue does not show taxpayers ways of unlawfully avoiding tax, even though a portion of the information at issue discusses lawful tax saving scenarios. In making this finding, I have taken into account the references in the Book of Evidence referred to by the Ministries. Accordingly, I find that section 18(1)(d) does not apply to the information at issue in this record. As no other exemptions have been claimed for this information, I will order it disclosed.

### ***Record O50***

[312] This record is undated and is entitled, "Tax Haven Corporations, Background Information". The Ministries provided confidential representations on the application of section 18(1)(d) to this record. Their confidential representations focus on the impact disclosure of this record would have on Ontario's relationship with other provinces.

#### *Analysis/Findings re: Record O50*

[313] Based upon my review of this record and the confidential representations, I find that the Ministries have provided sufficiently "detailed and convincing" evidence to establish a "reasonable expectation of harm" for most of the information in this record. The record does contain some general information that is known or otherwise publicly available. Accordingly, I find that section 18(1)(d) applies to parts of this record. As stated above, section 15(a) does not apply to this record. No other exemptions have been claimed for this record, therefore, I will order the parts of this record not subject to section 15(a) or 18(1)(d) disclosed.

### ***Record P7C***

[314] This record is described as "pre-meeting handwritten notes and post mortem." The Ministries submit that this record contains strategies for assessment and evaluates



strengths and weaknesses of options, including impact on tax revenues, in Ontario and in other jurisdictions.

*Analysis/Findings re: Record P7C*

[315] This record contains point-form notes of a meeting attended by representatives of the CRA, the MOF and individuals from accounting and law firms representing corporate taxpayers. I do not agree with the Ministries' representations that disclosure of this record could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario. The information in this record has been communicated to representatives of law and accounting firms who were in attendance at this meeting. Furthermore, I cannot find anything in this record that discloses "...strategies for assessment and evaluates strengths and weaknesses of options, including impact on tax revenues" as claimed by the Ministries. Accordingly, I find that section 18(1)(d) does not apply to this record. As stated above, section 15(a) does not apply to this record. Therefore, as no other exemptions have been claimed for this record, I will order it disclosed.

***Record P7H***

[316] This record consists of emails within the MOF between the Manager, Tax Avoidance Unit, Ottawa Tax Office, Ministry of Finance employees, the Manager, Interpretations and Legislative Training Corporations Tax Branch Group Manager, Field Audit, the Senior Manager, Tax Advisory Corporations Tax Branch, the Senior Tax Advisory Specialist Tax Advisory Corporations Tax Branch regarding "Captiveco's request for change in year-end." The Ministries have applied section 18(1)(d) to severances on pages 2 and 3 of this record.

[317] The Ministries submit that this record contains strategies for assessment and negotiating settlement with tax avoiders, along with the MOF's initial position in relation to the taxpayers request to change their year ending dates before the amendment to the legislation becomes effective.

*Analysis/Findings re: Record P7H*

[318] The information at issue in this record is from June 2005 and concerns a general discussion of requests for year-end changes before the effective date of the amendment to the *CTA* in 2005. I do not agree with the Ministries that disclosure of this information could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario. The *CTA* was amended in 2005. The discussion in this record of potential year-end changes of corporate taxpayers was not specific to any particular taxpayer nor is there any reference in this information to any settlement information. Accordingly, I find that section 18(1)(d) does not apply to the severances on pages 2

and 3 of this record. As no other exemptions have been claimed I will order this information disclosed.

***Record P7J***

[319] This record is described in the Ministries representations as a string of emails between the Ministry of Finance Manager, Tax Avoidance Unit, Ottawa Tax Office and a named Ministry of Finance employee, etc. regarding Captiveco tax avoidance cases involving extra provincial corporations. However, on my review, I find that this record is only one email between these two Ministry of Finance employees. The Ministries submit that:

The whole record should be exempt. Page 1 contains the Ministry's theory of the case and includes details of various strategies that could be used for assessing these taxpayers. Pages 1, 2, and 3 include information relating to the tax revenue impact on the Province. Page 2 includes an assessment of the strengths and weaknesses of the different proposed approaches, and identifies issues with taking each approach. Page 3 contains details of various strategies that could be used for assessing these taxpayers

*Analysis/Findings re: Record P7J*

[320] Based upon my review of this record, I agree with the Ministries that disclosure of this record, which contains detailed discussions of the strengths and weaknesses of various anti-avoidance approaches, as well as tax collection strategies, could reasonably be expected to be injurious to the financial interests of the Government of Ontario. I agree with the Ministries that taxpayers could take advantage of this information in this record to further their tax avoidance activities, which could cost the Government of Ontario significant tax revenue. Therefore, I find that section 18(1)(d) applies to this record.

***Record P7K***

[321] This record is a string of emails from the MOF's Manager, Tax Avoidance Unit, Ottawa Tax Office to a named MOF employee regarding "Dissolved Captivecos". I found above that the names of corporate taxpayers in this record were exempt under section 17(2). The Ministries submit that this record contains information about the MOF's internal processes for applications to cease operations and how such cases are handled within the MOF.

*Analysis/Findings re: Record P7K*

[322] I find that this record contains general information about the tracking by the MOF of corporations that have either dissolved or ceased operations at the time of this

record's creation in February 2006. Based upon my review of this record, I find that it does not contain information disclosure of which could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario. Accordingly, I find that section 18(1)(d) does not apply to this record. I will order this record disclosed except for the names of taxpayers that I have found exempt under section 17(2).

### ***Record P8B***

[323] This record consists of emails between the Manager, Tax Avoidance Unit, Ottawa Tax Office and the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division, the Alberta Director, Audit, Tax and Revenue Administration and others regarding, "Ontario Financing Arrangement - Statute Barred Status 152(4)." The Ministries submit that pages 2, 3, 4 and 5 contain tax assessment strategies, page 6 contains an assessment of the weaknesses of the Ministry's position, page 8 contains a discussion of a particular approach the Ministry could take on the assessments, and assesses the strengths and weaknesses of that approach.

#### *Analysis/Findings re: Record P8B*

[324] I found above that the bodies of certain emails include information that comes within the sections 15(a) and (b) exemptions. The remaining information in the emails contains general information including information about logistical arrangements for the meeting. I find that this remaining information is not exempt under section 18(1)(d). Disclosure of this information could not reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario. I will consider below whether this remaining information is exempt under section 19.

### ***Record P9B***

[325] This record is a 135-page position paper. I found above that the identified excerpts on pages 45, 56, 116-117 and 129 of Record P9B are exempt from disclosure under section 13(1). The Ministries provided extensive confidential and non-confidential representations concerning section 18(1)(d). In their non-confidential representations, the Ministries submit that:

...Even though the Summary Position Paper was prepared before the request was made by the Requester, it contained all of the information that the Ministry believed was necessary to provide to the Requester or his client under the circumstances. Indeed, the Ministry has committed itself to communicating effectively with taxpayers to ensure that all tax disputes are resolved in a fair and efficient manner... Disclosing the internal discussions of the Ministry does not serve the Ministry's goal of providing reliable written information to the taxpayers...

[326] The Ministry submits that Record P9B should be exempt from disclosure in its entirety. In their confidential representations, the Ministries provided representations on individual portions of Record P9B.

*Analysis/Findings re: Record P9B*

[327] Based upon my review of this record and the Ministries' extensive representations, I find that disclosure of Record P9B could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario.

[328] This record was prepared by the MOF's Senior Tax Advisory Specialist for discussion at the Ontario GAAR Committee and is entitled "Position Paper - Captiveco: Passive Interest Income." This record discusses tax avoidance scenarios and assesses the strengths and weaknesses of various anti-avoidance techniques. I agree with the Ministries that releasing the unofficial or incomplete information in this record would weaken their official anti-avoidance position. Therefore, I find that section 18(1)(d) applies to this record.

***Record G22A***

[329] This record is an internal memo regarding, "Taxhaven Co." from the Anti-Avoidance Review Committee to the GAAR Committee, named Ministry of Revenue employees, the MOF Senior Manager, Tax Advisory Corporations Tax Branch. The Ministries submit that this record contains information related to internal Ministry processes for assessing taxpayers. It also contains strategies for tax assessments and an assessment of the weaknesses of one of the potential positions the Ministry could take.

*Analysis/Findings re: Record G22A*

[330] I agree with the Ministry that disclosure of the information in this record relates to a discussion of anti-avoidance approaches and an assessment of the strengths and weaknesses of those approaches, with a strong potential for negative consequences if disclosed. I find that this record is subject to section 18(1)(d) as disclosure could reasonably be expected to be injurious to the ability of the Government of Ontario to manage the economy of Ontario.

***Record G22C***

[331] This record is a memorandum regarding "GAAR referral – Captiveco GAAR Committee Meeting Report" from the Manager, Interpretations and Legislative Training Corporations Tax Branch to the named Ministry of Revenue employees and the MOF Senior Manager, Tax Advisory Corporations Tax Branch. The Ministries submit that this

record contains strategies relating to tax assessments and an assessment of the weaknesses of the Ministry's position. They state that the information contained in the Committee Report referred to in this record includes assessment strategies under GAAR and potential legislative changes.

*Analysis/Findings re: Record G22C*

[332] I agree with the Ministry that disclosure of the information in this record relates to a discussion of anti-avoidance approaches and an assessment of the weaknesses of those approaches, with a strong potential for negative consequences if disclosed. I find that disclosure of this information could reasonably be expected to be injurious to the ability of the Government of Ontario to manage the economy of Ontario and that this information is subject to section 18(1)(d).

***Conclusion regarding section 18(1)(d)***

[333] Subject to my review of the Ministries' exercise of discretion, the following records or portions of records are exempt by reason of section 18(1)(d):

- Records P7J, P9B, Y7, G22A and G22C;
- the non-highlighted information in Record O50.

[334] Although, the Ministry has claimed the exemption under section 18(1)(d) for individual records and for the records as a whole, I find that only these records are subject to this exemption. The Ministry's argument that disclosure of the records as a whole could trigger section 18(1)(d) are general, rather than specific, and the necessary "detailed and convincing evidence" of a reasonable expectation of harm has not been provided. Accordingly, I conclude that disclosure of the remaining records for which section 18(1)(d) has been claimed, either individually or together, could not reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario.

**G. Solicitor-Client Privilege**

[335] I will now determine whether the solicitor-client privilege exemption in section 19 applies to the remaining records or portions of records that I have not found to be subject to sections 12(1), 13(1), 15(a) and/or (b), 17(2), or 18(1)(d), namely, Records Y4, Y8C, P8B, P8D, P8E, P8I, P8T and the first page of Records O11 and P5F.

## ***General principles***

[336] Section 19 of the *Act* states as follows:

A head may refuse to disclose a record,

- (a) that is subject to solicitor-client privilege;
- (b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation; or
- (c) that was prepared by or for counsel employed or retained by an educational institution for use in giving legal advice or in contemplation of or for use in litigation.

[337] Section 19 contains two branches as described below. The institution must establish that one or the other (or both) branches apply.

### ***Branch 1: common law privilege***

[338] Branch 1 of the section 19 exemption encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for branch 1 of section 19 to apply, the institution must establish that one or the other, or both, of these heads of privilege apply to the records at issue. [Order PO-2538-R; *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4<sup>th</sup>) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39)].

#### ***Solicitor-client communication privilege***

[339] Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice [*Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.)].

[340] The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation [Order P-1551].

[341] The privilege applies to “a continuum of communications” between a solicitor and client:

. . . Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach [*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.)].

[342] The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice [*Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27].

[343] Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication [*General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.)].

#### *Litigation privilege*

[344] Litigation privilege protects records created for the dominant purpose of existing or reasonably contemplated litigation [Order MO-1337-I; *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); see also *Blank* (cited above)].

[345] In *Solicitor-Client Privilege in Canadian Law* by Ronald D. Manes and Michael P. Silver, (Butterworth's: Toronto, 1993), pages 93-94, the authors offer some assistance in applying the dominant purpose test, as follows:

The "dominant purpose" test was enunciated [in *Waugh v. British Railways Board*, [1979] 2 All E.R. 1169] as follows:

A document which was produced or brought into existence either with the dominant purpose of its author, or of the person or authority under whose direction, whether particular or general, it was produced or brought into existence, of using it or its contents in order to obtain legal advice or to conduct or aid in the conduct of litigation, at the time of its production in reasonable prospect, should be privileged and excluded from inspection.

It is crucial to note that the "dominant purpose" can exist in the mind of either the author or the person ordering the document's production, but it does not have to be both...

[For this privilege to apply], there must be more than a vague or general apprehension of litigation.

#### *Loss of privilege*

##### Termination of litigation

[346] Common law litigation privilege may be lost through termination of litigation or the absence of reasonably contemplated litigation. As stated in Order P-1551:

Litigation privilege ends with termination of the litigation for which the documents were prepared or obtained [*Boulianne v. Flynn*, [1970] 3 O.R. 84 at 90 (Co. Ct.); *Meaney v. Busby* (1977), 15 O.R. (2d) 71 (H.C.)]. The exception to this rule is where the policy reasons underlying the privilege remain, despite the end of the litigation. For example, privilege may be sustained in related litigation involving the same subject matter in which the party asserting the privilege has an interest [*Carleton Condominium Corp. v. Shenkman Corp.* (1977), 3 C.P.C. 211 (Ont. H.C.)]. In other words, the law will only give effect to the privilege while the purpose for its recognition continues to be served. Unlike solicitor-client communication privilege, the purpose of which is to protect against disclosures which could have a chilling effect on the solicitor-client relationship, the purpose of litigation privilege is to protect against disclosures which could have a chilling effect on the lawyer's preparation for the particular litigation, or any related litigation arising out of the same subject matter.

[347] Note, however, that termination of litigation does not affect the application of statutory litigation privilege under branch 2 (see below) [*Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)* (2002), 62 O.R. (3d) 167 (C.A.)].

#### Waiver

[348] Under branch 1, the actions by or on behalf of a party may constitute waiver of common law solicitor-client privilege [Orders PO-2483, PO-2484].

[349] Waiver of privilege is ordinarily established where it is shown that the holder of the privilege

- knows of the existence of the privilege, and
- voluntarily evinces an intention to waive the privilege

[*S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.)].

[350] Generally, disclosure to outsiders of privileged information constitutes waiver of privilege [J. Sopinka et al., *The Law of Evidence in Canada* at p. 669; see also *Wellman v. General Crane Industries Ltd.* (1986), 20 O.A.C. 384 (C.A.); *R. v. Kotapski* (1981), 66 C.C.C. (2d) 78 (Que. S. C.)].



[351] Waiver has been found to apply where, for example

- the record is disclosed to another outside party [Order P-1342; upheld on judicial review in *Ontario (Attorney General) v. Big Canoe*, [1997] O.J. No. 4495 (Div. Ct.)]
- the communication is made to an opposing party in litigation [Order P-1551]
- the document records a communication made in open court [Order P-1551]

[352] Waiver may not apply where the record is disclosed to another party that has a common interest with the disclosing party. The common interest exception has been found to apply where, for example

- the sender and receiver anticipate litigation against a common adversary on the same issue or issues, whether or not both are parties [*General Accident Assurance Co. v. Chrusz* (above); Order MO-1678]
- a law firm gives legal opinions to a group of companies in connection with shared tax advice [*Archean Energy Ltd. v. Canada (Minister of National Revenue)* (1997), 202 A.R. 198 (Q.B.)]
- multiple parties share legal opinions in an effort to put them on an equal footing during negotiations, but maintain an expectation of confidentiality vis-à-vis others [*Pitney Bowes of Canada Ltd. v. Canada* (2003, 225 D.L.R. (4<sup>th</sup>) 747 (Fed. T.D.))]

### ***Branch 2: statutory privileges***

[353] Branch 2 is a statutory exemption that is available in the context of Crown counsel giving legal advice or conducting litigation. The statutory exemption and common law privileges, although not necessarily identical, exist for similar reasons.

#### *Statutory solicitor-client communication privilege*

[354] Branch 2 applies to a record that was “prepared by or for Crown counsel for use in giving legal advice.”

#### *Statutory litigation privilege*

[355] Branch 2 applies to a record that was prepared by or for Crown counsel “in contemplation of or for use in litigation.”

### *Loss of Privilege*

[356] The application of branch 2 has been limited on the following common law grounds as stated or upheld by the Ontario courts:

- waiver of privilege by the *head of an institution* (see *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.)) and
- the lack of a “zone of privacy” in connection with records prepared for use in or in contemplation of litigation (see *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.)).

[357] The Ministries made reference to a number of orders of this office and court decisions on the application of section 19. They also made specific representations for each record. I will now review each record or portion of a record that remains at issue in order to decide whether section 19 applies to it.

[358] The appellant submits that:

To the extent that you are satisfied upon examining [Records G19, P8B to P8F, P8H, P8M, P8N, P8P to P8R, P9A and P9B] that they are privileged within the scope of prior jurisprudence records outlined above, we would agree that they are to be exempt from disclosure. However, these records have lost their privilege or were never privileged, and it is our position that such records are to be disclosed forthwith. In particular, a number of the[se] records are communications to or from third parties, such as the CRA and [the Alberta Tax Revenue Administration]. In such cases, it cannot be said that they fall within the scope of communication between a client (i.e., the [MOF]) and its legal advisor [emphasis in original].

### **Record Y4**

[359] This record is described as “various drafts, instructions to counsel, comments on drafts re: 2005 amendments to section 2(2) of the *Corporations Tax Act*.” I found above that pages 2-5, 7-9, 11, 12, 15-18, 20-22, 24-26, 28-30, 32-33, 35-36, 38-42, 44-48, 50-56, 58-64, 66-75, and 77-170 of Records Y4 were exempt by reason of section 12(1)(f). I will now consider the application of section 19 to the remaining information at pages 1, 6, 10, 13, 14, 19, 23, 27, 31, 34, 37, 43, 49, 57, 65 and 76 of Record Y4.

[360] The Ministries submit that:

Cover pages (emails.)

Pages 6, 13-15, 23, 31 and 34 are exempt emails as they all relate to legal advice from MOF Crown Counsel [name]. They also serve to introduce the draft which follows and belong with that document... Thus, the emails form the continuum of communications that is solicitor and client privileged.

Emails (from Clients)

Pages 1, 10, 13, 19, 22, 31, 34, 43, 49, 57, 65, 76 are emails from clients to legal counsel requesting legal advice, or providing information in relation to previous and/or ongoing requests for legal advice, and are thus exempt...

Emails between staff and legal counsel were also held to be part of the continuum of communications and were held to be exempt (Orders PO-2602 and M-2241-1). Further, emails that did not contain specific legal advice or requests for legal advice were nevertheless exempt from disclosure as they formed part of the continuum of communications between the institution and its legal counsel (Order MO 2206)...

Emails (from Legal Counsel)

Pages 6, 14, 23, 32, 43 are emails from Legal Counsel to clients in response to requests for legal advice...

#### *Analysis/Findings re: Record Y4*

[361] I note that the Ministries refer to pages 15, 22 and 32 in their representations. These pages contain draft legislation and were found to be exempt by reason of section 12(1)(f) above. The Ministries did not refer to page 37 in their representations. Page 37 contains emails seeking legal advice from the MOF Crown Counsel. This page also serves to introduce the attached draft legislation.

[362] Based on my review of the parties' representations and the pages at issue in Record Y4, I find that all of these pages at issue refer directly to direct communications of a confidential nature between MOF's lawyers and MOF staff made for the purpose of obtaining or giving professional legal advice. These pages constitute email chains in which the MOF's solicitors are providing legal advice to its staff and this legal advice forms part of the continuum of communications between the solicitors and his/her clients (see Orders MO-2206 and PO-2746). Accordingly, I find that section 19 applies to the remaining information at issue in Record Y4.

#### ***Record Y8C***

[363] This record is an email chain between Counsel, Legal Services Branch and 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office regarding, "Quick CMT Assessments and Captiveco Specialty Debt." The Ministries submit that this record is an email

request for legal advice in respect of the reassessment of Captivecos, revival of dissolved Captivecos, and collection of reassessed amounts. The Ministries rely on Orders PO-2591, PO-2602, MO-2206 and MO-2241-I.

*Analysis/Findings re: Record Y8C*

[364] I agree with the Ministries that this record represents part of the continuum of communications between a solicitor and client for the purpose of providing legal advice. As stated above, this record constitutes email chains in which the MOF's solicitors are providing legal advice to its staff and this legal advice forms part of the continuum of communications (see Orders MO-2206 and PO-2746). Accordingly, I find that section 19 applies to the remaining information at issue in Record Y4.

***Page 1 of Record O11***

[365] This page is a cover page that contains an email from legal counsel at the Ministry of Finance. The Ministries submit that cover page emails to and from Crown Counsel are exempt since they form part of the continuum of communications that is solicitor and client privileged (requesting legal advice, receiving legal advice, or providing information in relation to other requests for legal advice

*Analysis/Findings re: page 1 of Record O11*

[366] I agree with the Ministries that this cover page email forms part of the continuum of communication between Crown Counsel and MOF staff and following the analysis set out above for Record Y4 is subject to section 19.

***Page 1 of Record P5F***

[367] This page contains emails between the MOF Senior Manager, Tax Advisory Corporations Tax Branch and the MOF Corporate and Commodity Taxation Branch, Office of Budget and Taxation regarding "Captiveco draft Legislation with Attachment." The Ministries submit that this page:

...consists of emails exchange between clients, forwarding draft legislation, and providing information in relation to previous requests for legal advice. Email exchanges by non-legal staff that addressed the subject matter for which legal counsel had been consulted and often referred to the need for communications with legal were exempt from disclosure as part of the continuum of communications, even though some of the email chains were not sent to legal. (Orders PO-2624, PO-2626, PO-2087, PO-2223, PO-2370).

*Analysis/Findings re: page 1 of Record P5F*

[368] Page 1 of Record P5F is a cover page containing emails. I find that it forms part of the continuum of communication between Crown Counsel and MOF staff. The information on this page of Record P5F specifically refers to the seeking of legal advice. Based upon my analysis set out above for Record Y4, I find that Record P5F is subject to section 19.

***Record P8B***

[369] This record consists of emails between the Manager, Tax Avoidance Unit, Ottawa Tax Office and the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division, the Alberta Director, Audit, Tax and Revenue Administration and others regarding, "Ontario Financing Arrangement - Statute Barred Status 152(4)." The Ministries submits that:

Records that were the product of confidential communications between counsel and management of a branch of the Ministry were held to be exempt under s. 19(a) (PO-2719). Further, email exchanges by non-legal staff which addressed the subject matter for which legal counsel had been consulted and often referred to the need for communications with legal were exempt from disclosure as part of the continuum of communications, even though some of the email chains were not sent to legal (Orders PO-2624, PO-2626, PO-2087, PO-2223, PO-2370). Finally, email chains between non-legal ministry staff concerning legal advice provided by counsel and intended to be kept confidential were held to be exempt and did not constitute a waiver of privilege (Orders PO-2624 and PO-2626).

The various emails relate to subject matter for which legal counsel had been consulted. Many of the emails refer to the need for communications with legal. Thus, the records are exempt under s. 19

*Analysis/Findings re: Record P8B*

[370] I found above that the bodies of certain emails contain information that comes within the sections 15(a) and (b) exemptions. The remaining information in the emails contains general information about arrangements for the meeting or emails with accounting firms and does not come within sections 15(a) or (b). I found that this remaining information is not exempt under section 18(1)(d).

[371] I find that the remaining information in this record does not qualify for exemption under section 19 either as it does not address the subject matter for which legal counsel had been consulted or they are not confidential in that they involve individuals from various accounting firms who were to attend the meetings. Accordingly, I will order this information disclosed.

***Record P8D***

[372] This record consists of emails between Quebec, the CRA, the MOF and Alberta regarding "Ontario Financing Arrangement – Oct. 3 meeting." There is also an attachment of a sample letter that was sent to various corporate taxpayers' representatives. I found above that sections 15(a) and (b) applied to the emails, but not the attachment. The Ministries did not provide representations on the attachment to this record. They did state that, "This record consists of a string of email communications, with attachments, between non-legal staff." There is only one attachment to this record.

*Analysis/Findings re: Record P8D*

[373] The attachment to this record is a template of a letter that was sent to many corporate taxpayers by the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division. It is a general letter requesting information. Section 19 does not apply to the attachment to Record P8D. As no other exemptions have been claimed for this part of this record, I will order it disclosed.

***Record P8E***

[374] This record consists of emails between the Alberta Manager, Tax Audit, the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office and other individuals regarding, "Fincos and Extra-Provincial Limited." I found above that most of the emails contain information that comes within the sections 15(a) and (b) exemptions. The remaining information in the emails consists of general information such as arrangements for the meeting and does not come within sections 15(a) or (b).

[375] The Ministries submit that:

This record consists of a string of email communications, with attachments, between non-legal staff...

The various emails relate to subject matter for which legal counsel had been consulted. Many of the emails refer to the need for communications with legal.

*Analysis/Findings re: Record P8E*

[376] There are no attachments to this record. The record consists entirely of emails. The information that I have found not to be subject to section 15(a) or (b) is information about arrangements for meetings. I find that this information does not come within section 19 as it does not address the subject matter for which legal counsel had been consulted. Accordingly, I will order this information disclosed.

***Record P8I***

[377] This record consists of emails between the MOF Director, London Regional Tax Office and Mississauga, the Alberta Director, Audit, Tax and Revenue Administration, the CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division, a named Quebec employee and the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office, regarding "Request for meeting re: July 24th letter."

[378] I found above that portions of the emails contain information that comes within the sections 15(a) and (b) exemptions. The remaining information in the emails contains general information about arrangements for the meeting and does not come within sections 15(a) or (b). I will now consider whether section 19 applies to the information I have not found subject to sections 15(a) or (b). The Ministries provided the same representations as they did for Record P8E.

*Analysis/Findings re: Record P8I*

[379] There are no attachments to this record. The record consists entirely of emails. The information that I have found not to be subject to section 15(a) or (b) is information about arrangements for meetings. I find that this information does not come within section 19 as it does not address the subject matter for which legal counsel had been consulted. Accordingly, I will order this information disclosed.

***Record P8T***

[380] This record is a string of emails between the Manager, Field Audit, Corporate Tax Audit Division of Alberta Finance and the MOF Manager, Tax Avoidance Unit, Ottawa Tax Office regarding "List of companies using Ontario to Avoid Alberta Provincial Taxes." I found above that section 17(2) exempts the name of a corporate taxpayer on page 4. I also found above that the first and third severances for which section 17(2) was also claimed contain information that comes within the sections 15(a) and (b) exemptions. The remaining information contains general information pertaining to arrangements for the meeting and does not come within sections 15(a) or (b). I will now consider whether section 19 applies to this information that I have not found subject to sections 17(2) and 15(a) and/or (b).

[381] The Ministries provided the same representations as they did for Record P8E.

*Analysis/Findings re: Record P8T*

[382] There are no attachments to this record. The record consists entirely of emails. The information that I have found not to be subject to sections 17(2) or 15(a) or (b) is information about arrangements for meetings. I find that this information does not

come within section 19 as it does not address the subject matter for which legal counsel had been consulted. Accordingly, I will order it disclosed.

### ***Conclusion regarding section 19***

[383] Subject to my review of the Ministries' exercise of discretion, the following records or portions of records are exempt by reason of section 19:

- pages 1, 6, 10, 13, 14, 19, 23, 27, 31, 34, 37, 43, 49, 57, 65, and 76 of Record Y4;
- Page 1 of Record O11;
- Page 1 of Record P5F;
- Record Y8C.

### **H. Exercise of Discretion**

[384] I will now determine whether the Ministries exercised their discretion in a proper manner under sections 13(1), 15(a) and/or (b), 18(1)(d) and 19.

#### ***General principles***

[385] The sections 13(1), 15(a) and/or (b), 18(1)(d) and 19 exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[386] In the Notice of Inquiry sent to the parties, I invited the parties to provide representations concerning the Ministries exercise of their discretion. I advised them that:

The Commissioner may find that an institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 54(2)].



### ***Relevant considerations***

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
  - information should be available to the public
  - individuals should have a right of access to their own personal information
  - exemptions from the right of access should be limited and specific
  - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information

- the historic practice of the institution with respect to similar information

[387] In response to the Notice of Inquiry, the Ministries did not provide representations concerning the exercise of their discretion with respect to their decision to not disclose the records that I have concluded are subject to the discretionary exemptions listed above. As a result, the appellant did not provide representations in response concerning the Ministries exercise of discretion. Based upon my review of the records and the Ministries' representations, I find that I have insufficient information as to whether the Ministries exercised their discretion in a proper manner, taking into account relevant factors and not taking into account irrelevant factors (see Order MO-2609-I). Some factors that may have been relevant for the Ministries to consider in the exercise of their discretion are:

- a. that information should be available to the public;
- b. whether disclosure of similar information is required by law, such as by the provisions of the *Corporations Tax Act*, *Taxation Act, 2007* (Ontario), the *Income Tax Act*, or any other statute;
- c. the public interest in the records;
- d. whether disclosure will increase public confidence in the operation of the Ministries;
- e. that some of the withheld information may be otherwise publicly available or available in records that have been disclosed;
- f. the passage of time since the records were created and since the request was made in May 2007;
- g. whether the appellant has a compelling need to receive the information;  
and
- h. that any necessary exemptions from the right of access should be limited and specific.

[388] Accordingly, I will order the Ministries to exercise their discretion in accordance with the analysis set out above and to advise the appellant and this office of the result of this exercise of discretion, in writing.

## **ORDER:**

1. The following records or portions of records are exempt by reason of the mandatory exemption in section 12(1)(f):
  - Pages 2-5, 7-9, 11, 12, 15-18, 20-22, 24-26, 28-30, 32-33, 35-36, 38-42, 44-48, 50-56, 58-64, 66-75, and 77-170, of Records Y4;
  - Records O4, O5, O7, O12, O18, O20 to O25;
  - Records O11 (except page 1);
  - P5F (except page 1).
  
2. The following records or portions of records are exempt by reason of the mandatory exemption in section 17(2):
  - Record Y3
  - The names of corporations on page 5 of Record Y7 (except the appellant's name)
  - Record G8 (except parts of two emails on page 1);
  - The names of corporations other than the appellant in Records G9A, G19, G22E, P7D, P7J, P7K, P8H, P8M, P8N, P8Q, P8S, P8T, P8U, P8V.
  
3. The following records or portions of records are to be disclosed by **November 18, 2011**:
  - Records P7C, P7H, P8K;
  - meeting notes in Record P8G;
  - the highlighted information in Records P8A, P8B, P8E, P8I, P8L, P8O, P8T, O10, and O50;
  - the severances on page 1 of Record P7G;
  - Record P7K (except for the names of corporations in Record P7K);
  - the attachments to Records P8D and P8U.
  
4. In order to verify compliance with provision 3 of this order, I reserve the right to require a copy of the records disclosed by the Ministries pursuant to order provision 3 to be provided to me.
  
5. The following records or portions of records are subject to the discretionary exemption in section 13(1):
  - Records O13, O76 to O80, G22B;
  - the concluding statements on pages 41 and 42 of Record P9A;
  - pages 1 and 2 of Record P8U;
  - the identified excerpts on pages 45, 56, 116-117, and 129 of Record P9B;

- the severed information in Record O74.
6. The following records or portions of records are subject to the discretionary exemptions in sections 15(a) and/or (b):
- Records O46, P7D, P7E, P7I, P8C, P8F, P8H, P8J, P8M, P8N, P8Q, P8P, P8R, P8S, P8V, G9A, G18A, G19, G22E;
  - the severances on pages 2 and 3 of Record P7G;
  - The non-highlighted portions of Records P8B, P8E, P8I, P8L, P8O, P8T;
  - The agenda in Record P8L;
  - pages 1 to 3 and part of one email on page 4 and the attachment to Record P8A;
  - the emails in Record P8D;
  - pre-meeting notes and draft agenda in Record P8G;
  - parts of two emails on page 1 of Record G8.
7. The following records or portions of records are subject to the discretionary exemptions in section 18(1)(d):
- Records P7J, P9B, Y7, G22A and G22C;
  - the non-highlighted information in Record O50.
8. The following records or portions of records are subject to the discretionary exemption in section 19:
- pages 1, 6, 10, 13, 14, 19, 23, 27, 31, 34, 37, 43, 49, 57, 65 and 76 of Record Y4;
  - Page 1 of Record O11;
  - Page 1 of Record P5F;
  - Record Y8C.
9. I order the Ministries to exercise their discretion with respect to the records listed in order provisions numbers 5 to 8 taking into account the factors set out above in paragraph [387] and to advise the appellant and this office of the result of this exercise of discretion, in writing. If the Ministries continue to withhold all or part of these records, I also order them to provide the appellant with an explanation of the basis for exercising their discretion to do so and to provide a copy of that explanation to me. The Ministries are required to send the results of their exercise of discretion, and their explanation to the appellant, with the copy to this office, by no later than **November 18, 2011**. If the appellant wishes to respond to the Ministries' exercise of discretion and/or their explanation for exercising their discretion to withhold information, it must do so within 21 days of the date of the Ministries' correspondence by providing me with written representations.

10. I remain seized of this matter pending the resolution of the outstanding issues in this appeal.

Original signed by \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_  
October 27, 2011

**APPENDIX**  
**INDEX OF RECORDS**

**Tax Advisory**

<b>Doc. No.</b>	<b>General Description or Categories</b>	<b>Sections Applied</b>
<p><b>G8</b>  <b>Fully at issue</b></p>	<p>March 3, 2005 (11 pages) Email From: Ministry of Finance employee To: Sr. Tax Advisory Specialist Corporations Tax Branch - Finance group Re: named company &amp; Provincial Tax Avoidance Scheme Email with string of attached emails and documents From CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division To named person and cc's to named persons, including members of CRA/ ARC (Avoidance Review Committee), the CRA Manager, Identification, the Detection and Legislation Co-ordination Section of the Tax Avoidance and Special Audits Division, the CRA Chief, Provincial Legislative Amendments, the Legislative Policy Directorate, a Ministry of Finance employee</p>	<p>s. 15(a) s. 15(b) s. 17 (2)</p>
<p><b>G9A</b>  <b>Fully at issue</b></p>	<p>March 1, 2005 (2 pages) Email From CRA employee To: a Ministry of Finance employee Re: named company &amp; Provincial Tax Avoidance Scheme</p>	<p>s. 15(a) s. 15(b) s. 17(2)</p>
<p><b>G18A</b>  <b>Fully at issue</b></p>	<p>July 14, 2005 (18 pages) Email Re: GAAR Referrals - provincial tax avoidance From: Sr. Group Manager, Field Audit, Oshawa (FIN) To: Manager, Interpretations and Legislative Training Corporations Tax Branch (FIN) &amp; (Finance people) Forwarded from: Chief, Provincial Legislative Amendments, Legislative Policy Directorate (CRA) Attachments:</p>	<p>s. 15(a) s. 15(b)</p>

<b>Doc. No.</b>	<b>General Description or Categories</b>	<b>Sections Applied</b>
	Memorandum to GAAR Committee chairperson from the Tax Avoidance and Special Audits Division Re: Generic Provincial Tax Avoidance - Case 1 & 2	
<b>G19</b>  <b>Partly at issue</b>	Jan 26 & 27, 2007 (17 pages) Presentation: Captiveco Interest Income (Meeting with Alberta Treasury)	s. 15(a) s. 17(2) s. 19
<b>G22A</b>  <b>Fully at issue</b>	July 25, 2003 (2 pages) Internal memo: Taxhaven Co. From: The Anti-Avoidance Review Committee To: The GAAR Committee, named Ministry of Revenue employees, Sr. Manager, Tax Advisory Corporations Tax Branch	s. 18(1)(d)
<b>G22B</b>  <b>Fully at issue</b>	Jan 21, 2005 (1 page) Email Re: Captiveco From named Ministry of Revenue employee To Sr. Manager, Tax Advisory Corporations Tax Branch, Manager, Interpretations and Legislative Training Corporations Tax Branch, Sr. Tax Advisory Specialist Tax Advisory Corporations Tax Branch	s. 13(1) s. 18(1)(d)
<b>G22C</b>  <b>Fully at issue</b>	March 5, 2004 (3 pages) Memo: Re: GAAR referral – Captiveco GAAR Committee Meeting Report From: Manager, Interpretations and Legislative Training Corporations Tax Branch To: named Ministry of Revenue employees, Sr. Manager, Tax Advisory Corporations Tax Branch	s. 18(1)(d)
<b>G22E</b>  <b>Fully at issue</b>	January 25, 2007 (1 page) Email from 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office, to Manager, Interpretations and Legislative Training Corporations Tax Branch and Sr. Tax Advisory Specialist Corporations Tax Branch	s. 15(b) s. 17(2) s. 18(1)(d)

**Tax Design**

<b>Doc. No.</b>	<b>General Description or Categories</b>	<b>Sections Applied</b>
<b>O4</b> <b>Fully at issue</b>	March 3, 2005 (3 pages) Legislation	s. 12(1)(f) s. 19
<b>O5</b> <b>Fully at issue</b>	Undated (3 pages) draft legislation	s. 12(1)(f) s. 19
<b>O7</b> <b>Fully at issue</b>	April 11, 2005 (7 pages) draft legislation Legal specifications for amendments to Corporations Tax Act relating to corporations incorporated outside Ontario	s. 12(1)(f) s. 19
<b>O10</b> <b>Partly at issue</b>	July 7, 2006 (4 pages) Email To: 2005 Corporate Tax Design 2006 Sr. Leg. Design Specialist, Corporate Tax Administration Redesign, Corporate and Commodity Taxation Branch, Office of Budget and Taxation From: Mgr Corporate Tax Design Unit, Office of the Budget and Taxation (now Director) Re: ADM Factsheet Captiveco-3, with attached ADM factsheet	s. 18(1)(d)
<b>O11</b> <b>Fully at issue</b>	May 4, 2005 20 pages draft legislation and covering email RE: CTA draft #9	s. 12(1)(f) s. 19
<b>O12</b> <b>Fully at issue</b>	2005 (20 pages) draft legislation Draft #9 legislation from Legislative Counsel (showing mark-up)	s. 12(1)(f) s. 19
<b>O13</b> <b>Fully at issue</b>	April 14, 2005 Cover page email from Director, Corporate and Commodity Taxation Branch, Office of the Budget and Taxation to 2005 Assistant Deputy Minister, Office of Budget and Taxation. 2006 Special Budget Advisor, Deputy Minister's Office.	s. 13(1) s. 15(a)



<b>Doc. No.</b>	<b>General Description or Categories</b>	<b>Sections Applied</b>
	with Attachment "Tax Haven Corporations, Redistributing Revenue to Other Provinces" prepared by 2005 Corporate Tax Design 2006 Sr. Leg. Design Specialist, Corporate Tax Administration Redesign, Corporate and Commodity Taxation Branch, Office of Budget and Taxation	
<b>O18</b> <b>Fully at issue</b>	2005 (5 pages) draft legislation	s. 12(1)(f) s. 19
<b>O20</b> <b>Fully at issue</b>	2005 (4 pages) draft legislation (showing mark-up)	s. 12(1)(f) s. 19
<b>O21</b> <b>Fully at issue</b>	2005 (5 pages) draft legislation #2	s. 12(1)(f) s. 19
<b>O22</b> <b>Partly at issue</b>	2005 (4 pages) draft legislation #2	s. 12(1)(f) s. 19
<b>O23</b> <b>Fully at issue</b>	2005 (4 pages) draft legislation #2	s. 12(1)(f) s. 19
<b>O24</b> <b>Fully at issue</b>	2005 (4 pages) draft legislation#2	s. 12(1)(f) s. 19
<b>O25</b> <b>Fully at issue</b>	2005 (5 pages) draft legislation (showing mark-up)	s. 12(1)(f) s. 19
<b>O46</b> <b>Fully at issue</b>	Undated (3 pages) referred to by the Ministries as Draft Option Paper: Tax Haven Corporations- Timing of Implementation	s. 13(1) s. 15(a) s. 18(1)(d)
<b>O47</b> <b>Fully at issue</b>	Undated (2 pages) Draft Option Paper: Tax Haven Corporations- Timing of Implementation	s. 13(1) s. 15(a) s. 18(1)(d)

<b>Doc. No.</b>	<b>General Description or Categories</b>	<b>Sections Applied</b>
<b>O48</b> <b>Fully at issue</b>	Undated (2 pages) Draft Option Paper: Tax Haven Corporations- Timing of Implementation	s. 13(1) s. 15(a) s. 18(1)(d)
<b>O49</b> <b>Fully at issue</b>	Undated (2 pages) Draft Option Paper: Tax Haven Corporations- Timing of Implementation	s. 13(1) s. 15(a) s. 18(1)(d)
<b>O50</b> <b>Fully at issue</b>	Undated (3 pages) Tax Haven Corporations, Background Information	s. 15(a) s. 18(1)(d)
<b>O51</b> <b>Fully at issue</b>	Undated (1 page) Draft Option Paper: Tax Haven Corporations- Timing of Implementation	s. 18(1)(d)
<b>O71</b> <b>Partly at Issue</b> <b>Part NR</b>	Undated (1 page) Title: Note on Tax Avoidance Strategy	s. 13(1)
<b>O74</b> <b>Partly at issue</b>	Feb 28, 2005 (1 page) Note by 2005 Corporate Tax Design 2006 Sr. Leg. Design Specialist, Corporate Tax Administration Redesign, Corporate and Commodity Taxation Branch, Office of Budget and Taxation dated Feb 28, 2005 (main text prepared by 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office)	s. 13(1)
<b>O76</b> <b>Partly at Issue</b> <b>Part NR</b>	Feb 23, 2005 (12 pages) Slide package: Addressing Threats to the Tax Base	s. 13(1) s. 15(a) s. 18(1)(d)
<b>O77</b> <b>Partly at Issue</b> <b>Part NR</b>	Feb 18, 2005 (12 pages) Draft Slide package: Addressing Threats to the Tax Base	s. 13(1) s. 15(a) s. 18(1)(d)

<b>Doc. No.</b>	<b>General Description or Categories</b>	<b>Sections Applied</b>
<b>O78</b> <b>Partly at Issue</b> <b>Part NR</b>	Feb 17, 2005 (12 pages) Draft Slide package: Addressing Threats to the Tax Base	s. 13(1) s. 15(a) s. 18(1)(d)
<b>O79</b> <b>Partly at Issue</b> <b>Part NR</b>	Feb 17, 2005(14 pages) Draft Slide package: Addressing Threats to the Tax Base	s. 13(1) s. 15(a) s. 18(1)(d)
<b>O80</b> <b>Partly at Issue</b> <b>Part NR</b>	Feb 16, 2005 (13 pages) Draft Slide package: Addressing Threats to the Tax Base	s. 13(1) s. 15(a) s. 18(1)(d)

**Tax Compliance and Revenue Operations**

<b>Doc. No.</b>	<b>General Description or Categories</b>	<b>Sections Applied</b>
<b>P5F</b> <b>Fully at issue</b>	March 3, 2005 (4 pages) String of Email To: Sr. Manager, Tax Advisory Corporations Tax Branch From: 2005 Corporate Tax Design 2006 Sr. Leg. Design Specialist, Corporate Tax Administration Redesign, Corporate and Commodity Taxation Branch, Office of Budget and Taxation Re Captiveco draft Legislation With Attachment  Another version of P5E draft legislation which went to counsel, Counsel, Legal Services Branch	s. 12(1)(f) s. 19
<b>P7C</b> <b>Fully at issue</b>	July 21, 2006 (2 pages) Pre Meeting Handwritten Notes and Post Mortem	s. 15(a) s. 18(1)(d)
<b>P7D</b> <b>Fully at issue</b>	March 7, 2007 (1 page) Meeting Notes CRA/MRQ/AB/ON	s. 15(a) s. 17(2) s. 18(1)(d)

<b>Doc. No.</b>	<b>General Description or Categories</b>	<b>Sections Applied</b>
<p><b>P7E</b>  <b>Fully at issue</b></p>	<p>July 11- 18, 2006 (4 pages) String of Emails To: Director, London Regional Tax Office and Mississauga, Sr. Manager, Tax Advisory Corporations Tax Branch, Director, Corporations Tax Branch (now ADM) From: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office Re: Meeting July 14, 2006 - Tax Avoidance Arrangement Exploiting Ontario Tax Provisions</p>	<p>s. 15(a) s. 15(b) s. 18(1)(d)</p>
<p><b>P7G</b>  <b>Partly at Issue</b></p>	<p>July 10, 2006 (3 pages) String of Emails To: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office From: Director, London Regional Tax Office and Mississauga RE: Provincial Tax Avoidance utilizing provisions within the Ontario Corporation Act</p>	<p>s. 15(a) s. 15(b) s. 18(1)(d)</p>
<p><b>P7H</b>  <b>Partly at Issue</b></p>	<p>July 4, 2005 (3 pages) String of Emails To: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office, Ministry of Finance employee, Manager, Interpretations and Legislative Training Corporations Tax Branch Group Manager, Field Audit, Sr. Manager, Tax Advisory Corporations Tax Branch, Sr. Tax Advisory Specialist Tax Advisory Corporations Tax Branch, Finance employee From: named Ministry of Finance employee Re: Captiveco's request for change in year-end</p>	<p>s. 15(a) s. 15(b) s. 18(1)(d)</p>
<p><b>P7I</b>  <b>Fully at issue</b></p>	<p>April 12, 2006 (20 pages)  Page 1 is Emails and attachment To: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office From: CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division</p>	<p>s. 15(a) s. 15(b) s. 18(1)(d)</p>

<b>Doc. No.</b>	<b>General Description or Categories</b>	<b>Sections Applied</b>
	<p>Re: Provincial Tax Avoidance utilizing provisions within the Ontario Corporation Tax Act</p> <p>Pages 2-19: Draft Federal Generic Position Paper</p>	
<p><b>P7J</b></p> <p><b>Fully at issue</b></p>	<p>February 2, 2006</p> <p>String of emails between 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office (FIN) and named Ministry of Finance employee, etc.</p> <p>RE Captiveco tax avoidance cases involving extra provincial corporations.</p>	<p>s. 17(2)</p> <p>s. 18(1)(d)</p>
<p><b>P7K</b></p> <p><b>Fully at issue</b></p>	<p>Feb 14, 2006</p> <p>(3 pages)</p> <p>String of Emails</p> <p>To: named Ministry of Finance employee</p> <p>From: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office Re: Dissolved Captivecos</p>	<p>s. 17(2)</p> <p>s. 18(1)(d)</p>
<p><b>P8A</b></p> <p><b>Fully at issue</b></p>	<p>March 14, 2007</p> <p>(10 pages)</p> <p>String of Emails and Draft doc</p> <p>To: named Quebec employee, Director, Audit, Tax and Revenue Administration (AB), CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division</p> <p>CC: Sr. Manager, Tax Advisory Corporations Tax Branch (FIN), Director, Tax Avoidance and Special Audits Division (CRA), 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office (FIN), Director, London Regional Tax Office and Mississauga (FIN), named Alberta employee, Manager, Corporate Tax Audit (AB), From: Director General, Director General's Office, (CRA)</p> <p>Re: Meeting July 14, 2006 Tax Avoidance Arrangement Exploiting Ontario Tax Provisions.</p> <p>Draft Letter to National Director, Tax (named accounting firm) From Director General, Director General's Office Email To: Alberta employee, CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division, Director, London Regional Tax Office and Mississauga</p> <p>From: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office</p>	<p>s. 15(a)</p> <p>s. 15(b)</p>

<b>Doc. No.</b>	<b>General Description or Categories</b>	<b>Sections Applied</b>
<p><b>P8B</b> <b>Fully at issue</b></p>	<p>October 13, 2006 (13 pages) String of Emails To: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office From CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division, Director, Audit, Tax and Revenue Administration (AB) and others Re: Ontario Financing Arrangement - Statute Barred Status 152(4)</p>	<p>s. 15(a) s. 15(b) s. 18(1)(d) s. 19</p>
<p><b>P8C</b> <b>Fully at issue</b></p>	<p>October 16, 2006 (1 page) Email To: Director, Audit, Tax and Revenue Administration (AB), Director, London Regional Tax Office and Mississauga (FIN), Sr. Manager, Tax Advisory Corporations Tax Branch (FIN), named Quebec employee, 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office (FIN) From: CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division Re: Ontario Financing Arrangement - Oct. 3 meeting</p>	<p>s. 15(a) s. 15(b) s. 18(1)(d) s. 19</p>
<p><b>P8D</b> <b>Fully at issue</b></p>	<p>Nov 20, 2006 (8 pages) String of Email To: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office, named Quebec employee, Director, Audit, Tax and Revenue Administration (AB), Director, London Regional Tax Office and Mississauga, Sr. Manager, Tax Advisory Corporations Tax Branch, From: CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division Re: Ontario Financing Arrangement – Oct. 3 meeting</p>	<p>s. 15(a) s. 15(b) s. 18(1)(d) s. 19</p>
<p><b>P8E</b> <b>Fully at issue</b></p>	<p>Nov 24, 2006 (6 pages) String of Emails To: Manager, Tax Audit (AB), and others.</p>	<p>s. 15(a) s. 15(b) s. 19</p>

<b>Doc. No.</b>	<b>General Description or Categories</b>	<b>Sections Applied</b>
	From: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office Re: Fincos and Extra-Provincial Limited Liability Companies (EP LLCs)	
<b>P8F</b>  <b>Partly at issue</b>  <b>Part NR</b>	Feb 28, 2007 (4 pages) String of Emails To/From: Alberta employee, CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division, Director, London Regional Tax Office and Mississauga (FIN) To/From: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office	s. 15(a) s. 15(b) s. 17(2) s. 18(1)(d) s. 19
<b>P8G</b>  <b>Fully at issue</b>	Oct. 3, 2006 (3 pages) Meeting Notes Notes and Agenda of CRA/ Provincial Tax Authorities Meeting with Tax Advisers	s. 15(a) s. 15(b)
<b>P8H</b>  <b>Fully at issue</b>	Sept 27, 2006 (4 pages) String of Emails To: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office From: named Ministry of Finance employee and CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division Re: Ontario Finco Case Alberta taxpayer	s. 15(a) s. 15(b) s. 17(2) s. 18(1)(d) s. 19
<b>P8I</b>  <b>Fully at issue</b>	Sept 15, 2006 (5 pages) String of Emails To: Director, London Regional Tax Office and Mississauga, Director, Audit, Tax and Revenue Administration (AB), CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division, named Quebec employee From: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office Re: Request for meeting re: July 24 <sup>th</sup> letter	s. 15(a) s. 15(b) s. 19
<b>P8J</b>  <b>Fully at issue</b>	Aug 28, 2006 (3 pages) String of Emails To: Director, Audit, Tax and Revenue Administration	s. 15(a) s. 15(b) s. 18(1)(d) s. 19

<b>Doc. No.</b>	<b>General Description or Categories</b>	<b>Sections Applied</b>
	(AB) From 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office (FIN) Re: Application of subsection 152(4) of the Federal Income Tax Act	
<b>P8K</b>  <b>Fully at issue</b>	July 24, 2006 (4 pages) Letter To: named accounting firm and named law firm From: Director General, Director General's Office (CRA) Re: Meeting of July 21 - reassessments	s. 15(a) s. 15(b)
<b>P8L</b>  <b>Partly at Issue</b>	April 19, 2006 (6 pages) Email and Attachment Forwarded To: Director, London Regional Tax Office and Mississauga, Sr. Manager, Tax Advisory Corporations Tax Branch, Sr. Tax Advisory Specialist Tax Advisory Corporations Tax Branch From: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office Re: Federal Provincial Meeting Att: List of participants Avoidance Arrangements	s. 15(a) s. 15(b) s. 18(1)(d)
<b>P8M</b>  <b>Fully at issue</b>	April 12, 2006 (7 pages) String of Emails Between: CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division and 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office (FIN) Re: Provincial Tax Avoidance	s. 15(a) s. 15(b) s.17(2) s. 18(1)(d) s. 19
<b>P8N</b>  <b>Fully at issue</b>	March 24, 2006 (8 pages) String of Email Between: CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division and 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office (FIN) Re: Provincial Tax Avoidance	s. 15(a) s. 15(b) s. 17(2) s. 18(1)(d) s. 19



<b>Doc. No.</b>	<b>General Description or Categories</b>	<b>Sections Applied</b>
<b>P8O</b>  <b>Fully at issue</b>	March 21, 2006 (2 pages) String of Email Between: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office (FIN) and others, CRA employee Re: Federal Provincial Meeting	s. 15(a) s. 15(b)
<b>P8P</b>  <b>Fully at issue</b>	March 17, 2006 (1 page) Email To: Director, London Regional Tax Office and Mississauga, Director, Corporations Tax Branch (now ADM) From: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office Re: Possible Tri-party Meeting on Captiveco	s. 15(a) s. 15(b) s. 18(1)(d) s. 19
<b>P8Q</b>  <b>Fully at issue</b>	March 1, 2006 (6 pages) Sting of Email To: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office From CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division Re: Provincial Tax Avoidance	s. 15(a) s. 15(b) S. 17(2) s. 18(1)(d) s. 19
<b>P8R</b>  <b>Fully at issue</b>	March 1, 2006 (2 pages) String of Email To: CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division From: CRA / ARC (Avoidance Review Committee) Re: Documents attached	s. 15(a) s. 15(b) s. 18(1)(d) s. 19
<b>P8S</b>  <b>Fully at issue</b>	Feb 6, 2006 (2 pages) String of Email To: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office From: CRA Manager, GAAR and Technical Support Section of the Tax Avoidance and Special Audits Division Re: Provincial Tax Avoidance	s. 15(a) s. 15(b) S. 17(2) s. 18(1)(d)

<b>Doc. No.</b>	<b>General Description or Categories</b>	<b>Sections Applied</b>
<b>P8T</b>  <b>Fully at issue</b>	Jan 17, 2006 (5 pages) String of Emails To: Manager, Field Audit, Corporate Tax Audit Division of Alberta Finance (AB) From: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office Re: List of companies using Ontario to Avoid Alberta Provincial Taxes	s. 15(a) s. 15(b) S. 17(2) s. 19
<b>P8U</b>  <b>Fully at issue</b>	Undated (5 pages) Document Note & Draft Letter Re: Collaboration on Inter Provincial Tax Avoidance Draft Letter to National Director, Tax (named accounting firm) From Director General, Director General's Office Re: meeting of July 14, 2006	s. 13(1) s. 15(a) s. 15(b) s. 17(2) s. 18(1)(d) s. 19
<b>P8V</b>  <b>Fully at issue</b>	June 4, 2007 (11 pages) Chart - Document Re: Ontario Shuffle Audits	s. 15(a) s. 15(b) s. 17(2) s. 18(1)(d) s. 19
<b>P9A</b> <b>Partly at Issue</b> <b>Conclusion only at issue 2.5 pages at end Rest disclosed</b>	June 19, 2007 (43 pages) Title: Summary Position Paper FINCO, CAPTIVECO Passive Interest Income	s. 18(1)(d) s. 13(1) s. 15(a) s. 18(1)(a) s. 18(1)(d) s. 19
<b>P9B</b>  <b>Fully at issue</b>	Title: Position Paper: CAPTIVECO Passive Interest Income (135 pages)	s. 18(1)(a)(c)(d) s. 19 s. 13

**Legal Services**

<b>Doc. No.</b>	<b>General Description or Categories</b>	<b>Sections Applied</b>
<b>Y3</b>  <b>Fully at issue</b>	January 25, 2007 (17 pages) To: Counsel, Legal Services Branch From: 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office Fax together with CRA proposal to assess a Captiveco arrangement	s. 15(a) s. 15(b) s. 17(2)
<b>Y4</b>  <b>Fully at issue</b>	Various drafts, instructions to counsel, comments on drafts re: 2005 amendments to s. 2(2) of the Corporations Tax Act	s. 12(1)(f) s. 19
<b>Y7</b>  <b>Fully at issue</b>	March 9, 2006 (3 pages) String of emails between 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office (FIN) and Counsel, Legal Services Branch (FIN, LSB) among others.	s. 17(2) s. 18(1)(d) s. 19
<b>Y8C</b>  <b>Fully at issue</b>	January 5, 2006 (1 page) Email between Counsel, Legal Services Branch and 2006 Manager, Tax Avoidance Unit, Ottawa Tax Office RE: Quick CMT Assessments and Captiveco Specialty Debt	s. 19