Whistleblower's Document… **(2014.09.23 Revision)**

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

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

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

Presumption…taking of something for granted.
Purported…to give the appearance, often falsely, of being, intending, etc.
Preponderance…greater in amount, weight, power, influence, importance, etc.
Regulatory Audit…examination and checking of accounts and financial records in a timely fashion based on co-operation, openness and transparency. (See "What you should know about audits" RC4188 Rev. 10) *R. v. Tiffin, 2008 ONCA 306*
Regulatory Auditor…an officer who examines and checks accounts in an open and transparent manner with the taxpayer.
Investigation…involves careful search or examination; systematic inquiry. Refers to a detailed examination or search, often formal or official, to uncover facts and determine the truth (the investigation of a crime).

Investigator/Auditor…is an officer who searches and gathers evidence and information in an undercover and covert manner to further a criminal investigation with the intent to prosecute. This type of officer is connected to the Audit Information Management System (AIMS) and is stationed in a Work Section under the Verification and Enforcement Directorate.
This is the AIMS officer (auditor) at issue in respect to determining "Predominate Purpose."

INTENT & PURPOSE

The primary intent of this document is to provide the impetus that advances the law in this area of criminal justice, an area where judicial determinations have traditionally been misguided and improperly rendered from limited fact and opinion alone, which has notably resulted in a zigzag of assumptive judgments easily overturned, often to the detriment of the accused, by a Crown appealing to a higher court.

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

This document also exposes the esoteric functions within the "investigation sectors" of the Canada Revenue Agency (CRA) mandated to develop prosecutions, using special AIMS Audit Groups that covertly discriminate the *Canadian Charter of Rights and Freedoms*.

The reader will find a comprehensive listing of disclosure essentials starting at page 43, which all defence teams are advised to base their pre-trial and ongoing disclosure application on. Defence

teams are further advised to inform the Crown regarding the need for pre-trial witness interviews of Crown witnesses that are deemed to be defence witnesses, if it is anticipated the trial will open with a *voir dire*, which will require the defence to examine-in-chief, so it is important to know what the responses will be in advance. Some of these responses may (should) quickly result in the Crown dismissing charges to end the trial before it begins.
Defence is therefore advised to insist that the trial open with a *voir dire* in respect to an early determination of "Predominate Purpose."

Certainly, it is extremely important to be completely prepared prior to entering into a *voir dire*, so as to prevent getting locked into a faulty premature decision by *res judicata* to literally haunt the defence throughout the remainder of the trial.

The information contained in this document "cracks the nut" so to speak. It is important defence becomes acquainted to the vast medium of CRA policy and procedure, knowing that disclosure begets disclosure, from a reluctant Agency in full protection mode of their prosecution case. Therefore, defence teams must maintain disclosure diligence and persistence, without compromise…guard against the complacency of accepting unverified speculation readily offered in Crown witness testimony, including any unsolicited statements based on speculation by the Crown Prosecutor.

Should Crown witness rely on "not knowing", a form of "wilful blindness,"…defence must therefore insist the Crown undertakes to provide a witness(s), "expert witness(s)" who are familiar with the specific processes or circumstances and under oath will be capable of providing the full and complete answers required.

The subject *Gunner* Case introduces a new defence perspective to tax evasion cases that exposes the Agency's affinity to procedural corruption, knowingly condoned and enabled by the Crown. This form of procedural corruption is specifically designed to usurp the *Charter* in favour of the prosecution's theory, which follows a universally misleading and deceitful program in effect across the Dominion. Clearly, these covert illegal actions must be stopped and the *Gunner* Case discloses the sources of evidence necessary to delineate and expose these actions.

Disclosure helps to level the playing field, since a defendant is typically positioned in a disadvantaged position, where the state always possesses enormous resources the accused can never match. The state has the advantage of unlimited taxpayer funds, significant manpower advantages and the luxury of time and power to accumulate and prepare for prosecution, which most certainly tips the scale of justice against the individual charged with a crime.

R. v. Jarvis 2002 SCC 73...
With admitted difficulty, the Supreme Court of Canada (SCC) deliberated the quintessential elements of "Predominant Purpose" and arrived at a set of seven (7) guiding factors, with the SCC concluding that no one factor is necessarily determinative in and of itself, but that courts must assess "the totality of all the circumstances" and "the record" to determine if a decision to proceed with a criminal investigation could have been made. Of course, "the totality of all the circumstances" and the "record" are totally dependent on full disclosure...which begs a far reaching question..."what is the extent of full disclosure?" Especially when one is confronted

with a respondent that specializes designing their processes to be inextricably intertwined, compounded with unintelligible procedures, coding, acronyms and secretive investigation procedures. Certainly the task of disclosure and comprehension is monumental at the very least.

The following excerpts provide insight into the perspective taken by the Supreme Court in its *Jarvis* deliberations, which led to the guiding factors set out at paragraph 94 under (a) to (g).

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

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

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

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

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

(a) Did the authorities have reasonable grounds to lay charges? Does it appear from the record that a decision to proceed with a criminal investigation could have been made?

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

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

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

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

(f) Is the evidence sought relevant to taxpayer liability generally? Or, as is the case with evidence as to the taxpayer's *mens rea*, is the evidence relevant only to the taxpayer's penal liability?

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

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

From a comprehensive review of the plethora of cases used in an attempt to draw the line between audit and investigation, a commonality in theme arises in the form of a **presumptive premise**...that there was an "auditor" and that there was a "regulatory audit" which forms the

bases of all these cases on record. However, following evidence will show the typical investigation activities, performed by the Agency's investigation sectors, are knowingly and intentionally abusing the nondescript labels applied to "audit" and "auditor" which more accurately can be described as special internal AIMS audit groups programmed to effectively facilitate the preliminary investigation with the scope of information that enables an investigation referral to the next investigation plateau, that being the AIMS Stage 2 Investigations. Basically, a compliance audit is just another way of saying preliminary investigation.
Therefore, by applying the accused's Section7 *Charter* "right to full disclosure" necessary to bring forth **"the record"** and **"the totality of the circumstances"**...details that will progressively uncover and expose the highly sought after "predominant purpose." Not unlike panning for gold.

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

Sections 231.1(1) and 231.2(1) of the *Income Tax Act* provide a CRA auditor with inspection, audit, examination and requirement powers. It is important to note, that the terms "investigate or investigation" are not found on that legislated list. These terms are restricted to criminal investigations leading to prosecution. Similar provisions exist in the *Excise Tax Act*.
These are significant intrusionary powers necessary to monitor the self-reporting nature of the taxation system. However, there is no oversight mechanism preventing CRA investigation officials from designing a program to then covertly use these regulatory audit powers as an investigation tool to collect information and evidence to further a prosecution.

With guarded apprehension and in a somewhat contradictory manner, the Supreme Court of Canada (SCC) expressed their concern to refuse CRA the self-governing right to arbitrarily decide when sections 231.1(1) and 231.2(1) can no longer be applied.

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

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

It is generally accepted and quantitatively documented, from previous case law, that the record of Canada Revenue Agency's investigation activities are less than pristine when it comes to protecting *Charter* rights. It goes without saying that the Agency's AIMS investigation sectors are highly motivated by budgets, statistics and reports, to succeed in their mandated function of enforcement prosecutions.

It follows that compliance with *Charter* conditions is cumbersome and poses an obstacle to the mandated objective of the AIMS investigation sectors. It is understandable then that these investigation sectors would wish to avoid competing issues with the *Charter*, in order to access

the incriminating evidence necessary to make their case, better ensuring a timely and successful conviction in virtually every case, regardless of individual rights.

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

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

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

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

The transparency of officer "Work-Description" details and scope of training goes to the heart of predominant purpose by establishing job distinction and job activity, within the Agency.
In contrast "predominant purpose" is rarely an issue with police investigations, simply because the police wear uniforms, carry a badge, and their training and qualifications are retrievable.

Police do not have a regulatory function to demanding interviews or documents, basically they are deemed to be in an investigating mode at all times in pursuit of incriminating evidence.
Therefore, police have no ulterior motive to conceal their "authorized person" status.
The same, however, is not true of the Agency's AIMS Investigation (Enforcement) sectors.

It is safe to say that zealous police officers would find a statutory authority desirous legislatively permit inspection, audit, examination and requirements in order to access a suspect's personal affairs prior to making application for a search warrant or laying charges.
Such an overarching issue (*The Patriot Act* and more recently the NSA electronic information collection in the USA) has been the basis of debate regarding "personal-privacy protection", which has become more prominent in the aftermath of 9/11.

The police are persistent in their demands for loosening restrictions imposed on them by the *Charter* and the same forces flourish in CRA's investigations units as well. The police do not have a regulatory authority set out under the *Criminal Code*, which makes the administrative sections 231.1(1) and 231.2(1) in the Income Tax Act (ITA) and Excise Tax Act (ETA) dangerously alluring and vulnerable to abuse by the investigation authorities functioning within

CRA. As previously mentioned, there is no oversight mechanism preventing CRA investigation officials from covertly using regulatory audit powers as an investigation tool to collect information and evidence to further a prosecution.

It is naïve to believe the Agency's investigation sectors would not devise pretence audit programs to covertly apply regulatory audit power as an investigation tool. Basically, the only purpose of a "Compliance Review/Audit" is to replace the Preliminary Investigation by effectively collecting the scope of evidence necessary to service an ITO to advance the criminal investigation, a situation that patterns virtually every prosecution.
Basically, an actual "Preliminary Investigation" is essentially unnecessary within the methods devised by the AIMS investigation sectors since the Compliance Review/Audit has fulfilled that purpose.

The Agency identifies a Compliance Review/Audit as being "an audit of sufficient depth and scope to conclude that all significant non-compliance matters have been dealt with" in respect to what exactly...how about determining potential for criminal prosecution would be accurate. Certainly, the fact that the Agency's own compliance definition to identify "significant non-compliance matters" goes to suggests a "Predominate Purpose" that goes beyond the objectives of statutory audit. Clearly, a Compliance Review/Audit is nothing less than the "preliminary investigation" under a different title.

For example, the **"AIMS Online Manual"** contains a listing of designed compliance audit "Program Types" that are matched to one of four different "Investigation Types." This is a procedural circumstance that is part of officer training and known to the AIMS audit sectors as a listing of Program Types that take the place of the preliminary investigation in respect to gathering the type of information and evidence to further the investigation. This is an important area of required disclosure that can quickly end the Crown's case.

R. v. Jarvis 2002 SCC 73

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

The cited paragraph 84 addresses a need to identify "separation", which is inherent within the administrational and accounting operations of the Agency's investigation sectors, where the transparency of full disclosure is prerequisite to any successful defence case. Defence requests for full disclosure of: computerized case tracking, administrative and internal accounting methods, reporting and documentation is an area of relevant evidence, historically overlooked and under developed in respect to all the current case laws referenced on the subject. They have remained unknown and untested areas holding the case "record" of relevant evidence important to the accused.

The above noted recognition by the Supreme Court of Canada, regarding a defined "separation" between audit and investigation, coupled with seven (7) important factors a trial judge is required

to consider, supplemented with special regard of the "record" and "the totality of the circumstances", which can only be derived from full disclosure of how the Agency investigation sectors handle their investigation projects from beginning to end, is a clear path laid out by the SCC defence must follow if they are serious about winning their case.

Disclosure of "the record" and "the totality of the circumstances" are the most important areas that essentially go to answer all the necessary conditions respective to the "separation" between audit and investigation, if such a "separation" has ever existed, as previously discussed.

Acknowledgement by the SCC of "the record" and "the totality of the circumstances" has provided a case objective, a major advancement with respect to the *Charter*, which now makes full disclosure the defence tool of choice.

Returning to the initial premise...the evidence in the subject case at bar, ***R. v. Gunner Industries Ltd. et al.***, exposes the **"Identifier"** that distinguishes separation between "pre criminal investigation" and "criminal investigation"...it is important to realize that separation between a regulatory audit function and criminal investigative functions is virtually nonexistent within the Agency's current system of prosecution operations.
The objective prerequisite of the system, operated by the Agency's investigation sectors, is to select, process, and track every targeted project that have prosecution potential and within this operational system the **"Case Number"** is the key identifying element that distinguishes separation between "pre criminal investigation" and "criminal investigation"

It is important to understand that a "Case Number" is associated with every investigation project, whereas a "Case Number" is not associated with regulatory audit. Regulatory functions are not randomly selected and assigned a "Case Number"... "Case Numbers" are reserved for those projects that have been flagged with a noncompliant suspicion that has prosecution potential.

In all the cited case law that have come before the courts, one will easily recognize the similarities or pattern that develop, which tend to center around a scenario regarding an "audit" being referred to "investigation" in a referral stratification that ends up as a prosecution.

The Prosecution Business...
It is important to identify and address three interconnected functions typical to the sound operation of any business, including the Agency's investigation and prosecution business, which is easily recognized as being a substantial business requiring organizational controls necessary to facilitate a degree of efficiency and reports.
In order to accomplish this, the Agency's administration and accounting system involve various computer programs with coded activities and controlled computer data access, coupled with training of those expected to manage or work within these systems.

The complexity and controls make it difficult, if not impossible, for any one employee to fully comprehend the totality of the system, which makes them poor witnesses in any trial...an intended consequence by design. The Agency's investigation and prosecution business is best

described as esoteric, since it is understood by only a chosen few. Therefore, only qualified witnesses relative to each respective operation are competent to testify.

Defence must become reasonably proficient in all operation categories of the Agency's investigation and prosecution business prior to formulating examination of these qualified witnesses. Defence must insist the Crown undertake to identify and provide at least two qualified witness relative to each operational category and agree to arrange for pre-trial interviews with each. This condition is of critical importance, especially when an opening *voir dire* is anticipated at the commencement of the trial.

Three areas of disclosure, regarding the Agency's investigation and prosecution business, important to the knowledge and understanding of the defence, are as follows:

1. Focus disclosure on the Agency's policy and procedure guidelines governing their investigation-prosecution operations;
2. Focus disclosure on the Agency's progress reporting methods and location regarding investigation-prosecution projects;
3. Focus disclosure on the Agency's administrative and accounting practices regarding investigation-prosecution projects.

The following expands on these three areas of disclosure focus:

Disclosure Area #1... Policy and Procedure:

The Agency's policy and procedure guidelines, while not being law, do however spell out the legal principles behind their operation. Guidelines are an absolute necessity to any governmental organization required to perform efficiently and within the law. There is also a need to maintain statistics in order to prepare annual reports to the upper echelon.

The main two manuals that contain investigation operational policy and procedure data are the, "Tax Operations Manual" TOM 11 Investigations and its 2001 replacement manual called the, "Investigations Manual". Currently, the Agency is replacing the use of the word "Investigation" with the less descript "Enforcement", which is being done to further blur a moving target with terminology they define at their discretion. Accordingly an "Enforcement Manual" is forthcoming.

There is also an "Audit Manual"...however this manual is effectively a smoke screen and is not relevant to the investigation type of audit procedures undertaken by those first assigned officers under the AIMS computer system, which is discussed later.

As previously noted, the most important demarcation that identifies a decision to investigate is the assignment of a "**Case Number**", which - apart from numerous other mentioning in the TOM 11, is most accurately defined under sections 1142.2(2) (D) and 1142.2(2) (E) (b), which reads: ***"When a T134 Referral is accepted for a preliminary investigation, the Case Number will be assigned immediately, showing the date of the decision."***

The **Case Number** in effect, becomes the project tracking identifier of a **Prosecution Project**, not unlike the **Case Number** assignment used by the police or the use of a **Project Number** in construction.

One will note upon comparing the two main manuals that the latter, more resent, manual is blatantly void of any **Cases Number** mention, which implies that the particulars surrounding a **Case Number** is a sensitive demarcation the Agency does not want the general public aware of.
Therefore, the history and current standing of a "Case Number" is an important operational condition to get before the court in respect to full disclosure. It is also semantically important to recognize that the **Case Number** is occasionally identified by other titles, such as **Order Number** or **Link Code**.

The automatic assignment of a Case Number by opening an "Add Case" in the AIMS computer system is accompanied by a "File Number". The first three digits of the "File Number" define the respective year the Case was opened in AIMS, while the following two digits depicts the month the Case was opened in AIMS, ie: **206 07**7982 (2006 & July).

Focus must also be placed on the various investigator training courses, which are designed to follow the Criminal Investigations Program (CIP), specifically in the TD1310-000 Initial Course and the TD1312-000 Advanced Course. Additional Training Courses are listed in the "Defence Disclosure List" in this document.

Once defence becomes familiar with the policy and procedure guidelines sufficient to identify the comparisons, statements and presumptions contained in the above noted manuals, an adversarial examination of the qualified witnesses, professed auditor and assigned lead investigator will result in making your Case, effectively shortening the *voir dire* court time required.

Disclosure Area #2...Progress Reporting:

In regard to listed reference material, "AIMS Online Manual" and the "AIMS Overview Manual" will show how the current Canada Revenue Agency (CRA) maintains their tracking and progress reporting relative to their investigation/prosecution projects and how the AIMS computer system, developed in the early 90's, functions.

From these particular Manuals, one will develop a sense of the AIMS integrated tracking system in respect to prosecution development.

Firstly, it is important to note that the AIMS computer network separates the Canada Revenue Agency into two distinct and separated operational sectors.
The "external" AIMS work sections and the "internal" AIMS work sections.

The "external" AIMS work sections are comprised of the regulatory audit functions such as: payroll audit, corporate tax audit, collections, etc. These are work sections that do not have direct access to the AIMS computer network.
Whereas, the "internal" AIMS sectors are comprised of special operational groups that function and report within the Verification & Enforcement Directorate.

Members of the "internal" AIMS sections are provide with a personal entry code (PIN) in order to access the AIMS system. These (PIN) codes are routinely changed.
In the AIMS Online Manual these special "internal" operational groups are said to be "under the umbrella" of the AIMS system.

Both of the above noted AIMS related manuals, contain a "Screen Index" that identifies the array of AIMS Screens numbered "0" to "8" and lettered "A" to "N".
Interestingly...the "Screen Index" opens with a **"Screen 0"**, which is identified as "Investigation Leads". The fact that the first screen is directly associated with the collection of investigation data contradicts the Agency's misleading submission that AIMS is an acronym for "Audit Information Management System" an "audit" system, which is only accurate regarding the AIMS audit type, an audit/investigation type that is systematically being used to replace or provide for the Preliminary Investigation function.

More recently, the Agency has recognised blatant Index mistake and is now attempting to change the literature that names the "Screen 0" from "Investigation Leads" to "Enforcement Leads."

The Crown will likely claim "privilege" over this screen's data. Therefore, the defence must request the trial judge review the data contained with the objective of determining if the data is relevant to the defence case, and if so...order the Crown release the full contents or a redacted format. Remember...only those informants who have officially requested "in writing" TOM 1173.7(g) are entitled to remain anonymous and qualify for "informant privilege." The Crown should be required to provide these written requests as part of the review by the trial judge and the trial judge should briefed to review the respective context of the date(s).

The next indexed screen is **"Screen 1"**...this screen holds the basic program information regarding the targeted subject under investigation. It is important to note that when this screen is initiated both the "Case Number" and "File Number" are automatically generated/assigned and as previously noted...the first three digits of the File Number are representative of the year the AIMS case was opened. Therefore, this "record" will be the first indicator of when the investigation was officially initiated.

According to evidence and comparison, it is the AIMS Screen 1 that has effectively replaced the former T20SI-1 format of the Management Information System TOM 11(19)1.1, which was a dedicated investigation progress tracking program.
Again...any AIMS referenced to being a nondescript "Audit" is a more resent innovation devised to blur the picture of the screen's true investigation function.

The indexed **"Screen 2"** relates to file data, which will display a "P" if it is a primary file or "S" if a secondary file. Any additional parties associated with the Case Number will be uniquely identified by a newly assigned secondary file number.

Certainly, one of the most important AIMS screen is indexed as the **"Screen 3"** Case Assignment History. This screen may involve as many as 2 to 3 pages and will contain the listed names and dates of the officers who were officially assigned or reassigned to the various investigation stages. It is believed that this screen cannot be tampered because it is automatically updated from all the "entered" data to the Case Number. This is the screen the Crown is hesitant to release.

It is important to explain at this point that some of the AIMS screens can be tampered with in regard to the data contained. This can occur to the numbered screens and with the lettered "Update Case" screens relative to a particular Case. This is accomplished when an AIMS screen that can be updated, corrected or modified is entered with false and printed off for a file copy (disclosure), but not saved to the system.
As a result some of the AIMS screens, provided in disclosure, maybe fabricated evidence, which is a condition that must be considered when only a few screens are provided in disclosure. In disclosure you may receive "Browse" screens associated with the lettered screens. These "Browse" screens contain accurate entered data system generated. However, not all the important detail is contained on "Browse" screens. That is why copies of all "Update" screens are an important disclosure insistence.

The Crown will submit that AIMS is a continuously updating system, which overwrites data to current status preventing copies of certain previous screens. This is correct in part and will have to be a point of examination, because generally a current screen is copied to file progressively. So there should be a progression sequence of screens held in the investigation file or should be in that file. This is another reason why certain system qualified witnesses, provided by the Crown, are important to a Case.

"Screen 4" holds "Comments" and notes representative to the case's investigation development and must be requested through disclosure. The Crown may/will claim "privilege" over this data. However, the Defence must request the trial judge review the data contained to determine if any is subject to any exemption privilege. Certainly, any information under this screen is clearly relevant to the defence case. Therefore, the Crown will be required to release the full contents under this screen. Be sure to question the AIMS qualified witnesses in regard to whether or not data from this Screen 4 has been redacted or altered in any way.

While a criminal investigation case is created by simply opening a Screen 1 in AIMS, which then automatically generates a project Case Number & File Number...it is important to understand that the actual progress tracking of the investigation only occurs

in conjunction with the AIMS "Screen G", which is to covers the preliminary investigation stages...**Stage 0** and **Stage 1**.
The first assigned officer to the Case, charging time to the Case Number, will typically be an investigation AIMS "auditor" who through "workload development" and a "field audit" effectively facilitates the entire Preliminary Investigation. Basically, there is no preliminary investigation...simply because it is this first assigned investigation AIMS "auditor" that makes the referral to investigations, which is the AIMS Stage 2 Investigations, thereby eliminating the preliminary Stage 0 and Stage 1 investigation.

The fact that once the referral to investigations is made, it is only that information and evidence as provided by the first assigned AIMS "auditor" used to services the ITO is proof that the referral was made to the AIMS Stage 2, meaning the "auditor" did the virtually all the preliminary work. From the Agency's own manuals, the first activity associated to the Stage 2 is the preparation of the ITO followed by execution of the search warrant.

The AIMS Screen "H" is delegated the AIMS Stage 2 Investigations, typically referred to as the "full scale investigation", which opens with preparation of an ITO and leads to evidence handling after the search warrant. Later, based on the compiled evidence derived (seized) under the warrant, the Case is advanced, by another referral, to the Department of Justice, which now referred to as the AIMS Screen "I" or AIMS Stage 3 Court proceedings.

While there are additional screens beyond AIMS Screen "I" relative to tracking court progress...decisions, appeals and convictions, it is suggested they are not important at this time.

Within the AIMS system there are certain screen types. Regarding the AIMS Screen 1 there is three screen types...Add Case, Update Case and Browse Case. Whereas, the other screens only involve two different screen types...Update and Browse. Slightly different data is contained on each screen type, which is important information to a defence case.

With respect to promoting efficiency, all investigations leading to prosecution are comprised of 4 progressive Stages or levels...Stage 0, Stage 1, Stage 2 and Stage 3. The investigation procedure requires that each stage be referred to the next stage, once the objectives unique to each stage have been accomplished.

As a matter of record, every stage contains initiation and completion dates, as well as the name of the assigned officer to the particular stage. The AIMS computer system is programmed to progressively track investigation projects moving through the various investigation Stages. Importantly...there is no significant audit information contained in AIMS other then certain "estimated" totals related to federal tax potential.

The AIMS sectors are all under the Verifications and Enforcement Directorate and at every TSO there will be a number of investigative Audit Groups, an Underground

Economy Unit, Special Investigations Division and an International Investigation Unit. Each officer within their sector is provided with personal access codes to enable access to the AIMS computer system in order to manage their particular Case assignments.
Time sheets will show individual AIMS auditors, in Audit Groups, are assigned as many as 10 to12 Case Numbers projects at any one time, which they are progressively working on over months and even years, as certain information comes available. Certainly, this style of work is clearly investigation related and not representative of regulatory audit.

Since the AIMS system is universal, both Ottawa HQ and local management have full access to every Case in progress for monitoring purposes.

You will find on the AIMS Screen 1(Update or Browse Screens) there will be data entry relative to "Assignment Status" of the Case, which may be from 0 to 4 or 7 to 9. This Status rating is discussed within the AIMS Online Manual. For example: the AIMS Screen 1...may display Assignment Status "3"...which according to the noted manual means the Case has been "Assigned to Investigator"...Knowledge of this entry alone can make your Case.

Secrete AIMS Screens...
It has come to the attention of the writer, that there are additional AIMS screens that are only available to special AIMS system operators. The intent and purpose of these screens is unknown at this time, however these screens would contain case related information that the Agency does not want the general public to know about. This is an area of further research and is awaiting the outcome of expert witness testimony responding to defence examination. Please address this "fishing expedition" in examination.

The Paradigm of the Investigation Process...
Typically cases are initiated by an investigative "internal" AIMS Audit Group or sector, as previously mentioned...However, on rare occasions the process may have started by an "external auditor", not in the AIMS structure, during a routine administrative audit. In this scenario this "external auditor" believes he or she has discovered a circumstance that suggests tax evasion.

This "external" auditor is identified in AIMS Online Manual as the "Original Referrer" and is expected to consult with the appropriate V&E investigations sector, thereby initiating what is called the "Consultation" period.
Based on a boardroom review of the suspicion, which addresses the prosecution potential, the "Original Referrer" may have their information passed on to an investigative "internal" AIMS Audit Group or the UE Unit. It is at this point that the file has crossed over into the AIMS system, the AIMS Case is opened and a Case Number is now available to be used to charge time to in the required project accounting.

The Case is then assigned to one of the officers within an "internal" AIMS Audit Group or in the UE Unit as a "Program Type" as identified on the opening AIMS Screen 1 "Add Case." This newly assigned officer will generally have other assigned Case Number

projects that he or she has been working on for months and even years, gathering information in a desk audit respective to each of the assigned Cases with possible drive-bys of the subject properties the Case target may have an interest in.

At some point this officer makes contact with the Case target and arranges a field audit at their office or home. In respect to the field audit this officer purports to be an auditor and may have been working on this particular Case for years. During the field audit, apart from interviews and reviewing the book and records, this officer is filling out an "Audit Findings Checklist" designed to gather information relevant to preparing an ITO, surveys the office or home, draws a floor plan pointing out area functions and record storage. Once, sufficient information regarding the initial information lead provided from the "original referrer" has been identified, gathered and located in this undercover stage of operations to facilitate an ITO, this investigative internal AIMS auditor makes a referral to investigations. However, the process is now at Stage 2 Investigations. Effectively the preliminary investigation has been completed by the investigative internal AIMS auditor who was the "First Assigned" to the Case.

At some point after the referral, the first assigned officer (auditor) completes a T134 Fraud Referral Form, which basically serves no other purpose then to create evidence of a "date" that the Crown introduces as the demarcation between audit and investigation, when more accurately it is the "date" between the preliminary investigation audit and the Stage 2 investigations, basically investigation to investigation.

Although there was an early "Consultation" regarding the prosecution potential, the official confirmation of when an investigation takes place is when a Case is created in the AIMS computer tracking network, which is evidenced by the appearance of a Case Number and File Number. These numbers are project numbers required for the administrative and accounting of the prosecution project.

Details pertaining to the assignment of a Case Number must be of specific interest regarding disclosure of the "record" and "the totality of the circumstances", which are critically important to the defence's case. These details involve areas not fully understood, appreciated or explored in respect to previous case law. However, this area of "record" disclosure is undeniably relevant to a defence case in order to discern "Predominate Purpose" as specifically called for by the SCC under *Jarvis* factor (a).

TOM 1151.2 provides guidelines and common denominators regarding, "what constitutes a Case", which are utilized by V&E to initiate a criminal investigation with the underlying intent to prosecute. Particulars of this determination constitute an important part of the required "record" and "the totality of the circumstances" that can only be derived through specific operational disclosure.

It is important to understand that Case Numbers are not wasted on regulatory audits. Case Numbers and investigation activities are not typically entered into the time sheets of "external" regulatory auditors, unless an external auditor has been seconded to an internal AIMS group.

It is a telltale when every purported audit performed by an "internal" AIMS group is associated with the assignment of a Case Number. Therefore it is obvious that the paradigm associated to these two sectors operate distinctly different. This is why it is important to decipher the type of audit and auditor at issue, simply because not all audits and auditors are the same.

AIMS Screen "G"… Stage 0 and Stage 1 Preliminary Investigation:
In respect to being repetitive, at these two stages the AIMS inventory case, with a pre-assigned Case Number, is assigned to an investigative internal AIMS auditor who is directed to proceed with the undercover "desk audit" by researching the Case target's assets and tax history under the guise of a "Program Type", essentially an investigation, which may also involve "drive-bys" of any subject properties.

After a year or more, this assigned officer will arrange a field audit and with an "Audit Findings Checklist" inspects the Case target's premises with specific attention to the location of books & records, interviews accountants, bookkeepers and will likely do a floor plan sketch of the Case target's facilities. This officer may attempt to avoid direct contact with the owner, if accountants or bookkeepers available to interview, this is meant to distance the owner in regard to a *Charter* issue, which will be prominently mentioned numerous times in the Crown's disclosure record.

Once all these tasks have been completed the information and evidence is consolidated as a referral using a T133 Project Information/Lead Lead.

The investigative AIMS auditor, purported as an "auditor", will not be displayed as the investigation officer on the AIMS Screen "G", a screen noted as being the Preliminary Investigation T134/ Workload Development and Preliminary Investigation Stage 1.
Of interest, note there is no mention of the Stage 0, which is the undercover Workload Development activity associated to what the AIMS auditor is involved with in accordance to the Criminal Investigation Program (CIP).

The Preliminary Investigation, Workload Development (Stage 0) activity is specifically outlined under TOM 1141 & 1142 as activities conducted and controlled by the Investigations.

The name of the officer displayed on the AIMS Screen "G" will be the second officer assignment. This is the lead investigation officer assigned to the Case subsequent to the Case being referred to investigations by the first assigned AIMS officer (auditor).

Information helpful in exposing investigation assignments and procedures is contained in the "Investigations Training Orientation Course" which is training course #HQ1301-000 for disclosure purposes. This course describes the preliminary investigation as an **"undercover"** workload development operation that involves "desk audit" and "field audit" activities that occur in a slow and methodical manner that generally run over a period of months and even years, certainly, nothing like a regulatory audit.

An important indication of intent is also found by the use of the **"Audit Findings Checklist"**, which contains the notation, "It is recommended that a checklist be used when preparing a referral to Investigations"... therefore it follows, that using this "Checklist" confirms the purported auditor's intent to facilitate a prosecution.

Further, this "Checklist" contains appendixes of approximate 75 questions formulated and designed by Special Investigations to lessen the possibilities of having to go back to check items overlook or not considered relevant from an audit perspective.
By reviewing these Checklist questions it becomes clear the document was tailored to collect information of a certain type necessary to facilitate Information to Obtain (ITO) a search warrant, which specifically requires special information regarding the locations of the books and records to be seized, the type of accounting system and conditions relative to *mens rea*. Clearly, the "Checklist" information goes well beyond the scope of evidence necessary regarding the taxpayer's general liability as per *Jarvis* SCC factor (f).

In respect to the opening AIMS Screen 1, an AIMS a **"Program Type"** is selected to act as the "smoke-screen" program to facilitate the undercover development of the preliminary investigation's Stage 0 & Stage 1 regarding a new Case Number project.
A "Program Type" listing containing a minimum of 22 variations is found in the **"AIMS Online Manual"**, which is directly matched with a particular **"Investigation Type."** (See Screen "G" Update), the Investigation Types are numbered 1 to 4.

The selected "Program Type" is part of the basic data entry required to initiate the opening AIMS Screen 1 to automatically generate the "Case Number"...thereby signaling the start of the Criminal Investigation Program (CIP) process.

It is important to note that the Agency typically refers to a "Program type" as being a **"compliance audit"**... which is intentionally misleading.

As an example found in the opening AIMS Screen 1 maybe an **"Audit Action: 01"** entry, which the Crown will claim is an indication of a selected "compliance audit."
Of course, there is no clear definition of what a compliance audit" may entail, which is left in an intentional nebulous manner.

However, in respect to the AIMS Contacts Training course TD1304-000 (Exercise 1 – Part 1) students learn they are working within the Criminal Investigation Program (CIP) when initiating a case with (Screen 1). Following the student's instructions we find the noted "Audit Action: 01" is identified to mean..."**conduct preliminary investigation."**

Therefore, it can be concluded that a "Compliance Audit" effectively substitutes as the "preliminary investigation", which explains why little to no investigation work is effected after the first assigned AIMS auditor has made the Case "referral" to investigations.
Few fully realize that this level Case referral is actually to the Stage 2 investigations.

Of interest is the applied use of the word "investigations", being used as another diversion to help conceal the fact that the Case was actually a referral from one investigation stage to the next investigation stage.

The obvious lack of any preliminary investigation activity relative to the AIMS Screen "G", once the Case has been referred to investigations by the AIMS sector auditor is proof that this self proclaiming "auditor" effectively facilitated the collection of the required information necessary to suffice the Preliminary Investigation. This situation can be further confirmed by simply examining the displayed Investigation Officer on the AIMS Screen "G" to discover that this officer never provided any of the preliminary Stage 0 or Stage 1 workload development investigation work
Basically, the preliminary investigation information entered on the AIMS Screen "G" does nothing more than create a suggestive diversion.

It will become obvious from examination that the Case's Lead Investigation Officer assigned after the "referral to investigations" only effected a cursory affirmation of the referral information, as provided by the AIMS sector auditor, sufficient to prepare the ITO. Typically, no new preliminary investigation occurs once a referral has been made to investigations. Initially, the AIMS Screen "H" Stage 2 Investigation activities are administrative in respect to securing a search warrant and no investigative work is done, at this point, until the search warrant has been executed.

It can be seen that this referral situation depicts the process that occurred in both the *Jarvis* and *Ling* Cases, which is the Agency's AIMS sector typical investigation **boilerplate** scenario intended to mislead the Court and defence into a belief that the "referral" to investigations is the separation between audit and criminal investigation. However, in respect to the Criminal Investigation Program (CIP) this "referral" to investigations is actually a <u>Case progression between two investigation stages</u>.

This helps to explain why a Case Number is always in place prior to an assignment to the Case and why only the "internal" auditor types under AIMS are the ones assigned the Case entering their charged time, over months and years, to the Case Number in his or her activity report time sheets.

This situation emphasizes the importance of the various Investigator Training Course materials as relevant evidence in disclosure necessary to the defence Case. This material contains the operational "record" of investigations in order to better understand the Agency's AIMS sector's audit/investigation actions. Just because this may be a disclosure area the Crown is unfamiliar with, does not make it irrelevant to the defence being able to depict the "record" regarding Case handling.
This has been an area of disclosure material typically overlooked by the defence and the Crown...here the "record" and "the totality of the circumstances" will become clear when the defence has a thorough firsthand understanding of the process.

When a referral arrives, generally it is the Director of Investigations (Enforcement) who will review the evidence folders in order to make a decision to either continue the

prosecution project or, if the information provided is insufficient, decide to either send it back to the referring AIMS auditor for additional information or terminate the investigation project and instead have it completed as a civil audit in order to close the AIMS case. Not proceeding with the prosecution project would mean the AIMS auditor failed to uncover sufficient information and evidence necessary to facilitate an ITO and therefore the investigation and prosecution objective had to be abandoned.
This situation goes to show not all Case Numbers manifest into full scale prosecutions, but this should not take away from the fact that the investigation process was initiated on the belief there was prosecution potential.

The Agency's AIMS sectors have fashioned a boilerplate scenario, as previously mentioned above, which requires that the defence to look behind the actions of the professed auditor by inquiring into the scope of their individual investigation training, length of assignments, transfers to other work sections, the history of their other assigned activities and time sheet activity coding, use of Case Numbers, their reporting and the type of work their co-works are typically involved with. Inquire into their usage of the above noted "Audit Findings Checklist" and match their assignment expectations to that required in respect to a preliminary investigation. Most important...secure their "original" coded regular and O/T time sheets associated to all Work Section assignments and relative to the key period(s) at issue.

The shortcoming relative to all previous case law, including *Jarvis* and *Ling*, show the AIMS staged investigation process has been grossly overlooked. Defence in these previous cases have failed to go behind the "referral" to investigations by the professed auditor in order to realize the true "record" of investigation procedure.

The Crown, by exclusion, has managed to shroud the details regarding the "record" and "the totality of the circumstances" regarding the criminal investigation work leading up to a "referral" to investigations in accordance to CIP procedure.
Most lawyers, up to now, have failed to realize the significance of the AIMS system or the specific investigation mechanisms within that system, which opens up a new dimension of disclosure relative to the *Jarvis* "record" and "the totality of the circumstances" in the search for "Predominate Purpose."

AIMS Screen "H"… AIMS Stage 2 Investigations:
This is the "Full-Scale" Investigation activity tracking level, which is generally identified as the same "investigations officer" assigned on the previous AIMS Screen "G".

The first task expected of the AIMS Screen "H" (Stage 2) is the preparation of the "Information to Obtain" (ITO) for a search warrant in order to seize and secure the documents required as evidence to make a conviction.

The information incorporated in the ITO application is for all intents and purposes entirely derived from the investigative actions of the first assigned AIMS sector auditor, who effectively fulfilled the preliminary investigation objectives (Stage 0 & Stage 1)

under the guise of a specific audit "Program Type. Typically, when a search warrant is anticipated, the first assigned AIMS auditor will provide a sketch of the Case target's premises, showing where the books and records are being held, where the computer/accounting can be located and the layout of the various offices and means of egress. This drawing information is used by the search team, which disperses the search team to respective search areas as shown on the sketch.

A sketch/drawing of the office layout to be searched is standard undercover preliminary investigation information discussed in the Special Investigations Orientation Training Course material (HQ1301-000).
The detail of the office layout drawing suggests it was managed by the first assigned AIMS auditor during an arranged field audit. Clearly, drawing a floor plan of an area to be searched is not regulatory audit practice and its very existence exposes the predetermined prosecution intent.

Disclosure of the floor plan drawing associated to a Case would be found in the search team briefing documents. Should a floor plan drawing not be forthcoming in Crown disclosure, it is suggested members of the search team be closely questioned regarding how they were site briefed and dispatched prior to the search.

As mentioned, the AIMS Stage 2 Investigations Officer initially performs an administrative function by firstly preparing the ITO, which may have only required affirmation of the information provided by the AIMS auditor.
Questioning the lead investigations officer who prepared the ITO will prove that virtually no additional investigation work was done until new evidence was seized and secured under the search warrant.

Once seizure of documents has occurred under the warrant, the AIMS Screen "H" Stage 2 investigation officer, who may or may not be the same officer named under the AIMS Screen "G" Stage 1 (See the AIMS Screen 3 - Case Assignment History)...compiles and organizes the new evidence in order to prepare a case for "referral" to the Department of Justice (DJ). If this "referral" is accepted, the Case will then move onto the AIMS Screen "I" - Stage 3 Court along with the same lead investigation officer who will now be assisting the Crown Prosecutor to present their case before the court.

AIMS Screen "I"… AIMS Stage 3 Court:
This AIMS Stage is beyond the interest of the "Predominate Purpose" document but is mentioned in order to show how the various investigation stages assemble.
Here again the Case is identified as being assigned to an "investigation officer" who may or may not be the same officer assigned under Screen "H" or Screen "G" (See disclosure of AIMS Screen 3 Case Assignment History).

Because the Stage 3 assigned officer must be familiar with the case and capable of testifying in regard to the prosecution's evidence introduced at trial, it will likely be the same lead investigator officer assigned to the previous screen stages.

This lead investigator officer, under the investigation process Stage 3, is required to coordinate the presentation of the evidence and assist the assigned Crown Prosecutor throughout the subsequent trial proceedings.

Disclosure Area #3... Administrative/Accounting Practice:

The third area of disclosure involves how the Agency's investigation sectors administratively account for their prosecution projects. Reference is made to the "Finance and Administration Manual", "AMS Fast-Track" and specifically TOM 1151.5, which highlight the **importance of accuracy** with time sheets with respect to statistics vital to planning and developing prosecution programs.

Currently, the Agency's "Time Sheets" are identified as Time/Activity Records (RC509), and previous to that they were identified as Regular Activity Records (RC500). The latter Time Sheets only displayed regular time, while overtime is reported on the RC609. With reference to TOM 11(19) 0 Special Investigation Reports...Time Sheets as of 1993 were formatted as T22 Weekly Time Reports. Currently Time Sheets are computer generated but contain the same data entry. All CRA time data entry is consolidated to the Corporate Administrative System (CAS).

Weekly Progress Reports...

Only in the Time Sheets of the "internal" AIMS sector officers who have been assigned to a Case will time be allotted to weekly progress reports and certain actions in respect to activity codes 040 and 041. The requirement for progress reports is a continuation of the reporting process identified under TOM 11(19) 0, which formed part of the T22 Time Sheets used at that time, a condition that has carried over to the Time Sheets being used today. This is an area of important disclosure that the Agency and Crown has excluded any real mention of. These are the weekly progress reports contained within the AIMS system that are accessible to local management and Ottawa HQ in respect to following the activities on a particular case.

Note: Disclosure of "Time Sheet" records should be the first and highest priority.

Time Sheet disclosure opens an original source of important information in the determination of an officer's actual status, and may also provide defence with additional lead material regarding the involvements of other interconnected persons and activities requiring further disclosure.

This information is submitted as being the most important source of disclosure exposing and officer's daily activity contained within the administrative accounting of "weekly time sheets". Disclosure of Time Sheets provides an accurate "record" of activity directly related to: coded activity types, transfers to other groups, dates and the time of day. This data is further important because it is in the respective officer's handwriting and therefore is extremely relevant to cross examination. Time Sheets disclose the job

type and permit comparisons to the AIMS Screen dates and assignments, which is necessary in determining "Predominate Purpose."

Cost Center...
Time Sheets contain irrefutable evidence "records" of an employee's comprehensive involvements, which account to the closest fifteen minutes. Time Sheets further contain a numbering sequence that represents an officer's employment station...a combination of a "Tax Service Office number" a "Work Section number" with the "Group" and "Unit" numbers, form a "Cost Center." Time charged to a particular Case Number may be sourced from a variety of Cost Centers involving numerous officers who have entered this data when completing their Time Sheets. When this data entry is combined it will account for all hours charged to a particular Case from all work sections.

Whether the employee is an Auditor, Investigation Officer, Desk Clerk, Team Leader, or the Chief of Investigations, their respective "Time Sheet/Activity Record" is a universal accounting document within the Agency.

For example, an officer's Cost Center number sequence may be 1222 443 5 2, where the first 4 digits represent the "Tax Service Office", the next 3 digits represents the "Work Section" and the following two numbers represent the officer's "Group" and "Unit" sector.

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

Platinum Reporting Facility...
Another reporting system affiliated with the AIMS tracking system within the Agency's electronic data bank systems, is the "Platinum Reporting Facility" (PRF) & Data Base 2 (DB2). It is important to note that there are as many as 20 pages associated with this particular reporting system. This is a reporting area very few know exist, which goes to show the vast resource of untapped disclosure regarding relevant evidence within the Agency's administrative accounting and recording systems pertaining to investigation projects. An area the Crown has simply not been forthwith about in respect to full disclosure or what it could mean to a defence case.

T20SI Management Information System...
Investigation Case tracking is set out under TOM 11(19), which discusses the former "T20SI Management Information System (MIS)," a system prior to the current Audit Information Management System (AIMS). The former MIS was a computer tracking system dedicated to maintaining investigation data entry contained in numbered report forms or screens. The former T20SI-1 format documented the "Case Initiation Report," the T20SI-2 was used to as a Case Progress Report and the T20SI-3 was the Court Stage update report. Basically these particular formats are comparable to the three investigations stages being used today. Accordingly, the T20SI System was to be updated on a weekly basis in conjunction with the T22 Time Reports (time sheets).

History of the former MIS is important in respect to being able to compare the current AIMS and "Platinum Reporting Facility", which shows continued emphasis on the need for records and reports in association with Case Numbers. Certainly history affirms that Case Numbers have always been used to identify investigation cases. So when the Crown submits that a Case Number relates to an audit and not an investigation, certainly history does not support this contention and under the circumstances one can see why there is an effort to redirect attention away from the inherent investigation project reliance associated with Case Numbers...an indispensable accounting element that will always remain in some manner or another.

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

Audit Case Management System (ACMS)...
There is a new computer tracking system developing within the V&E AIMS audit sectors called the Audit Case Management System (ACMS). This system identifies a client with a Case Number that typically starts with the letters AV----.

It is suggested that the Agency has realized they had to create a new Case Numbered administrative audit system in order to give the appearance of separation from the AIMS system and the stigma associated with the AIMS Case Number that has traditionally identified the "interior" AIMS Audit Groups as a programmed element linked to the investigation process.

The audit scheme under AIMS has been unwinding for some time now due to broader public exposure demanding transparency of the administrative and accounting aspects of the AIMS system and simply because the auditors have come to realize they were effectively doing the first stages of investigations under AIMS in breach of the *Canadian Charter of Right and Freedoms*, which placed them in jeopardy of being charged for misfeasance.

This new ACMS tracking system, seemingly detached from the AIMS investigation process, is essentially doing exactly the same scope of evidence collection to facilitate the initial stages of the preliminary investigation with the objective of making referrals to investigation. Basically, the Agency's boiler-plate investigation activities have essentially remained the same with the exception that now it is the ACMS being introduced in conjunction with the purported "audit" function acting as a firewall in perception only.

The weak link in the ACMS illusion is that all the time charged to the new ACMS Case Number must be accounted for as part of the entire prosecution effort. Therefore, all the time charged under the ACMS Case Number connects to all the time charged under the

AIMS Case Number, which is then combined within the accounting system to arrive at a grand total of costs associated to a particular investigation project with prosecution intent.

Within the ACMS there are interesting categories identified as "High Risk" that involve noted "Risk Levels" such as "Risk 1." This a new area of disclosure that requires definition of the terminology in order to develop a well rounded understanding of the ACMS, it is therefore important to request full disclosure of all the manuals associated to the operation of the ACMS as well as the accounting features, which link to the AIMS.

CROWN'S ARGUMENT:

The Crown will argue that a "Case Number" is assigned by Audit, which brings us back to standard "Audit" and "Auditor" **presumptions**. However, within the AIMS Online Manual", the preliminary investigation Stage 0 and Stage 1 are to be assigned to an "investigation officer" not an "auditor".
As previously discussed...it is the purported "auditor" that compiles the information necessary to make a "referral" to investigations. What the Crown and the Agency's AIMS sectors are neglecting to properly advise us of regarding this equation, is that this "referral" is to the AIMS Stage 2 Investigations.

This situation can be verified by simply comparing the scope of information provided by the "referral" to the scope of information typical to preliminary investigations, which will result in exposing the later assigned lead investigator, displayed in the AIMS Screen "G", did virtually none of the investigation used in the preparation of an ITO. Basically all the preliminary investigation work is being completed by the professed first assigned "auditor" under a compliance program.

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

Point of note...Case Numbers are not found on regulatory "Audit Reports" or assessments prepared by "external" auditors. Case Numbers are only being used within the V&E AIMS sector and only by those officers who are "internal AIMS officers.
Is cannot be coincidental...that every prosecution case has a Case Number.

TOM 1142.2 (2)(D) and TOM 1142.2 (2)(E)(b) state that when a decision is reached to accept a referral for preliminary investigation a "Case Number" will be assigned immediately. It is important to note that over the years Case Numbers have been directly associated to investigation projects requiring tracking and cost accounting, and cannot be reasonably categorized as a required identifier for regulatory audit. On the contrary the specialized "internal" AIMS audit groups are programmed to effect the preliminary investigation under the guise of an audit.

The Crown will argue that AIMS is the acronym for Audit Information Management System. However, by simply reviewing the overall AIMS Screen Index and the respective data contained one will conclude all the AIMS Screens related functions are primarily designed to facilitate investigation tracking leading to prosecution...the AIMS system clearly not an audit system, which, suggests the system's name "Audit" is meant to be intentionally misleading.

The former computer system identified under TOM 11(19)1.1(5) is identified as the T20SI Management Information System (MIS) and is also identified as the IDMS System. This system was designed to cater specifically to investigation case tracking connected to data entry associated with the weekly Time Sheets (T22) reports. According to the AIMS Online Manual the AIMS computer system is also reliant on the entry of time sheet data in respect to case progress reports. Certainly, these case progress reports have never been released by the Crown in any disclosure to date.

Since the AIMS programming was designed to take over the former dedicated investigation tracking system it is reasonable to believe the primary function of AIMS was specifically designed to facilitate investigations, which undoubtedly requires a certain degree of audit work. However, the only audit work relative to AIMS is in support of prosecution development, not a tax liability. This is an important distinction.

ANONYMOUS INFORMANTS:

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

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

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

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

As evidenced in many of the cited cases, for example: *R. v. Dial Drugs*, and *R. v. Saplys*, proves the Agency's V&E AIMS sector is capable of some extremely disturbing acts in pursuit of a conviction. It is therefore not unreasonable to believe the old adage..."if they can, they will" aptly applies to this Agency sector in respect to the intentional fabrication of Anonymous Informants to jazz-up their ITO applications to better assure a search warrant is

issued when cases that are inherently weak and lacking sufficient reasonable and probable grounds. Obtaining a search warrant is a critical facet of the Agency's case, in order to secure documents that effectively facilitate an 'evidence fishing expedition' necessary to advance their prosecution case to the court stage.

In the noted *Gunner* case there is evidence that suggests at a number of Anonymous Informant were fabricated by the Agency's AIMS sector and used to embellish the ITO, details of which were withheld by the Crown engaging **"Informant Privilege"** and untimely disclosure. The Crown cited *R. v. Leipert [1997]* 1 SCR 281 as their duty to withhold disclosure of the Anonymous Informant leads. However, in the example *Gunner* case the trial judge was respectfully requested to review and verify the legitimacy and arms length of the Informant leads. The trial judge failed to take the initiative of reviewing the Informants, which the defence is of the belief, were fabricated informants being used as a "prosecution tactic" to bolster the ITO.

Such a "prosecution tactic" was not a subject addressed in the cited case law and therefore is not applicable to the *Gunner* case. It is uncertain how prolific this tactic is being used. It is however enough to say that such an opportunity does exist, which is effectively abusing "Informant Privilege" and opening another "Exception" not considered in the leading case law. Certainly, such deceitful tactics would seriously challenge a search warrant, which would bring the administration of justice into disrepute.

In the *Gunner* case informant suspicion was initiated when the Crown provided a T133A regarding an Informant, which arrived late, only 4-days prior to the opening trial. According to this disclosure, a November 1996 Anonymous Informant led information regarding personal renovations being expensed by the corporation.

The *voir dire*, in the *Gunner* case determined that the "audit" was independent the "investigation." This was a premature decision that was based on the balance of evidence (as it was known to the defence at that time). Once this *voir dire* was closed the Crown blatantly introduced new evidence regarding an October 1996 Anonymous Informant who led information regarding "GST and Unreported Business Income." Clearly this is the type of information that should have been introduced prior to closing the *voir dire*, since it pertained to circumstances that could have resulted in a decision to proceed with a criminal investigation relative to *Jarvis* factor (a).

In this October 1996 Anonymous Informant information, there was no mention of personal renovations being expensed as alleged in the T133A dated November 1996, therefore this meant there were two Anonymous Informants at this point. Two Anonymous Informants introduced late, by the Crown, which the defence claims unfairly affected their case in respect to the *voir dire*.

It is submitted that the *Gunner* case could have been resolved by the *voir dire*, in favor of the accused, had the Crown disclosed the evidence surrounding the Anonymous Informants in a timely manner. Interestingly the *Gunner* case was set up in the AIMS and assigned a Case Number on or around December 23, 1996, which creates an important sequence of events.

It is also important to emphasise, in respect to the *Gunner* case, that neither the post *voir dire* October 1996 Anonymous Informant or the November 1996 Anonymous Informant were given any mention in the ITO. Instead the ITO mentions a third Anonymous Informant dated September 1998, as having occurred only two months before the search warrant.

According to the ITO this September 1998 Anonymous Informant alleged information to the effect that there was a bank account used by the accused in the name of his mother.

What raised suspicion regarding this September 1998 Anonymous Informant…is that the Crown has not been able to provide evidence to show this bank account has ever been investigated. Surly such a bank account would be important in respect to locating the alleged appropriated funds and to expand their prosecution case.

This situation raises two scenarios. Firstly, the Agency did check into the account and discovered the Informant Lead could not be verified or secondly the Agency knew the Informant Lead was a fabrication, only meant to enhance the ITO grounds, influence the justice and better assure the search warrant is issued, so did not have to be checked into.

This situation raises serious concerns regarding the circumstances pertaining to this September 1998 Informant, which suggest the ITO was intentionally falsified and protected from being exposed by the Crown's application of "Informant Privilege."

The boldness of the Anonymous Informant incident relative to the *Gunner* case demonstrates the fabrication of Anonymous Informants is not only possible but maybe a common ITO and prosecution device being used by the Agency's investigation groups to not only enhance the grounds of weak search warrant cases to better assure a search warrant is issued and to influence the trial judge toward conviction.

_____

In respect to the sequence of events in the *Gunner* case an interesting relationship develops regarding the above noted post *voir dire* October 1996 Informant, that is worth mentioning, since it equates to the same or similar scenario played out by the boiler-plate investigation procedure typically introduced by the Crown, as previously mentioned.

Shortly after the *Gunner* AIMS case was opened on around December 23, 1996, with a Case Number, a known "payroll" auditor makes contact and arranges an audit for April 1997.
It is important to understand that this "payroll" auditor was being examined in the *voir dire* prior to the Crown disclosing the October 1996 Anonymous Informant regarding "GST and Unreported Business Income."

Under the *voir dire* examination of this "payroll" auditor the Defence directed attention to notations entered in his audit report...such as "**Priority R1**" and "per **anonymous tip** we are to go to er's as a routine audit." This "payroll" auditor also reported that he requested and received GST information and information regarding two cash jobs, all of which were sent to the head of the Underground Economy (UE) Unit. Under further examination this "payroll"

auditor advised that he had received **directives**. However, when the payroll auditor was questioned on the **anonymous tip** and the **directives** the Crown Prosecutor immediately interjected and claimed "Informant Privilege." This prevented the defence any further examination of this witness in respect to being able to expose the "payroll" auditor's "Predominant Purpose." Now the *Gunner* case had four anonymous informants associated with the case.

In the main trial, post *voir dire*, the lead investigator's testimony connected the "payroll" auditor's purported **anonymous tip** to a former employee of the company. Under sworn testimony this employee, as a defence witness, claimed he was not an informant simply because he knew nothing to inform about.

Ordinarily, with an astute trial judge, the former employee's testimony would have been sufficient to discredit the Crown's "Informant Privilege" standing as a fabrication and the Crown would be ordered to disclose the "payroll" auditor's **anonymous tip** and **directives**.

However, since the *voir dire* at that time was concluded regarding the pursuit of "Predominate Purpose", any examination or new evidence touching on what was referred to as the *Jarvis* issue was now *res judicata*...meaning until reversed, a judicial decision is conclusive and may not be contradicted. The verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. It is applicable to criminal and civil proceedings.
So, even if the payroll auditor under cross examination in the main trial, admitted under oath that the audit intent was to gather evidence to further a criminal investigation...the Crown Prosecutor would have jumped up crying *"res judicata"*, which occurred numerous times in the main trial during cross examination of Crown's witnesses...to effectively halt the defence from any questioning on that subject. Defence was effectively hobbled.

This situation is being pointed out to show how a premature *voir dire* decision can taint a Case when the defence fails to have its act together regarding full disclosure of the "record" and "the totality of the circumstances" regarding the criminal investigation, pre trial. Warning, once a decision is rendered within a trial...that decision will become *res judicata*, which is understood to be a decided issue not easily reversed. Do not get locked into a situation that can result from a premature *voir dire* decision not rendered on all evidence.

With regard to the "payroll" auditor's **anonymous tip** and **directives**, defence in the *Gunner* case believes they directly relate to the withheld October 1996 Anonymous Informant lead, regarding "GST and Unreported Business Income." In hindsight, it was odd for a "payroll" auditor to be inquiring and gathering information about GST information and cash related sales, and then sending it all to the head of the UE Unit.
The fact that the Crown imposed 'informant privilege' and 'untimely disclosure' to effectively prevent the defence from connecting the "payroll" auditor's April 1997 actions to that of the October 1996 Anonymous Informant lead...is unconscionable, simply because the circumstances fit perfectly to factor(a) under *Jarvis*.

TWO TYPES OF DISCLOSURE:
Prior to engaging into a ***Jarvis-Gunner*** comparison of "the record" and "the totality of the circumstances"...it is clear that full disclosure on the three interconnected "Disclosure Areas" are inherent to the operation of the Agency's investigation orientated sectors, which makes it paramount to explore the "Audit" and "Auditor" **presumptions** in order to successfully challenge the fictional boiler-plate investigation scenario typically proposed by the Crown.

It is unlikely "Predominant Purpose" will be found in the sterilized and selected disclosure evidence introduced by the Crown as meeting their required disclosure duty to the accused, the full text of which is under the Agency's complete control.

There are in fact <u>two types of disclosure</u> prevalent in all tax prosecution cases.
The first type involves the evidence important to the Crown's conviction.
The second type of disclosure, typically ignored or overlooked by the Crown, is that area of disclosure the accused requires to meet the Crown's case.

This second type of disclosure is dependent on "the record" and "the totality of the circumstances" in order to determine if a decision to proceed with a criminal investigation could have been made. Recently greater focus has been placed on disclosure of the "record" and "the totality of the circumstances" since the SCC identified these conditions as important areas of consideration relative to *Jarvis* factor (a).

Therefore, the specific disclosure type sought after by the accused is that derived from "the record" and "the totality of the circumstances" in respect to how the criminal investigation originated, was tracked, documented and accounted for within the Agency's investigation procedure and process.

This is an area of disclosure the Crown is unfamiliar and understandably uncomfortable with, simply because it opens up new areas of the Agency's investigation operation that have traditionally been out of sight and out of mind, but clearly areas extremely relevant to the ability of the accused in mounting a *Charter* defence under Sections 7 & 8 regarding "Predominate Purpose".

The Crown has no problem providing the accused with the first type of disclosure, which they always intended to introduce at trial, involving selective documents that have been collectively placed in a "disclosure file" or a "permanent document envelope" that have been compiled for disclosure to the accused.
A problem comes in knowing what type of record should be in these two files and which, have been left out or redacted in some manner. Certainly, the Crown has a long record of not being forthcoming with the disclosure of exculpatory evidence, so it is extremely naive to simply trust the Crown without any verification mechanism. Quite frankly, it is unlikely the Crown has ever taken the time necessary to become fully appraised of scope of information relevant to a tax prosecution. Basically the Crown has cherished its ignorance in this area.

The Crown's mantra regarding the administration, accounting and training of the Agency's investigation process and procedure is, "the requested material is not relevant." Certainly, this type of requested disclosure may not be relevant to the Crown's focused criminal prosecution objective, but it is an area of disclosure extremely relevant to a *Charter* defence intent on exposing the Agency's investigation "Predominate Purpose."

However, the Crown has an ongoing responsibility in both civil and criminal matters to err on the side of full disclosure regarding anything the defence believes is required to make its Case in defence. This full disclosure duty, imposed on the Crown, is clearly enunciated in the guiding seminal case law of *R. v. Stinchcombe* [1991] 3 SCR 326 and *R. v. McNeil* [2009] SCC 3, [2009] 1 SCR 66.
A stubborn Crown Counsel can make disclosure unnecessarily difficult, semantic and virtually impossible to receive in a timely manner. It is therefore critically important defence prepares a comprehensive disclosure application and then be insists on full disclosure without compromise. The record of defence's efforts in pursuit of full disclosure is important to making a case in appeal should the trial judge fail to recognize the right of the accused to full disclosure.

These are the critical areas of disclosure courts must be made cognizant of if the "Bright Line" demarcation or "Crossing of the Rubicon" in respect to "Predominant Purpose" is to be taken seriously. It is within this zone of disclosure evidence that the Crown has an ongoing responsibility to insure the "record" and "the totality of the circumstances" is made transparent in all respects. The smallest obstruction to this accountability discredits the Crown's case.

It would be of interest to note that the demarcation regarding the commencement of a criminal investigation has always been hiding in plain sight, ever since the Agency first initiated an investigation process following standard accounting principles that used time sheets, activity codes, cost centers and training objectives all consolidated to computerized criminal investigation system used to prepare progress reports that allow division heads, management and Ottawa HQ to track a project's current status.

The demarcation of an investigation decision is simply found within the administrative and accounting functions typical to virtually all business operations. The demarcation is not found in the state-of-mind of an auditor. Investigation intent is as simple as identifying the "Case Number" along with the "activity coding" that the subject auditor has been entering in his or her weekly time sheet, which is a mandatory administrative and accounting condition that will also include the specific coded activities of management in an accounting system that is universally applied across the entire country.

It is a trite expression to say, "one cannot see the forest for the trees" and these Agency AIMS sectors have demonstrated their expertise at creating diversions that have for years now equated to pulling the wool over the trial judge's eyes through selective disclosure and testimony that is effectively lying by omission, half truths and semantics, all of which have played a part in the great Gatsby perpetuated on courts and admittedly the Crown as well.

The reprehensible tragedy in all this is the fact that this undercover investigation process has railroaded, convicted and acquiesced taxpayers, who have lost their reputations, life savings, their families and their health on the basis of an abuse of power exercised by an Agency who professes having the highest of moral standards as guardians of Canada's finances, yet covertly designs unlawful programs to undermine *Charter* rights.

RETENTION OF INVESTIGATION RELATED RECORDS:
The "record" and "the totality of the circumstances" is located within the records, documents and reports relative to the Agency's criminal investigation and prosecution process and procedure, which the Agency is obliged to retain for a period of 10 years after any appeal has expired. This retention periods are noted in TOM 11(16)(15).2 and under Investigation Manual 16.17.3 the noted period is 5 years after any appeal.

It is proposed that the "time sheets", also called "activity reports", contain some of the most important investigation related information relevant to a Case, covering the specific period at issue, which would be classified as, "other documentation" and "other information related to a case file."

For a clear understanding...the former "Regular Activity Record" RC500 and the current "Time /Activity Records" RC509 are both compiled as a 3-part carbon copy document.
The **Copy 1** is directed to Finance & Administration for data entry into an integrated employee payroll system, which is currently referred to as the CAS.
The **Copy 2** is the important disclosure copy...it is the copy retained within the respective work section and is used for job evaluations, compensation claims, job grievances and any liability conditions.
The **Copy 3** is provided to the employee for their personal record.

With regard to the former RC500 format, there is a specific section #1 noted as "Locator Number", which is the filing number associated with these documents, which are stored in a standard bank referred to as the Attendance and Leave record no. RC PSE 903
It is suggested that the same storage conditions also apply to the RC509 format.

When requesting disclosure of "time sheets" insure provision of any O/T reports and any individual "time sheets" related to other work sections the officer may have been temporarily seconded. The "Transaction Codes" on the record will show 0 to 7 any work sections involvements the officer has been affiliated with that week.

***JARVIS–GUNNER* CASE COMPARISON:**
It becomes obvious within the details of ***R. v. Jarvis*** 2002 SCC 73 as with other cited case law, that disclosure simply never went far enough or deep enough into the actions of the purported "auditor" to effectively expose the "record" or "the totality of the circumstances" to easily identify the "Predominant Purpose." According to current case law "Predominant

Purpose" is within the mind of an auditor...currently a subjective approach, which is a wishy-washy approach that is simply not necessary.

Determination of "Predominant Purpose" can be objectively based from disclosure that opens "the record" and "the totality of the circumstances" regarding the Agency's investigation administration, accounting and officer training, which is necessary to properly assess "auditor" activity, because it would be a serious mistake to believe all "auditors" are involved in regulatory activities. Simply stated...the objective appearance of an AIMS Case Number is the signal regarding when an investigation project has commenced. This does not mean that all initiated investigation projects will evolve into a full scale prosecution. However, it does mean the case was opened in AIMS with the intent to work the case towards a prosecution if and when the preliminary investigation program uncovers the evidence necessary.

The typical boiler-plate premise submitted by the Crown is dependent on the presumption that there was an auditor doing an audit. Accordingly this auditor stumbles upon a tax evasion scheme and as a result gathers up the information and evidence relative to the audit and makes a referral to Investigations. This has been the generally accepted scenario unquestionably accepted by the court and defence teams over the years. However, this presumption should be relegated to dust bins of history and never again be tolerated or blindly accepted again.

With the advent of the "Defence Disclosure List", scheduled later in this material, the focus is on exposing "the record" and "the totality of the circumstances" associated with the actions of the Agency's AIMS sector over a period of time. Disclosure of this area of evidence will determine the "Predominate Purpose."

R. v. JARVIS **Points of Note...**

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

According to policy and procedure under TOM 1143.1(4)(C) informants are required to be directed to Special Investigations. This places the noted Business Audit section in a questionable activity involving the investigation of the lead. Certainly, the lead itself suggests criminal activity that a regulatory audit would be unfit to accomplish. Therefore, the lead would require special actions that suggest criminal investigation from the onset.

Disclosure in ***Jarvis Case*** *falls short of the recorded evidence now known relative to the "AIMS Online Manual" where the noted "Business Audit" activity is identified as Program Type 41, which is matched to Investigation Type 1. We also know from disclosure that "Business Audit" actions are handled by AIMS Audit Groups set up within the Verification & Enforcement Directorate. It is also known that the AIMS Special Investigations Unit and the AIMS Underground Economy Unit are also set up under the same Verification & Enforcement Directorate, all of which are under the AIMS umbrella regarding investigation activities.*

*In the **Jarvis Case** there is no evidence that shows the "Business Audit" program fulfilled the preliminary investigation (Stage 0 and Stage 1) activity. The Court and defence blindly accepted the idea that since the "Business Audit" professed to be an audit that it therefore meant there was separation between the Audit and Investigation involvements. However, evidence now shows the Verifications & Enforcement Directorate contain criminal investigation groups working together in respect to the Criminal Investigation Program (CIP), which is a designed program that masks the preliminary investigation activities in the guise of an audit.*

*Question...what type of auditor was Ms. Goy-Edwards? Was she in or out of AIMS system? Was a **Case Number** assigned to the accused? These are the first essential disclosure elements missing in the Jarvis case.*

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

The question was never posed by defence as to why the Informant's lead was sent to a Business Audit section in the first place and why an experienced business auditor was handling this type of audit when the matter actually involved personal earnings, not business earnings.
*We do not know what work section Ms. Goy-Edwards was stationed in or whether she was an external or internal officer with respect to the AIMS system. Certainly, the circumstances suggest she was an internal AIMS auditor, which would place her within the AIMS investigation sectors. Had defence requested copies of her time sheets, in her own handwriting, relative to her involvement period on the **Jarvis Case** there would be verification and grade of experience.*

*The court, in the **Jarvis Case**, the anonymous informant was not challenged. It was presumed verifiable and not fabricated by the AIMS sectors, within Revenue Canada, to shore up their grounds for a search warrant.*

*With respect to the **Gunner Case** evidence, during the key period of investigation activity, found that all the primary officers involved, worked under AIMS and were stationed in Work Section 443, the only exception was the "payroll" auditor who gathered GST information, which was then provided to the AIMS Underground Economy Unit operating in Work Section 443.*

*In **Jarvis Case**, we do not know if Ms. Goy-Edwards had ever taken any investigation training courses.*
*In the **Gunner Case** the purported AIMS auditor stated in testimony that he had taken investigation training. It is submitted that investigation training is prerequisite to all AIMS officers.*

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

*No evidence was led whether or not she had an "Audit Findings Checklist", an information format recommended when there is an **intention** to make a referral to investigations.*

- We find that Ms. Goy-Edwards was extensively involved with the Case from February 16, 1994 to March 16, 1994, visiting as many as nine art galleries researching the art of the deceased Mrs. Jarvis. She discovered Mr. Jarvis's bank account and determined his 1990 and 1991 income. She then concluded that the Informant lead was valid, which meant she also had to review all of Mr. Jarvis's tax returns in order to make a comparison.
- This information was all known to her prior making the first contact with Mr. Jarvis or his accountant, Mr. Burke.

The question is…how much time is routinely allotted to regulatory audit for activities that would allow the latitude of time that occurred in this case? It would appear Ms. Goy-Edwards was not under any particular time restraint, which suggests she was involved in a special circumstance.

During this period, was an AIMS case in place and was she charging her time to a Case Number and if so, what was the Activity Code being entered?
This is an area of important disclosure relative to "Predominate Purpose" that the Jarvis Case was lacking throughout, which would have been helpful information to the SCC in their decision.

Certainly, the warrantless investigation methods the auditor engaged were in contradiction to the Agency's professed "open and transparent" hallmark of regulatory audit, where the auditor and the subject get together and exchange information. However, the activities of Ms. Goy-Edwards were clearly covert and characteristic of an investigation, R. v. Tiffin, 2008 ONCA 306 [47]& [155].

*In the **Gunner Case,** evidence provided from two former Revenue Canada auditors (defence witnesses) explained that routine auditors are under strict time lines of only 15 to 20 hours per audit and should any additional time be necessary it would look badly on the auditor's record.*

*Interestingly from the record, the first assigned officer to the **Gunner Case** was an AIMS auditor charging time to the Case Number for some 15 months prior to submitting a referral to the investigations (Stage 2 Investigations). Then from post voir dire evidence the AIMS Screen 3, Case Assignment History records shows this AIMS auditor continued the assignment to the AIMS Stage 3 Court at which time the Case was officially re-assigned to the lead investigator.*

It is suggested that the time sheets of Ms. Goy-Edwards would show time being charged to a Case Number, assigned to Jarvis, as she gathered the information necessary in respect to completing the preliminary investigation (Stage 0 & Stage 1)prior to making a referral to investigations (Stage 2 Investigations). According to the procedure in the AIMS Online Manual...officers who are involved in any part of an investigation activity must charge their time under investigations Activity Code 680.
Certainly, disclosure of time sheets constitutes an important area of "record" necessary to prove intent in respect to Predominant Purpose.

- On March 16, 1994 Goy-Edwards plans to bring her supervisor to an April 11, 1994 meeting, for a "second opinion" as to whether the file should be sent to the investigations.

On the surface one might believe it was too early in the process to be focused on prosecution, prior to any face-to-face meeting with Mr. ***Jarvis*** *or his accountant. The situation however suggests the supervisor was along to affirm mens rea, a necessary prerequisite to be determined by the preliminary investigation in order to facilitate an ITO, which is prepared at the AIMS Stage 2 Investigation. We are told that the judge expressed disbelief when Ms. Goy-Edwards testified that the supervisor was only along as a navigational guide. It was suggested that she was conscious of the intended referral to investigations and was attempting to conceal the "Predominate Purpose" with that story.*

In the ***Gunner Case*** *evidence the AIMS Screens 3, Case Assignment History, shows the AIMS auditor was given* ***"Case First Assignment"*** *status May 23, 1997, after the Case had been set up in AIMS with a Case Number on or around December 23, 1996. By the time the Case was referred to Investigations the AIMS auditor had effectively gathered the scope of information, evidence and mens rea necessary to prepare the ITO. There was no need for any further investigation preliminary investigation work, simply because the preliminary investigation (Stages 0 and 1) had been completed prior to the "AIMS Stage 2" referral to Investigations.*

Later in an Access to Information reply it is disclosed... "When the case is accepted for a preliminary investigation, the case will be assigned (Case First Assigned) to an officer to conduct more in depth review." This means that the officer positioned as the "Case First Assigned" in the AIMS Screen 3, Case Assignment History...is the officer effectively assigned the Preliminary Investigation activities. In the Gunner Case this officer is the professed referring case auditor, which is typical to most cases, in keeping with the covert investigation scheme operated by the AIMS sectors.

- It is not surprising in the *Jarvis* Case that the trial Judge determined that an investigation was underway as of April 11, 1994 and issued a verdict of acquittal. However, it is submitted that had full disclosure been provided in accordance to the "Defence Disclosure List" as set out in this treatise, the evidence would show the investigation had actually commenced prior to Ms. Goy-Edward's assignment to the Case. Who was on "record" as the "Case First Assigned" officer in the *Jarvis* Case? This is an area of important Crown nondisclosure the defence was never aware of.

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

- Late April 1994, upon reviewing the documents received, Ms. Goy-Edwards found discrepancies of some $700,000. As a result she concluded that fraud was possible.

- May 4, 1994 Ms. Goy-Edwards prepared a T134 Fraud Referral, attached her collected material and sent a referral to Investigations. There is no evidence that a T133 was ever prepared.

The fact that she prepared a T134 is proof under the Criminal Investigation Program (CIP) that Ms. Goy-Edwards was the officer first assigned to the Case (AIMS Screen 3, Case Assignment History) in respect to providing for the preliminary investigation activities Stage 0 and Stage 1. It is interesting to note that there is no mention of a Jarvis ***Case Number*** *in the entire trial evidence, which confirms the Crown's successful obstruction and conceal of the AIMS investigation procedure and the defence disclosure shortcomings.*

In the ***Gunner Case*** *a T134 document was provided in the Crown's initial disclosure.*
In trial testimony it was confirmed the T134 was back-dated to April 22/1998 near the date of the AIMS auditor's activity earlier that month, however the 3-part T134 was held in file for disclosure purposes and were never dispersed according to TOM 1142.2 Completion of Form T134...policy and procedure.
Later it was determined that the T134 may have only been prepared on or around July 1998 or possibly in early 2000 after the search warrant was executed on December 9, 1998.

Accordingly, this situation discloses that a T134 is only being prepared to provide the Crown with a selected "date" to enter as evidence showing when a referral to investigations was made. Otherwise, the T134 is of no other purpose.
Therefore, it is suggested a T134 is "fabricated evidence" specifically devised to sanitize the preliminary investigation activity by the first assigned AIMS auditor by creating an artificial referral "date" to investigations as being the separation between audit and investigation.

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

Similarly in ***Gunner Case*** *evidence, the AIMS auditor first assigned to the Case also gathered the evidence necessary to facilitate the preparation of the (ITO). Facts in the Jarvis Case show that when Ms Chang was assigned, she did not do any investigation but instead started immediately into the preparation of the ITO, which demonstrates Ms. Goy-Edwards had in fact provided the preliminary investigation information.*
It is important to note that preparation of the ITO is restricted to AIMS Stage 2 Investigations.

There is little need to continue with the *Jarvis* Case. Clearly, disclosure of the "record" regarding administration and accounting procedures related to the criminal investigation is necessary for a proper determination of intent, which is an area of evidence extensively lacking in the Case. However, the *Gunner* Case opens new avenues of disclosure and focuses attention on basic factors that have always been there, but never explored.

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

93… Apart from a clear decision to pursue a criminal investigation, no one factor is necessarily determinative in and of itself but courts must assess the totality of the circumstances, and make a determination as to whether the inquiry or question in issue engages the adversarial relationship between the state and the individual.

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

(a) Did the authorities have reasonable grounds to lay charges? Does it appear from the record that a decision to proceed with a criminal investigation could have been made?

Certainly, in order to answer the second part of factor (a), it is imperative the accused know what the "record" and what "the totality of the circumstances" are comprised of, which can only occur through full disclosure. To date, defence has been complacent in relying on the Crown to provide disclosure and without question defence has simply accepted the material provided as being the full disclosure. Defence has overlooked the fact that there is a great deal of relevant disclosure associated with "the record" and "the totality of the circumstances" that the Crown has been silent on, made possible only because the defence has never been aware of what there was to request in disclosure or how the esoteric evidence applied to their case. Therefore, it is important that Defence become fully aware of all the disclosure areas and able to argue its relevance to their case when making a disclosure application.

The above quoted paragraph #93 opens by stating that, "apart from a clear decision to pursue a criminal investigation." From this paragraph it is clear that the SCC was not provided with disclosure relative to the "Case Number" since according to evidence, this number is the effective indicator of a "clear decision" to initiate a criminal investigation. It is just that simple once the full scope of disclosure is taken into consideration as a "factor." This simple realization would have saved a great deal of unnecessary judicial exercise that still left the issue in a quasi circumstance.

Hopefully the information contained later in this document "Defence Disclosure List" will provide the impetus necessary to vitalize the defence to uncompromisingly insist on full disclosure associated to the listed areas.

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

In applying the *Gunner* Case (the company), evidence and information was collected by two auditors. The first was a payroll auditor acquainted to the company and not under AIMS. Oddly this payroll auditor was motivated to gathered information regarding "GST and Unreported Business Income", which apparently was based on an informant tip. The information gathered was provided to the UE Unit, on the bases of a pre-arrangement not disclosed in evidence.

The second auditor was under AIMS and was stationed in the UE Unit when he was first assigned the *Gunner* Case. As a "desk audit" this UE AIMS auditor worked sporadically on the *Gunner* Case for some 15 months prior to initiating a "field audit" at the company offices. During this purported audit activity this UE AIMS auditor completed an "Audit Findings

Checklist" information format, devised by Investigations and used by auditors intending to make a referral to Investigations. During the "desk audit" period this UE AIMS auditor did a number of drive-bys of the shareholders home and initiated appraisal reports. Then during the "field audit" this UE AIMS auditor reviews the company records, copied records, inspected the facilities, identified record storage, identified the accounting program, interviewed employees and accountants, and also drew up an office floor plan of the company's offices...which according to Investigations Training Courses is a important to search warrant planning.

During the "field audit" this UE AIMS auditor also borrowed 3-years of the company's financial books and records, which were held for 8-months and then seized under the warrant. When this auditor was asked about the status of the audit, he only apologized for the delay and contrary to policy...failed to advise that the file was under investigation.

It is proposed the scope of the actions regarding these two purported auditors, suggests a degree of interest that goes beyond typical regulatory audit procedures. These are the type of indicators relative to the "record" and "the totality of the circumstances" that show Revenue Canada, at all material times, was in pursuit of a criminal investigation with the intent to prosecute.

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

In applying the *Gunner* case (the company), the AIMS computer screen evidence shows a Case Number was assigned to the company on or before December 23, 1996, which only occurs on the "directive" of an authority following case assignment procedure. Therefore, certain transfer of forms, files, records and communiqués would have been involved in respect to the opening of a case in the AIMS computer-tracking system to automatically create a tracking Case Number.

The directive issued and procedure issued relative to the "record" to open a Case in AIMS is missing in full disclosure. As noted the company was assigned a Case Number on or around December 23, 1996 by the opening an AIMS case, however, there is nothing provided in disclosure that explains why or who authorized a case be opened.

Coincidentally, a few months into 1997 the above noted payroll auditor arranged for a "payroll" audit, which resulted a collection of GST and Cash Job information, which was passed on to the UE Unit. The UE Unit is mandated to initiate criminal investigations. In fact the name itself "underground economy" is suggestive of criminal investigation involvement. Clearly information was transferred to an investigations Unit in keeping with this factor.

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

As previously noted, the vetted pre-trial disclosure provided by the Crown advised of two auditors in the *Gunner* case…the first a known payroll auditor in early 1997 who, according to all indicators, was acting on direction from the UE Unit. The UE Unit had been provided with a T133A Investigations Lead dated November 19, 1996 and it was the UE Unit that opened the *Gunner* Case in AIMS on or around December 23, 1998 to create the Case Number that has identified the Case ever since. The second auditor was an internal UE AIMS auditor who was first assigned to the Case May 23, 1997. From "time sheet" information this UE AIMS auditor

had 10 to 12 other Case Number assignments that were months and years old, which the auditor was progressively working on as information came available.

Certainly both officers were qualified auditors, which is a status prerequisite to all Investigators. However, in this case, certain elements of the record suggested these professed auditors were not acting in a regulatory audit manner, so it was not a surprise when post trial new evidence showed the second UE AIMS auditor was in fact given "Case First Assignment" on May 23, 1997 in accordance to an AIMS Screen 3, Case Assignment History not released by the Crown at trial.

Interestingly, this AIMS Screen 3, Case Assignment History shows the Case was not officially re-assigned to the purported lead investigator until the Stage 3 Court Stage December 3, 1999, clearly the positions the second auditor as being more than a regulatory auditor.

With proper disclosure of "the record" and "the totality of the circumstances" the answer is an unequivocally "yes" ...these two professed auditors were acting as an agent for the investigation.

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

With reference to previous discussion regarding the "auditor" and under factor (d) above...it is clear that with full disclosure of the "record" and "the totality of the circumstances" the answer is an unequivocally "yes" that investigations did devise a plan, program/project that directed these two auditors as an investigation agent to collect information and evidence to further an intended prosecution.

(f) Is the evidence sought relevant to taxpayer liability generally? Or, as is the case with evidence as to the taxpayer's *mens rea*, is the evidence relevant only to the taxpayer's penal liability?

As previously noted, use of an "Audit Findings Checklist" is typical procedure associated with Compliance type reviews/audits. In the *Gunner* Case the UE AIMS auditor was completing this "Checklist" formatted with questions devised by Investigations to be used when intending to make a "referral" to Investigations. This "Checklist" contains certain questions that are only useful in identifying *mens rea* issues and for the preparation of an ITO. In fact the opening statement on the document notes that the objective is a "referral", which therefore qualifies its use as "Predominate Purpose" in the pursuit of a criminal investigation.

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

The application of the AIMS evidence clearly establishes that Revenue Canada's idea of a Compliance type review/audit is based on a "Program Type" designed to match-up to an "Investigation Type." This "Program" functions as the preliminary investigation (AIMS Stage 0 and Stage 1) relative to the process set out under the Criminal Investigation Program (CIP). Evidence of this connection is contained in the "AIMS Online Manual", which is further identified in the "Defence Disclosure List" set out later.

The *Gunner* Case, other circumstances or factors involved the following evidence and issues, which are somewhat typical of most AIMS Cases.

- Officers charging time to AIMS Stage 0, "Workload Development" is to use Activity Code 694. Interestingly, officers are instructed not to enter the respective Case Number of the project he or she is working on. Since this activity stage is the noted "undercover" activities regarding a "desk audit" and "field audit" by not associating the Case Number at this Stage is meant to be a distraction. It is submitted that officers do charge time to preliminary investigation relative to AIMS Stage 0 under the project Case Number, which may also involve another "Workload Development" Activity Code or may be on a second time sheet sourced from another Work Section. This is a very tricky area, due to the undercover nature of the activities.

- Anyone charging time to an Investigation Case under Preliminary Investigation Stage 1 or under Stage 2 Investigation (Enforcement) and Stage 3 Court phase is required to enter activity code 680 in their time sheets. Certainly, all time charged is consolidated to the project Case Number.

  In substitution of the original handwritten time sheets regarding the UE AIMS auditor, the Crown advised all original time sheets were destroyed after 2-year retention. In place of original time sheets the Crown provided electronic time summaries on spreadsheets that showed the key 8-month period, when the UE AIMS auditor was in direct contact with the company, was coded under Activity Code 0999 Unreported Time, which the Crown explained was a Union job action to frustrate management.

  Regardless of the fact relevant time sheet evidence was destroyed, the Crown failed to enter any corroborating evidence regarding the 8-month period of miscoding. The lead investigator under oath affirmed the "job action" that had been most devastating to management that year. However, the Crown failed to call any qualified witnesses to verify the 2-year destruction of payroll records and verity an Employee's Union job action did occur.

  To date it appears the 8-month job action was a big hoax perpetrated to prevent disclosure of the UE AIMS auditor's actual time sheets containing coded activity time relative to investigations, which would contradict the Crown's entire case.

  The point to take from this circumstance is a forewarning, that the Agency along with the Crown will stop at no lengths to protect their prosecution case. They are capable of fabricating evidence, mistruths and manipulations to cover over or at least cloud the "record". Clearly, devising a "job action" of such universal magnitude is unbelievable and then to think the Court in the *Gunner* Case did not see through this concoction is even more unbelievable. Yet that is exactly what occurred.

- There is a significant appeal issue in the *Gunner* Case regarding disclosure, the trial judge failed to properly deal with. Prior to the conclusion of the *voir dire*, defence managed to identify and compile approximately 150 disclosure issues derived from new evidence and *voir dire* testimony, which was submitted as a "Disclosure Application" in accordance to *R. v. Stinchcombe* the seminal case law regarding disclosure practice. At the beginning,

the trial judge correctly initiated a hearing that covered the first 22 issues and resulted in 20 Crown undertakings. However the next day, the Crown...encouraged by the trial judge, entered a motion to halt disclosure on the ground that disclosure is not appropriate at the end of a *voir dire* trial and should have been raised pre-trial. Basically, this argument was nonsense, simply because the disclosure issues came about as a result of *voir dire* testimony and the newly released SCC *Jarvis* and *Ling* decisions. Regardless, the Crown's argument was accepted by the trial judge who in spite of *Stinchcombe*, closed any further disclosure and ordered the *voir dire* finalized.

Closing off disclosure, when the Crown has an ongoing disclosure duty throughout a trial, was a grievous error by the trial judge, effectively preventing the defence from making its *voir dire* Case, which then seriously impacted the entire trial proceeding. The Crown also reneged on the 20 disclosure undertakings taking the trial judge's closure as their excuse not to provide any further disclosure throughout the remainder of the trial. The main trial was now subject to *res judicata*, due to the premature *voir dire* decision.

Subsequent the faulty *voir dire*, a preponderance of evidence came to the attention of the defence, which the defence submits would have resulted in a different *voir dire* decision had the "Disclosure Application" been allowed to run its course. As it was the *Gunner* trial is an example of a trial gone bad...officiated in a bias and unfair manner that failed to protect the right of the accused to full disclosure. Full disclosure to the defence is the *Jarvis* "record" and "the totality of the circumstances" as the type of disclosure necessary to the defence, not the prosecution type of disclosure of evidence the Crown typically volunteers pre-trial.

- There is the matter of the Crown withholding disclosure regarding the early involvements of two UE Unit officers on or around July 17, 1996, who were given 1B High Risk assignments. This situation was followed by a late October 1996 Anonymous Informant providing a GST and Unreported Business Income noncompliance lead, as previously mentioned. These 1996 records of activities were relevant to *voir dire* proceedings and clearly qualified under *Jarvis* factor (a).

  However, the Crown knowingly withheld disclosure of these activities until after the *voir dire* was complete. Certainly, disclosure of these activities in respect to the *voir dire* would have undermined the Crown's boiler-plate investigation scenario.

  These 1996 activities have set up series of events that involved the opening of an AIMS case to automatically assigned a Case Number to the *Gunner* Case. This number first appeared on an AIMS Screen 1 "Update Case" dated December 23, 1996, which also showed an "Audit Action 01" entry we now know as a code directive to initiate a preliminary investigation. The series of events then leads to the appearance of the first purported auditor, a payroll auditor known to the accused, to schedule an audit at the company's office early April 1997. The payroll auditor's report noted that the audit was due to an "anonymous tip." Oddly, this payroll auditor requests and collects GST information, which is given over to the head of the UE Unit. The motivation, of the payroll auditor, appears based on the October 1996 Anonymous Informant's lead regarding GST and Unreported Business Income.

The series of events is continued when a second purported auditor, who was given the "First Case Assignment" May 23, 1997, as per the post *voir dire* AIMS Screen 3, Case Assignment History. This second auditor, under the AIMS within the Underground Economy Unit, arranged for an audit at the company's office early April 1998. This was now more than a year after this UE AIMS auditor was first assigned to the Case, an assignment situation not typical regulatory audit practice.

Ultimately this UE AIMS auditor went about collecting virtually all the information including what was touted as *mens rea* required to prepare an ITO, which resulted in a search warrant executed December 9, 1998. This UE AIMS auditor did drive-bys, drew a floor plan of company offices that was used by the search team and completed an "Audit Findings Checklist" question format, as previously discussed.

Certainly none of these actions are typical to regulatory audit practice, which raises questions regarding how these purported auditors coded their activities in their respective time sheets, which the defence was advised had been destroyed after 2-years. Interestingly, as a substitute the defence received computerized time schedules, post *voir dire*, showing this UE AIMS auditor coding 8-months of key period time as "unreported time", which the Crown advised was due to job action. No supportive evidence from third parties was offered and of course the trial judge failed to recognize this situation as being farfetched. Defence submits the actual time sheets coded data may have contained information that would have changed the *voir dire*, had it been known. One must consider that "*res judicata*" was now a big influence on any new evidence.

Access to Information & Privacy Act (ATIP)

One other area of interest pertains to the information exemptions under 16(1)(a) to (d) & 21(1) under the *Access to Information Act*, which relates to the following: "Information obtained or prepared in the course of a lawful investigation, investigation techniques or plans for specific lawful investigations and information relating to the existence or nature of a particular investigation."

With regard to requests made through the *Access to Information Act* for "records" of information related to the *Gunner* Case, there have been numerous occasions, involving hundreds of pages "exempted" based on the above noted sections. As a result, one can conclude just from the use of the exemption that investigation evidence does exist on record that is being withheld from the accused in respect to the criminal prosecution. This is proof of Crown's nondisclosure...it is just that simple.

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

In argument, one can summate that the reason the Agency is withholding ATIP information is because it would be detrimental to their prosecution case. Therefore, if it is bad for the Agency, then it must therefore be good for the accused as relevant information the Crown is required to produce in disclosure upon the request of the accused. The ATIP exemption has provided proof that relevant evidence does exists for disclosure purposes.

If the exempted ATIP evidence does contain information that exposes a clear breach of *Charter* rights regarding the Agency's investigation practices, the exemptions under 16(1)(a) to (d) & 21(1) cannot therefore be "lawful" investigations and the Agency would be disqualified from using said exemptions. This would result in exposing inappropriate behaviour by the Agency by applying ATIP exemptions they were not entitled, as a method to obstruct exculpatory evidence to better insure conviction at the detriment of the accused, a truly unconscionable act that affects the well being of all those connected to the accused. This may provide evidence in a tort action.

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

Whistle Blower's Document "Predominate Purpose" identifies an important demarcation made easier when all factors are allowed to enter the picture. In previous subject case law, the trial judge is not being made aware of the full extent of necessary disclosure relative the "record" and "the totality of the circumstances" as set out under *Jarvis* and is left ill-equipped to make a well informed determination, based only on an auditor's state of mind, where a single word can discredit. Since a trial judge is not a psychologist, although some may think they are, the use of a polygraph would be more astute and accurate, a breathalyser of the mind. Clearly, there is need for an objective demarcation.

Whistle Blower's Document "Predominate Purpose" exposes for the first time that the assignment of a Case Number is the de facto demarcation, which has always been associated with every prosecution project since the beginning of criminal investigations.
The use of Case Numbers is standard procedure with the police and has been standard procedure with the Agency's investigation sectors, who have always known that a Case Number identifies an investigation project with the underlying intent to prosecute. Basically the Agency investigation sectors have knowingly not been forthright or transparent regarding the use and application of Case Numbers and have instead allowed the courts and defence to flounder around with this problem when the objective demarcation has been hiding in plain sight. This demarcation is just too simple and obvious, which must have had these sector officers chuckling after the court is adjourned.

The Agency's investigation sectors, through the creation of an ominous system, have literally and quite successfully frightened away litigation adventurers, leaving most in a state of confusion regarding codes and acronyms. However, with the introduction of Whistle Blower's Document "Predominate Purpose" as the guide, the law in these matters can now be advanced utilizing the *Accountability Act* and forcing transparency of the Agency's investigation administrative and accounting practice, involving time sheets, cost centers, activity codes, work sections, case numbers, assignment histories, job descriptions, training, AIMS screens and policy & procedures, etc.

The internal administrative, accounting and tracking activities associated with the Agency's investigation practice provides the objective "Predominant Purpose" demarcation. These

Agency sectors are duty-bound to be transparent, open, willing and prepared to expose their operations for complete review and verification before the courts, if they expect to maintain any credibility in the eyes of the law.

With the Agency's requirement powers granted under Section 231.2 *ITA*, for regulatory purposes only, the importance of "the record" and "the totality of the circumstances" are the operational functions the Crown must respond to in disclosure. Disclosure is the only judicial lever of control the accused has to ensure a fair trial. Left unchecked, the Agency's investigation sectors will be encouraged to escalate their covert operations by refining and devising new methods that spite *The Charter of Rights and Freedoms*.

The ongoing adversarial objective of these Agency sectors has been to design a fool proof encrypted operational program of smoke and mirrors, where they are able to covertly use statute audit power in pursuit of their criminal investigations...and no one knows.

Currently, these investigation sectors have introduced the "Case Management System" to compliment the traditional AIMS investigation tracking system. The feature of interest regarding this new system is that another Case Number is being created to effectively cloud the now publically exposed investigation intent associated with the AIMS Case Number.

Under the new "Case Management System" the assigned case files are subject to an operational "audit", designed to replace the operational "audit" currently under AIMS that is being used to facilitate the preliminary investigation function, whether the first assigned sector auditor is fully cognisant of that or not.

Basically, it is pointed out that the earliest assignment date relative either Case Number must be considered as the decision to investigate with the intent to prosecute. According to accepted accounting practice, there will always be an identifier "number" set up within the system and regardless of what these investigation sectors call it: Case Number, Link Number or Order Number...basically they are all the same. Therefore, it is important to look at all numbers with a degree of suspicion and request full disclosure regarding the intent and purpose surrounding each.

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

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

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

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

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

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

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

171… These are examples only of the attitude of Revenue Canada to their obligation of disclosure. That attitude to prevent, deny or delay disclosure has made the defence of this matter exceptionally difficult. Without the persistence of Mr. Stern a great deal of the information sought would never have come to light.

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

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

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

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

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

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

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

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

The applicants further submit that failure of the Special Investigations Branch to properly maintain and preserve investigation records has created critical gaps in the narrative of the course of the pre-audit SI investigation. The applicants are required in order to prove their allegations of *Charter* infringements that the purportedly regulatory seizures were performed for the purpose of effecting a criminal or quasi-criminal investigation. The failure of SI investigators to properly record the origins and course of

the investigation has substantially impaired the capacity of the applicants in bringing forward such evidence. Without a documented accurate account of the origin of the investigation, it follows that the applicants are prejudiced in their capacity to discharge the onus facing them on these applications since the lack of the investigative records renders it even more difficult for them to appreciate and make submissions on the relevance and significance of the investigative steps subsequent to the pre-audit investigative steps taken by SI. In essence, the right to full answer and defence in the context of being able to access evidence to discharge the evidentiary onus on the applicants has been substantially reduced by the conduct of the SI investigators.

24… On the evidence and submissions, I find that this case is one of the "clearest" in which the stay is appropriate. I am persuaded that the conduct of the investigative and prosecutorial branches of Revenue Canada have irreparably prejudiced the right of the applicants to a fair trial and that the absence of appropriate records and disclosure practices and attitudes of the investigative branch to Crown prosecutors is of such impact that there is no remedy short of a stay that could be fashioned capable of ensuring the s.7 *Charter* rights of the applicants to make full answer and defence to charges. To continue this prosecution would in effect do irreparable harm to the integrity of the judicial system and offend the defence of justice to the community by condoning the manifest misconduct of investigative branch by utilizing the regulatory audit process in furtherance of a criminal investigation.

R. v. Leroux

This is a British Columbia case that is currently awaiting a court decision in respect to a civil statement of claim for damages filed against CRA for negligent behaviour during audit, reassessment and collection practices. The British Columbia Supreme Court has dismissed CRA's motions to strike the claim on the bases it was plain and obvious that the claim of negligence would fail. The issue now hangs on a tort issue of whether or not CRA has a duty of care to the taxpayer to insure their actions are not negligent in the course of administrating or enforcing various taxing statues. Certainly this case is pivotal in providing a deterrent mechanism against potentially negligent actions by the CRA.

CONCLUSION

In conclusion "Predominant Purpose" is now the determinative factor, which is dependent on full disclosure of all the factors identified by the SCC in *Jarvis* as "the record" and "the totality of the circumstances" regarding the administration, accounting, tracking and training relative to all investigation operations, which commences the instant a "Case Number" is automatically assigned once the subject is screened into the AIMS computer tracking program.

Crossing of the Rubicon or the bright line, as it is occasionally described, effectively establishes a partition between a presumed regulatory procedure (if there ever is one) and a criminal investigation with the intent to prosecute. Courts are no longer required to weigh-in the balance of evidence or balance the probabilities in a judicial determination based on reasonable and probable grounds in an attempt to identify a demarcation based on the mindset of a purported auditor. The courts simply have to be provided with evidence of a Case Number and when it was assigned by AIMS.

The "record" of activities and "the totality of the circumstances" are found within the administrative procedures and standard accounting practice that are mandatory functions within the operations of the Agency's investigation sectors, which are the sectors stationed under the umbrella of AIMS controls. Investigation activities require special account tracking and attention from a budgetary and reporting perspective. This function has always existed and will always exist in one form or another to be effectively used to clearly identify the "Predominate Purpose" associated with an officer's record of activities. But like many of the simplest things

this area of disclosure has escaped recognition by the seminal case law typically referenced in defence.

Whether or not the accused will successfully expose a "Predominant Purpose" determination associated to his or her case depends on the degree of attention placed on the application made for **full disclosure** of case assignment particulars, time sheets, progress reporting, administrative functions and accounting ledgers, as well as the full and complete screen disclosure of all AIMS investigation stages and assignment screens, which involve punctual entries used to track the investigation project as it matures through its stages into a full scale prosecution or is declined due to a lack of evidence the AIMS sector "auditor" was incapable of retrieving to support a search warrant.

The Grand Scam Presumption...
As previously mentioned the basic faulty premise associated with current jurisprudence on criminal prosecution tax cases involve case law, typically cited by defence, that all notably germinate from a starting point based on an untested **presumption**...accordingly, once upon a time there was a regulatory auditor doing a regulatory audit and then eureka this auditor happens to discover what appears to be "tax evasion"...the rest is repetitive history.

Contrary to this boiler-plate **presumption**, the *Gunner* Case has uncovered through numerous "Access to Information" requests, disclosure and from former Agency employees...that the Agency's investigation sectors maintain an AIMS computer system that incorporates special screens pertaining to the administrative, accounting and tracking of all criminal investigation projects. Note the term "administrative" which is the key area all disclosure applications must specifically focus on. Keep in mind that these investigation sectors, functioning within the Agency under AIMS, specialise in making themselves a moving target to off balance and confuse any attempt to publically expose their investigation practice before the court.

These investigation sectors make subtle procedural and name changes along with other altered measures intended to throw you off their trail. This is done by having it appear the routine has changed and new operating pattern has emerged, when basically little to nothing has actually taken place. Such changes avert close inspection and allow plausible deniability when Agency witness is confronted with a particular situation. "I don't know...the system has changed"

Therefore, it is extremely important to understand with disclosure applications and with witness cross examinations...whatever the current procedure is claimed to be at the time, it will have replaced a similar procedure with the same objective. Only the names will have changed. There will always be an underlying requirement to consolidate accounting, administrative procedures, investigation assignments, training, coding and tracking, all of which are mandatory functions that require a defence investigation project.

There is also sufficient evidence that holds...the demarcation of a criminal investigation is the assignment of a **"Case Number"** which functions as a project number in order to comply with commonly accepted accounting practice used to consolidate data and identify the subject for the duration of the project.

Typical Case Development...
Typical case development will generally be initiated by an informant's lead, during an "initial consultation session" or "review" is held with or by the internal AIMS investigation/enforcement sectors. These sectors are currently under the Verification and Enforcement Directorate and basically involve a number of special investigative Audit Groups, Underground Economy Unit and Special Investigations Unit (SI or I), in any one TSO. Here the merit of the informant information is discussed and it is decided whether or not there is prosecution potential. If there is consensus regarding prosecution potential, the subject file is set up in AIMS and a Case Number is generated, which effectively initiates an investigation process under the guise of a compliance "Program Type."

See TOM 1142.2 (2)(D) and TOM 1142.2(2)E(b) also Investigation Manual (IM) 21.5(1)

The "Program Type" will be noted on the opening AIMS Screen 1, for ie: Program 41 (Business Audit). There are more than 20 "Program Types" listed in the AIMS Online Manual, which are matched to one of four different "Investigation Types."

The Case is then "first assigned" in AIMS to an officer within one of the investigative AIMS Audit Groups. This assignment equates to "preliminary investigation" given to an officer who is likely working on another 6 to 12 other Case Number assignments doing "workload development" as information comes available. These are information gathering "desk audits" lasting many months and even years, while this officer charges his or her hours to the respective Case Number project.

During this period, the officer will compile data on the subject case from: land titles, licences, incorporation and previous tax related files, which might also involve surveillance drive-by and real estate appraisals done by CRA appraisers, another area of required disclosure.

Then possibly after a year has elapsed, the officer contacts the subject case to arrange a field audit. Since these officers always intend to make a referral to the next investigation stage (AIMS Stage 2 Investigations) an "Audit Findings Checklist" is being completed, which documents the informant lead(s) results, type of computer program, work descriptions, borrows books and records, questions the owner, bookkeeper and accountant, all record storage is identified as the premises are inspected and *men rea* is a sought after priority. The officer will also draw a floor plan diagram of the prospective search warrant site while memories are fresh.
This is the **undercover** preliminary investigation phase of operations undertaken by these officers, which is indentified in the investigation training course HQ1301-000 (page 1-3) and in TOM 11(10)1.2(6), TOM 11(11)(11).4(6).

Once sufficient information has been collected, complete with *mens rea*, as necessary to make a (preliminary investigation) referral to the next investigation stage, the officer, under the approval of the team leader, prepares a T133 Project Information/Tax Lead (referral to investigations) and attached all the information and work sheets. The project is then sent to the Special Investigations Division.

Once Special Investigation has reviewed the referral material and has discussed it with the first assigned AIMS officer (auditor) it is decided whether or not the referral is worthy of full scale investigation (AIMS Stage 2 Investigations).
Primarily...the question is...are there sufficient assets to make it worth the effort?

If it is decided to proceed with a Stage 2, an investigation officer is then assigned the Case, which may reassignment of the same first assigned AIMS officer (auditor) or a different AIMS sector officer attached to the Special Investigations Unit (SI or I).

At this point, the first assigned AIMS officer (auditor) prepares a T134 Fraud Referral form. The T134 is prepared to officially document a demarcation date showing a "referral to investigations" by the first assigned AIMS officer (auditor).
That is the only purpose of the T134...otherwise it is a complete waste of paper.
Basically, the T134 is **planted evidence** placed in the investigation file just for disclosure purposes, enabling the Crown to enter material evidence showing a "date" that a referral to investigations occurred ...however, while the T134 purports to being a referral to investigations, nothing is mentioned to credit the previous T133 that contained all the workload development/preliminary investigation documents and materials that composed the actual referral to investigation...the Stage 2 Investigations. (Note: The doubled use application of the word "investigations")

This is the **Grand Scam** misrepresentation perpetrated on the courts, by the Agency's AIMS investigation sectors, which has been doing so ever since legislation created audit power and *The Charter of Rights and Freedoms* became the supreme law of Canada.

At this point in the investigation process the first actions undertaken by Stage 2 Investigations...is not an investigation but pertains to the preparation of the ITO. It is important to note that in most cases the ITO is prepared strictly from the information and evidence the first assigned AIMS officer (auditor) collected possibly over a year's assignment to the Case. Basically, at this time all of the preliminary investigation will have been completed by the first assigned AIMS officer (auditor) who facilitated the initial stages of investigation under a Program Type (smoke screen) misleadingly professed as a compliance program.

This is the essence of the audit-auditor presumption, which can only be researched through disclosure to expose the "Predominate Purpose" regarding the first assigned officer's intent based strictly on actions and results occurring over a period of months and often years, in comparison with a basic regulatory audit lasting only a few days.

Once the Stage 2 Investigation ITO has been granted and the search warrant is executed...using the floor plan sketch provided by the first officer, the seized documents secured and organized for another referral to the Department of Justice and the start off the Stage 3 Court activities.

Currently Special Investigations went from calling themselves just "Investigations" to now being the "Enforcements" Division. This is interesting since the whole AIMS operation subject to enforcement procedures under the "Verification & Enforcement Directorate." Therefore, it is

suggested that these changes are to only create a degree of confusion in respect to, who-is-doing-what. Really...what was wrong with "Special Investigations?"

DEFENCE DISCLOSURE LIST

Preamble:
The extreme importance to always specify the requested disclosure material in the format, "not sanitized" or "redacted" in any manner, cannot be over emphasised. The Agency has gone to great lengths in redrafting certain information documents and manuals for "public" consumption.

Disclosure with respect to lawful investigation practice...
While there are a number of provisions under the *Access to Information Act* 16(1)(a) to (d) & 21(1) that allows the Agency to withhold, exempt, information obtained or prepared in the course of a lawful investigation or information deemed injurious to the enforcement of any law, as deemed by the Agency. However, in a criminal prosecution case such restrictions do not apply. Therefore, all defence 'disclosure applications' following the listed disclosure areas of relevant evidence directed at exposing the "record" of the Agency's investigation activity and intent which, is only found in their administration, accounting procedures and training materials, must be fully disclosed in their respective versions not "sanitized" or "redacted."

As a point of interest...it would be an interesting legal argument regarding how the application of "lawful investigation" can be legitimately applied as an information exemption under Section 16(1) of the *Access to Information Act* when it is exposed the Agency's typical investigation program design is totally dependent on *Charter* violations. Therefore, the Agency's investigation program fails to qualify as a "lawful investigation" and would not be eligible for these noted exemptions under the *Act*.

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

   These CIP courses contain the full range of the administration procedure relative to the Agency's more resent covert investigation practices. This area of evidence contains information that is instrumental in developing a procedural understanding necessary to formulating examination questions exposing the full scope of the investigation record relative to a particular Case and to discredit the boiler-plate version typically proposed by the Crown. It is unlikely the Crown, at this time, is familiar with what the CIP course material contains or that it will result in generating additional areas of disclosure issues relevant to a particular case.

It is deductive to mention that since this is the "initial" course there would be additional courses relative to the same subject matter, which should also be specifically searched out and requested in the disclosure application. Certainly, the information contained in all training courses is prerequisite to the defence grasping a firm understanding of the audit/investigation process operated by the AIMS audit/investigation groups within the Agency. This information is relevant to the defence case in respect to properly preparing for the examination of witnesses. The defence should know the answer of the question being asked.

2. **Disclosure Request…**It is very important to request all the data connected to who, when, and the why, of your particular **Case Number** and **File Number** assignment.

   "Who", authorized opening a case in AIMS? "When", was this authorization initiated and "Why", was it set-up are questions relative to the investigation record held by the Agency.
   Note: T.O.M. 1142.2 (2)(D) and T.O.M. 1142.2(2)E(b), also the Investigation Manual (IM) at section 21.5(1) explains a Case Number will be assigned when there is a decision for preliminary investigation (AIMS Stage 0 and Stage 1 combine as the Preliminary Investigation).

   Remember the assignment date of the **Case Number** is the effective demarcation of an investigation with prosecution intent. The Case Number acts as a project number to facilitate project accounting and progress tracking. This identifier is as relevant today as it was in respect to TOM, regardless of who initiates the opening Case in AIMS. The first three digits of a File Number depicts the year the AIMS Case was opened.

   The Case Number was created as a special project accounting identifier, which was initially assigned only by Special Investigations in the computer system operating prior to AIMS, see T.O.M. 11(19)0, and during the initial years of the AIMS system, TOM Exhibit 1142-A shows a T134 Form. Currently, cases are typically being initiated and Case Numbers assigned by the professed AIMS Audit Groups stationed under the Verification and Enforcement Directorate, which may a directorate occasionally reincarnated under a different title. This change to a professed Audit Group was necessitated to direct attention away from the direct Case Number assignment by a Special Investigations group. Regulatory audit groups (ie: payroll audit) cannot access AIMS and therefore cannot open or use AIMS Case Numbers.

   It is important to note that there is nothing set out under the Agency's administrative procedure that has altered the ongoing unique importance of the Case Number relative to all prosecution cases. It is important to note that there has never been an investigation or prosecution case without a Case Number. Basically, it does not matter who opens an AIMS case, the overall intent remains the same.

   The idea that investigations can only be commenced by the Investigations group is a presumption. Evidence shows the professed AIMS Audit groups are initiating

investigation cases using compliance audit-review/program types that often continue for months and even years, as the preliminary investigation collecting the data/evidence necessary to facilitate an ITO that ultimately culminates in a search warrant. Basically these professed AIMS Audit Groups are actually doing the preliminary investigation under the guise of a nondescript "compliance audit/review."

It becomes obvious, once the case is purportedly "referred to investigations", when the Preliminary Investigation workload development (Stage 0 and Stage 1) is essentially bypassed as the case is moved directly to the Stage 2 (full scale) Investigations level.

The Agency's own policy and procedure information explains that the primary Stage 2 function is to prepare an ITO derived from the information provided by the referring auditor, which is followed by executing the search warrant.
Typically, at Stage 2 a lead investigator officer is now being assigned to oversee the process to the conviction of the subject party.

3. **Disclosure Request…**a complete **"AIMS Online Manual"** and all the **"AIMS Online Guide"** sections, on disk with word search, which must include the full range of the internal (hyper-links) computerized information references and any other AIMS user manuals previously used or currently in use.

   Employees within the Verification and Enforcement (VE) groups under the AIMS umbrella of investigation operations are provided with PIN Code in order to access the AIMS computer system, regulatory Non AIMS groups do not have access to AIMS data screens. It is important to understand there are two operating factions within the Agency, the operations functioning under the AIMS umbrella handling all investigations and the Non AIMS operations purely functioning in a regulatory capacity. This information is clearly set out in the "AIMS Online Manual".
   Examples of Non-AIMS areas are: Internal Audit, Operational Audit, Identification and Compliance (Non Filers/Registration), Collections, and Source Deductions are only a few of the regulatory areas.

   There are also two versions of the AIMS Online Manual documentation, **Sanitized** and **UNsanitized**. The Information Technology Branch (ITB) provides the UNsanitized versions to the local Information Technology (IT) who ensure they are made available to CPB staff via the TSO's local server (LAN).

   The following is a list of Sanitized documents provided to the general public are: InfoZone, Branches, Compliance Programs, CPB Reference Material, Manuals, Guides and Procedures, AIMS Online Guide.

   Example of the type of information retrievable through the **AIMS Online Guide**...which involves **"Selection Reason Codes**" where a good number of the listed reasons are subject to being withheld as "Exempt under AITA." Neither, this exemption status or

any privilege exemptions apply to the Crown's disclosure duty and must be provided complete in all respects.

Expert testimony regarding the **AIMS Online Manual and AIMS Online Guide** is sourced from such Agency witness as **Mr. Alain Giroux 941-0481** and/or **Lynda Morin 952-0256**, who are original members of the HQ AIMS Group. Experts from this group will say the former computer reporting program procedures were transferred into AIMS. Clearly, such key testimony directly links the investigation intent of the former system to the new AIMS. Evidence is available confirming the investigation progress reporting and tracking intent of the former T20SI system as now being handled by the AIMS system.

Additional evidence goes to show the former T20SI-1 report, as discussed under T.O.M. 11(19)1 in respect to the former T20SI Management Information System, has been specifically replaced by the AIMS Screen 1. Certainly this connection of these two computer systems confirms the "Case Number" generated by opening an AIMS Screen 1 is the demarcation of a decision to initiate a preliminary investigation in the same manner as the former system had provided.

4. **Disclosure request... "T134 Fraud Referral Form":**
The T134 form is professed as the referral format to investigations. However, this presumption is questionable as not being forthright or transparent regarding the documents true underlying intent and objective.

According to procedural evidence...by the time a T134 is completed the subject party has already been screened into the AIMS computer system and a Case Number has been assigned, which is the administrative/accounting demarcation for when an investigation is effectively underway. This underlying purpose of the administrative/accounting (project number) is and has always remained the same (TOM 1142), regardless of what sector under AIMS is directed to open a new case in AIMS.

New cases in AIMS are created after the Compliance Program Directorate (formally the Verifications and Enforcement) have decided to initiate a preliminary investigation process. This decision results in the "Case First Assigned" officer, who is typically sourced from a special Audit Group within the AIMS system. This first assigned officer initiates a "compliance audit" stealth program that follows an "Audit Findings Checklist" that facilitates the Investigation "Workload Development" protocols in respect to the Preliminary Investigation Stage 0 & Stage 1 processes. Once sufficient information and evidence has been discovered and/or collected to satisfy preparation of an ITO, this first assigned officer does an information-handoff to Investigations...often using a T133 entitled "Project Information" format. Unknown to the courts, at this juncture, the case has been advanced to the Stage 2 "investigations" process, which is misleadingly terminology professing a "referral" to investigations.

Since these cases have technically been subject to investigation right from the time the file was first set up in AIMS with a Case Number...thereby preparing a T134, at this point in time, is redundant as a referral to investigations, which may never be prepared unless the subject party responds with a defence Should this occur…a T134 is now prepared and backdated, for disclosure purposes only.

By closely reviewing the true function of the T134...it becomes clear that the document is actually fabricated evidence…typically placed within the initial pre-trial disclosure package released to the accused. Interestingly...during the trial the T134 form becomes a defence exhibit. As a result the defence leads the court into a false belief regarding a specific date the case was referred to investigations and accordingly a criminal investigation was commenced. Essentially, the defence cuts its own throat.

It is unlikely a prosecution case will not have a T134 form planted in the disclosure evidence, which is the material evidence the Crown must have as a full exhibit to mislead the court into believing the document's date was when the referral occurred and the investigation commenced.

The backdated T134 referral dates are selected subsequent to the Case First Assigned officer's Preliminary Investigation compliance audit/review activities in order to effectively "white-wash" the officer's investigation connection and effectively create the percievance of a divide between audit and investigation.

What cannot be concealed is the fact the First Assigned "referring" Officer, will typically be an officer stationed under AIMS, that will have been assigned numerous other "Cases Number" cases that have lasted many months and even years, the scope of the evidence collected is over-zealous in respect a typical regulatory audit, the scope of evidence collect is relative to ITO standards, charges time to Case Numbers, and generally all is atypical to the regulatory audit sectors not under AIMS.

Request... In respect to the above outline regarding how T134's are being applied, suggests there would be special information/memo/training material provided to select few officers, under AIMS, regarding T134 handling and application, being withheld from public knowledge. Please provide this procedural material in full compliance disclosure of the "record" identified under *Jarvis*.

5. **Disclosure request…**for a print-off the following minimum **AIMS Screens: 0, 1, 2, 3, 4, G, H, I…** Specifically request "Browse" screens including the "Add" screen in regard to the opening Screen 1 and the "Update" screens relative to all others, excepting for Screen 3 "Case Assignment History", which updates automatically from the other screens. With the Screen 3 "Case Assignment History" it is important to insure that all pages are provided and all assignments are displayed. Generally there are two and sometimes three pages relative to full disclosure of the AIMS Screen 3 content.

Note: Keep in mind the "Update" screens, as provided by the Crown, may contain false evidence. "Update" screens are easily altered to show incorrect dates and assignment status. Such false information can be enter into an open "Update" screen, printed off for the evidence case file, but not force saved. When these false screens are closed without being force saved the data reverts back to original data status.

6. **Disclosure request…**specifically for a print-off of the **AIMS Screen 1 "DOWN SCREEN CASE"** for the respective Case Number. This should result in the complete print-off of all screens under a particular Case Number.

7. **Disclosure Request...Audit Case Management System (ACMS)...**
   A new computer tracking system developing within the V&E AIMS audit sectors called the Audit Case Management System (ACMS). This system identifies a client with a Case Number that typically starts with the letters AV----.

   It is suggested that the Agency has realized they had to create a new Case Numbered administrative audit system in order to give the appearance of separation from the AIMS system and the AIMS Case Number that identified the "interior" AIMS Audit Groups as a programmed element linked to the investigation process.

   This new ACMS tracking system, seemingly detached from the AIMS investigation process, is essentially doing exactly the same scope of evidence collection to facilitate the initial stages of the preliminary investigation with the objective of making referrals to investigation. Basically, the Agency's boiler-plate investigation activities have essentially remained the same with the exception that now it is the ACMS being introduced as the purported "audit" function acting as a firewall in perception only.

   The weak link in the ACMS illusion is that all the time charged to the new ACMS Case Number must now be accounted for as part of the entire prosecution effort. Therefore, all the time charged under the ACMS Case Number connects to all the time charged under the AIMS Case Number, which is then combined within the accounting systems to arrive at the total costs associated to a particular investigation project with prosecution intent.

   Within the ACMS there are categories identified as "High Risk" that involve noted "Risk Levels" such as "Risk 1." This a new area of disclosure that requires definition of the terminology in order to develop a well rounded understanding of the ACMS, it is therefore important to request full disclosure of all the manuals associated to the operation of the ACMS as well as the accounting features, which link to the AIMS.

8. **Disclosure request…**for **TIME SHEETS…Very important disclosure**…Request original hand written **"Time Sheets"** of the specific operatives. RC500 and/or the newer RC509 version Time/Regular Activity Records including "Extra Duty Records"

combined with the Records from all Work Sections the specific officer may have recorded time under.

Note: With respect to Time Sheets you will find in the Investigation Manual under Section 24 Activity Time Reporting and Case Stages, every officer including management is required to charge their time to what maybe called an **Activity Code (AC)** or **Activity Time (AT)**. For example, when an officer is involved in an investigation stage code **680** is the required Time Sheet entry along with the respective Case Number. Code **690** is a SEP Audit entry, which is also associated with a Case Number and code **050** identifies the officer attended a meeting.

In respect to the "Case First Assigned" officers relative to the **AIMS Stage 0** activities involving "T134 Referral/Workload Development". We are told these officers are required to enter their time charged under Code **694** not linked to a Case Number. This situation is questionable simply because it is contrary to proper accounting practice especially when the Stage 0 activities can run over months and even years.
This situation suggests there is an obscured (backdoor) accounting connection that consolidates the Stage 0 expenditure of time with the respective Case Number. Certainly, when the Stage 0 is underway a Case has been opened in AIMS and a Case Number is available. This area of accounting requires additional examination of Finance and Administration personnel.

9. **Disclosure request...**the AIMS system contains a number of **"Programs"** and **"Sub Programs"** that act as the information/evidence gathering mechanism substituting for the Preliminary Investigation. The particular Program Types will be first noted on the AIMS Screen 1. It is important to request full disclosure in regard to <u>all</u> the "training course information" relative to the entire range of "Program Types" being utilized. Certainly, the simple act of selecting a "Program Type" does not necessarily make it an audit when the Agency's investigation sectors know these "Programs" are specifically designed to function as the preliminary investigation directed at evidence gathering. Only within the original training materials will the actual function be exposed in order to correctly decipher the predominant purpose through witness examination.

   It would be important to examine the purported auditor under oath...if he or she has ever been involved with taking an investigation training course and if so was it any of the ones previously noted. Certainly the Enforcement AIMS Contacts Training 2008 or 2010 (TD1304-000) as later discussed under #20, touches on some of the "Programs" and "Sub Programs" currently being used. This is an area in perpetual change.

10. **Disclosure request…**for **"Resource Management and Statistics Directorate Reports"** in order to cross-check an officer's time sheet data. These reports are based on the week ending (Friday) totals of regular and overtime hours under various activity types, which includes the respective Case Numbers relative to a key time period.

Caution: These reports are subject to possible data alterations. Therefore each report should be derived from witness cross examinations and the comparative Time Sheets.

This disclosure request should involve each key officer who was involved in the Case, ie: The purported regulatory Verification and Enforcement (V&E) auditor(s), the V&E investigation officers and the V&E team leaders as well as local V&E department managers. You will find that most of these individuals, with the exception of actual regulatory auditors and department heads, are typically stationed within Work Section 443. Work Section 443 is the primary V&E work section relative to the entire country. It is important to note that these former V&E sectors are amalgamating into what they are now calling "Enforcement" and "Compliance".

11. **Disclosure request…**for all weekly **"Case Progress Reports"** held on record, completed under **Activity Code 040 & 041** and entered in conjunction with the weekly Time Sheets. Disclosure of these weekly reports will provide the defence with the progressive "record" of investigation in respect to the *Jarvis, supra* factor (a).

    These two activity codes respectively involve: **"Case Progress Reports and Statistics"** and **"Manuals, Instructions and Branch Letters"**, which relate to the Investigation Project. In examination, these time codes will lead to relevant evidence regarding "Case Reports" that few are aware they even existence.

    This is weekly case progress reporting has evolved from the weekly reporting set out under T.O.M. 11(19)0 in respect to the former T20SI Management Information System (ESSI). According to T.O.M. 9690.1(1) the former weekly reporting/tracking system has been integrated into the redesigned AIMS.

    While the Agency purports AIMS as being an acronym for "Audit Information Management System" it is suggested the title is more accurately reflective as an Audit Investigation Management System, which is in accordance to the former T20SI Management Information System (ESSI).

12. **Disclosure request...**the **9690 Aims Inventory Input/Update/Browse Menu [3] – Supp (SI)** This 72 page document outlines the AIMS system as it was first applied to investigation tracking. It is a history document that discloses numerous AIMS procedures and understandings. It is a source of examination question examples regarding how it was handled at one time compared to questioning of how it is now being handled. It is also an important source of additional disclosure and procedural examination.

13. **Disclosure request…**print-off of all reports banked under the **"Platinum Reporting Facility (PRF)** & **Data Base 2 (DB2)**, within the Agency's electronic data bank systems. The AIMS system contains a reporting format interconnected with a Platinum Reporting

Facility (PRF) and Data Base 2 (DB2). There are as many as **20 pages** associated with this full disclosure request. There is a PRF "menu" to request that identifies all the data sections to choose from relative the subject Case and there is also **"Edit"** requests relative to these sections.

14. **Disclosure request…**for all contents of the **"Permanent Document Envelope" (PDE)**. In the PDE Copy 1 of the T134 is to be retained…see TOM 1142.2(2)(E)(c). The full extent of the contents should be addressed in cross examination, since current available evidence suggests the PDE is "surprisingly" subject to purging.

15. **Disclosure request…**for the **"Finance & Administration" Manuals** complete, regarding all Chapters starting at Chapter 1 and all Sections starting at Section 1 as well as all Sub-Sections.

- Ie: Chapter 1, Section 1 contains the Finance and Administration Manual "Policy";
- Ie: Chapter 2, Section 3 provides a listing of Activity Types by Functional Business Line Managers and Functional Program Cost Centre;
- Resource Management Volume;
- Time & Activity Recording (TAR) Policy and Recording Instructions.

Request...**The Finance & Administration Manual** schedule containing a complete listing of all **"Activity Codes"** is necessary to properly interpret employee Time Sheet coding and to determine any procedural anomalies in how other officers connected to the Case have charged their time and activity.

Request... **"Time Sheet Data - Report":** Is a report that provides details, by cost center, time and activity coding, work dates and number of hours. (See F&A Manual – Financial Administration Volume)

16. **Disclosure Request…Tax Operations Manual T.O.M. 11** on Disk
There is a CD current to the CCRA period that can be made available, however there are a few missing sections, most of which are available.
Note: The TOM 11 Investigations Policy and Procedure Manual have been replaced by the introduction of the **"Investigations Manual" (IM)** in the year 2000. Disclosure of this information is important to the defence in order to compare procedural circumstance in respect to seeing how certain procedures described in TOM 11 relate to current procedures. Often one will find the Agency will simply changes procedural names, yet for all intents and purposes the procedure remains and functions in a similar manner.

This name changing and perpetual alteration can be equated to changing the lock on the door. Change is a tactic used by the Agency uses to divert attention away from certain procedures. Often an Agency witness will simply state they cannot recall the former process, a state of wilful blindness. Basically the truism, "the more things change...the more things stay the same", is an appropriate understanding.

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

18. **Disclosure Request…**for a complete **"Investigation Manual" (IM)** including all "hyperlink" information regarding Tax Investigation, not related to Canada Customs, unless the defence case requires a Canada Customs issue. The IM has been prepared by the Agency in order to supersede TOM 11 Investigations. The Agency has realized that TOM 11 was too open in regard to the Agency's policy and procedure. So with more attention focused on the Agency's actions now-a-days it became necessary to discredit the relevancy of TOM 11 as not being representative of the Agency's current activity. It is suggested that TOM 11 is relevant in comparative situations...for example: it can be pointed out that this was the way it was handled under TOM 11...so explain how it is now being handled. As previously noted, "the more things change...the more things stay the same", forms the bases for undertakings and witness examination.

19. **Disclosure Request...** for the complete un-sanitized **Criminal Investigation Program (CIP)** on disk with "word search" including all "hyperlink" information material. Basically the Agency's staged audit/investigation process is formatted within this guidance program.

    Another program operated by the Agency's AIMS investigation groups is a Special Enforcement Program (SEP) dealing with the taxable proceeds of crime. This Program is clearly misleadingly in being professed as an audit program. SEP is strictly based on investigation intent and investigation activity...and would be best defined as an audit/investigation activity, not unlike the same audit/investigation procedure the Agency follows in regard to their Tax Avoidance or Tax Evasion actions.

20. **Disclosure Request…**for "word search" disk copies of the following **Investigations Training Courses** taken from TOM 11(18)0 not redacted in any manner:
    a. HQ maintains a library of slides illustrating fraud practices and audit techniques giving rise to detection.
    b. Special Investigations Orientation Training Course No.1301
    c. Special Investigations Initial Training Course No.1302
    d. Special Investigations Advanced Training Course No.1304
    e. Special Investigations Information Session No.1305
    f. Special Investigations First Line Supervisor Study Session No.1306

    This list of investigation course material set out in TOM was used well into 2000, which provides insight into the development investigation procedure. This material sets out the

investigation stages relative to the **Criminal Investigation Program (CIP)** and provides the defence with important information necessary to formulate witness examination. With this information a witness can be confronted with the specifics of their actions in respect to the Agency's investigation practice before and after.

With respect to the training course information, be sure to specifically request all the handout material provided to or accessed by the student investigators, including any video and screen presentations used in their training. Remember, you are in defence of criminal charges, therefore all relevant evidence must be disclosed and made available to the accused in accordance to the principles set out under *Stinchcombe*.

The Agency will submit that TOM related training material has been changed or is no longer available, as their typical standby excuse, which is suspect simply because this course material has involved a great deal of input cost, time and effort, to simply destroy and not use as reference material. Therefore, it suggested this information is achieved complete and you will be required to qualify your request to be provided proof with a **TF23** approval document form regarding storage or follow-up action.

21. **Disclosure Request…**for a complete **"Investigation Training Manual" HQ1301-000**
Note: This manual contains more resent training course material, which contains mention of the Agency's covert audit/investigative practice, *mens rea* inquiry, and evidence and information collection in respect to the Agency's preliminary investigation practice pertaining to two stages, the CIP Stage 0 (Workload Development) and CIP Stage 1 (Preliminary), which help to explain the Agency's typical investigation practice relative to cases that have evolved into a full scale prosecution initiated by the joint effort of the Agency's AIMS audit and investigation groups.

22. **Disclosure Request…**for a complete **"Investigation (Enforcement) AIMS Contacts Training" TD1304-000**

In the 2008 and 2010 AIMS Contacts Training Courses, defence will find an AIMS progression with regard to creating an AIMS Screen 1.

Exercise 1–Part 1...identifies that the student is working within the Criminal Investigation Program (CIP) when opening the AIMS Screen 1, which immediately contradicts the Agency's regulatory misrepresentations related to opening an AIMS Screen 1. Clearly, an AIMS Screen 1 can be initiated by special AIMS group officers provided with PIN access to the computer system, whether the officer is stationed in an AIMS audit group or the AIMS investigation group.

An important element contained in this AIMS Screen 1 progression is the data entry notation "**Audit Action**" described as an action "**to conduct preliminary investigation**." By following the training progression the **Exercise 1–Part 1** sample of AIMS Screen 1 goes to show this particular "**Audit Action**" code is "**01**".

It is suggested that the accused reference their AIMS Screen 1 "Add Case" disclosure, where it is likely the same "**Audit Action**" code "**01**" will be noted.
Also on the AIMS Screen 1 reference "Selection Reason", may also show code "**7000**" meaning "**Full investigation**" a condition that will apply in some instances.

This is a good example of why it is important for the defence to request the specific training course material disclosure along with training course code interpretations...this will assure the recipe of true code interpretation students are subject to in their training.

23. **Disclosure Request…**for a complete **"Senior Investigator Information Session" TD1305-000** Be sure to request the handout material provided senior investigators and follow up on examining team leaders and management personnel connected to the Case in respect to the content of this training class.

24. **Disclosure Request…*voir dire* witnesses...**This area of disclosure relates to gathering evidence from Agency witnesses, pre-trial. Often you will find that a defence trial will open with a *voir dire*, in order to determine the "Predominate Purpose" based on the Agency's "record" of their activities. The objective of the *voir dire* is to establish when an investigation commenced, which may result in the exclusion of certain Crown evidence under Section 24 of the *Charter*. In this respect it is important to understand that under a *voir dire* the Agency witnesses is to be called by the defence and are deemed defence witnesses (Examination in Chief). Therefore, since these witnesses are effectively defence witnesses, defence counsel is entitled to interview them prior to calling them to the stand. Defence should insist on unsupervised pre-trial access to interview the *voir dire* defence witnesses.

25. **Disclosure Request…**In order to rebut Crown's likely argument regarding "local procedures", defence must show that all TSO are required to comply with universal policy and procedure as outlined in the various manuals. In order to accomplish this, it may be necessary to request the Crown provide the names and contact particulars of former Agency employees who have retired or have resigned from the local and regional TSO within the last few years. By this it will be possible to prove that all TSO are bound by universal policy and procedure across Canada and are not free to make up their own policy and procedure on their own.

26. **Disclosure Request…ACSES Diaries** for the full period in question. These diaries relate to audit and collection activities. These actions will adjust or will align to certain investigation requests and inquiries that will disclose certain activity dates that suggest investigation intent. Again, this information forms part of the necessary "record" recognized under *Jarvis*. There are three categories of diaries to be requested: Payroll, GST and Corporate.

27. **Disclosure Request…Log of Action** is a computer-tracking program "record" relative to activities that involve audit/investigation and collection activities. In this schedule of activities, look for **"1B High Risk"** actions. Typically this type of action is a forerunner to being set up in AIMS, it will go to support the initiation period regarding an official criminal investigation.

28. **Disclosure Request..."Notepad"** There are <u>two types</u> of "Notepad" entries to request from the Audit Case Management System (ACMS): The "Notepad" general utilization version (formally the Log of Action) and the "Notepad" (private) version. The Notepad (private) version can only be viewed by those with access to the AIMS Case. It is important to request both "Notepad" versions and match the respective Activity Code/Time Code entered by the officer in their timesheets.

29. **Disclosure Request…**have the Crown provide at least 2 **"Expert Witnesses"** for each specialized area, as follows:

- AIMS (local "Information Systems Administrator" and "HQ AIMS Group" member); -
- Finance & Administration;
- ACSES Diary relative to all business categories (GST, Payroll, Corporate);
- Assistant Director of Verification & Enforcement (ADVE).
- Audit Case Management System (ACMS)

Note: In order to able to examine the correct party familiar with the above divisions of operation it is important to insist that the Crown arrange to provide the proper CRA persons who can provide binding answers and information in respect to disclosure regarding the operation and intent of these respective divisions relative to the Case. It would be advantageous to insist on interviewing these persons prior to the *voir dire*. Should the Crown refuse to arrange to provide these expert division witnesses to explain how these divisions factor into the "record" of the Agency's activity, it will constitute as a nondisclosure issue affecting the defence Case. The defence is placed at a serious disadvantage by examining witnesses who are not familiar with the respective divisions.

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

As previously noted...CRA ATIP may reply with exemptions under Sections 16(1)(a) to (d) & 21(1) of the *Act*, which contains the following wording: *The head of a government institution may refuse to disclose records obtained or prepared in the course of <u>lawful investigations</u>, material pertaining to information relating to investigation techniques or plans for "lawful" investigations, the conduct of "lawful" investigations, the nature of a particular investigation, the identity of confidential source of information.*

When these section exemptions are used to withhold the requested information, the reply has effectively confirmed that <u>relevant evidence does in fact exist</u>. It is therefore extremely important this situation is included in the Disclosure Application assuring it

will come to the attention of the **Court.** The rights of the accused in a criminal trial, takes priority over any and all exemptions under the *Access to Information Act*, therefore the all of the requested material withheld must be disclosed.

As previously noted above, should review of the now disclosed information material expose the Agency had been acting in breach of *Charter* rights, argument can be made alleging the Agency was not entitled to cite exceptions under the *Act*, because the Agency knew their actions were not consistent with the conduct of a lawful investigation.

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

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

    A **Cost Center** spreadsheet is almost as good as Time Sheets, since they contain the officer's name, hours & dates worked, along with the Activity Code (A/C) of the work type done relative to a particular Case Numbered project. Remember, since Cost Center information is derived from a computer the data may be subject to alterations. Therefore, it is imperative to cross check with the respective Time Sheet to verify the entered data. The Agency's "investigation" activity requires the entry of Activity Code 680 identifying investigation work. This Activity Code can be found listed within the Finance and Administration Manual (F&A) (previously noted for disclosure) along with all the other activity codes used to identify work type. The current integrated computer system relative to time data entry is called the Corporate Administrative System (CAS).

    A typical **Cost Center** number will appear as: 1222**443**02, where the first four digits "1222" represent the TSO zone, ie. Regina Tax Service Office (TSO), the next three digits "443" represent the designated Work Section W/S and the following single digits "0" and "2" relate to the specific Group & Unit within the W/S. Every Agency employee is delegated to a specific home work section. However, employees are also seconded to other W/S, which will result in a secondary weekly Time Sheet record relative to that W/S. There may also be separate O/T sheets other than those entered in the basic weekly Time Sheets, which accounts for time up to the "weekending date" being Friday in all instances.

    Cost Centers function within the Agency's accounting computer system and the employees within the AIMS sectors (Verification and Enforcement Directorate) are also connected to a project Case Number/Link Code or Order Number and to an activity type, all of which forms an indispensable administrative investigation accounting in

accordance to the SCC recognition of the "record" in *Jarvis*...a disclosable accounting "record" that will always exist in one form or another.

Note, while there are numerous W/S within the Agency, the most common W/S under the AIMS operations is W/S 443, which universally pertains to those within the Verification & Enforcement Directorate involving the primary groups of: the Audit/Investigation groups (posing as an "Audit Group") and the UE Unit (posing as an "Audit Group"), in fact there was an earlier period when the Special Investigation Unit was also set up under W/S 443. Currently the primary W/S within Special Investigations is W/S 641, however there are variations.

32. **Disclosure Request…**the accused must be aware of the Agency's applied use of **"Anonymous Informants"**, especially Informants set out in the ITO since according to the Criminal Code S. 487 Annotations a deemed reliable informant can be used as grounds in the ITO.
The accused must specifically request disclosure of the data bank referred to as... **"Retrieve Informant's Lead"** relative to each Informant. Should any of the circumstance regarding the Informant lead be questionable, for example, is there a close relationship in timing between the Informant and the date of the warrant?
In addition, check the sequence of the "Informant lead" ID number, since these numbers are computer generated. You may find that the Informant Lead ID number will show up on the T133A (Investigations Lead) form.

It is submitted that the Agency is not beyond fabricating and embellishing **Informant** leads. It is suggested this action is a common prosecution tactic used by the Agency to bolster a weak prosecution case. In order to better ensure an ITO will be issued, additional grounds are portrayed and introduced by way of an **Anonymous Informant**, which is a action overseen and approved by the Agency's Head Office in Ottawa.

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

It is submitted that the Crown, knowingly participates in this **Informant** embellishment by applying **"Informant Privilege"** to obstruct the disclosure of the Informant and prevent disclosure of certain information that may be helpful to the defence Case. Accordingly Informant Privilege is permitted in order to prevent any connection that may result in exposing the name of the Informant, which effectively diverts attention away from the fabrication or embellishment of the Informant that would jeopardize the legitimacy of the warrant.

This situation falls into the category of: "If they can...they will" and the extent of this practice is yet to be properly determined. It is therefore important that defence specifically request the trial judge to review all the "Anonymous Informants" subject to

"Informant Privilege" to ensure that each Informant is at arm's length and verifiable in all respects.

The very concealment of a material witness Informant may jeopardize trial fairness, therefore while it is at the discretion of the trial judge to review the Informants there is an underlying obligation to review the Informants to determine if there is any affect whatsoever on the ability of accused to make full answer in defence.

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

33. **Disclosure Request…**In the course of the trial the Crown will offer their explanation for nondisclosure, claiming the retention period of a document has expired and the subject evidence has now been destroyed. In this circumstance is important to know, that for any record to be destroyed, **Form TF23**, "*Request for Records Storage and Follow-up Action"*, must be prepared signed by an authority, manager or director responsible for the records. Therefore, a duly completed Form TF23 must be disclosed as proof regarding evidence storage or destruction, which the Crown must disclose.

    According to the retention and destruction of Investigation files TOM 11(16)(15) all evidence records relevant to the case must be retained for 10 calendar years after the case closed and after all appeals have been finalized. Interestingly there is a variation in policy regarding the number of holding years. However with any ongoing case all evidence must be retained and disclosed to the defence, otherwise the Crown is condoning the destruction of evidence, the remedy of which is a motion to dismiss the Crown's case.

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

Disclosure Request…

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

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

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

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

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

35. **Disclosure Request…** for **"Notebook Disclosure"**
This maybe the best kept secret by the Agency. Certain testimony has mentioned a "running diary" and interestingly new evidence contained within the Special Investigations Manual, also called the GST Investigations Manual, discloses that the AIMS officer (audit or investigation) assigned to a case are provided with "Notebooks" to document case progress, which is similar to police officers.
Certainly the fact that these "Notebooks" exist but have never been introduced in any trial is proof of the Agency's covert investigation nature. These "Notebook" records are relevant evidence that the Crown has knowingly failed to disclosure.

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

Section Notes:

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

36. **Disclosure Request…**for **"Intelligence Reports"**, which are an extension or elaboration of the officer's **"notebook"**, using the memos to file and the "Operational Report"

a. All "*Intelligence Reports*" are to be stored within a secured room or in a locked cabinet within the Investigations area.
b. All files related to case before the courts are to be retained and reviewed every six months until the case has been concluded.

c. Disclosure Request…full disclosure description of all "**Position Codes**" relative to intelligence reports. Ie: E01. E02, E10, E11, E20, E30, E40, E50, E60, E61, E70, E71, E72, E80, E99…etc.

37. **Disclosure Request…**for a complete **"GST Investigations Manual"** in accordance to the Investigations Training Manual (HQ1301-000, 03-1996 page 6-6) there is a manual specifically referred to as the **"GST Investigations Manual"**.
The type of Manual received to date is entitled "Special Investigations Policy and Procedures Manual" issued December 2, 1991 with some revisions done in 1993. It is uncertain whether this is the referenced "GST Investigations Manual", because there is nothing in the Index that specifically pertains to GST. Further, the Index lists sections that are not included in the 590 pages of material, to the extent that it appears the Index was drawn from a different Manual version. Certainly this Manual requires further research and explanation as part of a disclosure application request by the defence.

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

39. **Disclosure Request... "Case First Assigned":** This disclosure request emphasises the importance of demanding all the AIMS screens, which contain the case administrative and accounting details relevant to those subjects identified and tracked by a Case Number. On the AIMS Screen 3, Case Assignment History (Page 2), one of the opening assignment entries, after "Case Initiation" entry is "Case First Assigned."
This entry identifies <u>who was first assigned to your Case</u> after the AIMS Case has been opened creating your unique Case Number. Remember, a Case Number associated with your Case means you are effectively under criminal investigation, which may or may not come to fruition.

A demand for disclosure regarding all particulars, work scope and objectives regarding the intent and purpose of this first assigned officer, should result in the predominate purpose description as follows:
"The Workload Development Stage 0 starts when the subject is identified. This Stage ends when it is decided that further action by the Criminal Investigation Division is not warranted or the case is accepted and advanced to Preliminary Investigation."
Note: Keep in mind that the overall "<u>Preliminary Investigation</u>" process is inclusive of both Stage 0 and Stage 1 investigation actions.

The description should continue stating:

"When the case is accepted for a preliminary investigation, the case will be assigned (Case First Assigned) to an officer to conduct more in depth review."
Clearly, the "First Case Assigned" officer is therefore into the Preliminary Investigation process. Generally, you will find this position is the intentionally misleading "referring auditor" relative to your Case. You will find this officer will have provided most if not all of the evidence data relative to the ITO for a search warrant.

Xxxxxx

"Predominate Purpose"...Notes:

The assignment of a **"Case Number"** is the administrative/accounting demarcation regarding a decision to investigate with the intent to prosecute. A **"Case Number"** is automatically generated when the subject is screened into the AIMS computer tracking programming, which is the current computer system that has replaced the former T20SI Special Investigations Information System (ENIS).

AIMS (Audit Information Management System), is primarily a criminal investigation progress tracking program containing very little if any actual audit data. The system's name is intentionally misleading when on the Index, the opening AIMS Screen is "Screen 0" **Investigation Leads**, which clearly establishes the systems investigation intent. Interestingly, Screen 0 has recently been labeled "Enforcement Leads", which is an enhancement to improve the misleading character of the system. Still, defence would want to enter the before and after along with asking what the difference is. The fact that defence can show the opening AIMS screen is associated with "investigation" is evidence that can quickly make the Case in defence once the date is established when the Case Number was generated from the next AIMS Screen 1.

All the Preliminary Investigation Stage 0 and Stage 1 "work" is handled by officers identified as an "Auditor" acting in either an "Audit" or "Tax Avoidance" (TA) AIMS sector.
This is done intentionally, as a distraction, since both are actually acting as "Enforcement Services Officers (ESO)" and both are typically working out of Work Section W/S 443, which is under the Verifications & Enforcement Directorate.
These assigned officers are set up under a **"Program Type" & "Sub Program"** that interestingly cross-references to a specific **"Investigation Type"**.

Most of these **"Programs Types"** and **"Investigation Types"** are outlined within the **AIMS Online Manual**, while the scheme of the investigation stages is found under the **Criminal Investigations Program (CIP)** and the **AIMS Online Manual.**

The Preliminary Investigation comprises of both the Stage 0 and Stage 1, which will involve the collection of information and the *mens rea* by a professed "auditor", noted as the first assigned to the Case in the AIMS Screen 3 Case Assignment History. The typical "referral" to investigations that follows is actually a referral to the Stage 2 Investigation, which is a "smoke & mirrors" referral, done to mislead the courts into believing this "referral" identifies the separation between a regulatory audit and a criminal investigation. Instead, this referral is an investigation progression in accordance to the Criminal Investigations Program (CIP). The terms "audit" and "auditor" is intentionally left undefined in order to create a regulatory process presumption.

In order to challenge this presumption the court must be provided with evidence derived from disclosure of the "record" and "the totality of the circumstances" that exposes the intent of the "audit" and "auditor" in respect to facilitating the "preliminary investigation" stages 0 and 1, supplemented with the disclosure of the activity coding, work description profiles and training of the first assigned officer (auditor).

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

Disclosure is paramount in tax evasion cases where the *Charter* is often the only line of defence open to the accused. The Supreme Court of Canada in the cases *Jarvis* and *Ling* clearly establish the **"record"** and **"the totality of the circumstances"** are necessary factors in the determination of **"Predominant Purpose"**, which when coupled with *R. v. Stinchcombe* [1991] 3 SCR 326 and the more recent *R. v. McNeil* [2009] 1 SCR 66 seminal case law governing disclosure practice, the accused is now armed and dangerous with the necessary tools to pursue relevant disclosure in full answer in defence.

The **"Defence Disclosure List"** in this material, exposes the esoteric systems within the administrative and accounting facets of the Agency's investigation sectors, where "the record" and "the totality of the circumstances" regarding their criminal investigation actions and intent to prosecute is located.

Persistence and tenacity in demanding full disclosure of "the record" and "the totality of the circumstances" becomes a critical element to the accused.

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

SUPPLEMENTAL CASE LAW

The main legal principles applied to the disclosure of information in criminal matters were set down by the Supreme Court of Canada in the landmark case of ***R. v. Stinchcombe,*** [1991] 2 S.C.R. 326 and have since been elaborated and applied in numerous subsequent cases. More recently ***R. v. McNeil*** [2009] 1 SCR 66 reinforced the principles.
In ***R. v. Taillefer*** and ***R.v. Duguay*** [2003] 3 S.C.R. 307, where Mr. Justice LeBel reiterated the key principles as follows:

The rules may be summarized in a few statements. The Crown must disclose all relevant information to the accused, whether inculpatory or exculpatory, subject to the exercise of the Crown's discretion to refuse to disclose

information that is privileged or plainly irrelevant. Relevance must be assessed in relation both to the charge itself and to the reasonable possible defences. The relevant information must be disclosed whether or not the Crown intends to introduce it in evidence, before election or plea… [p. 334]

As the courts have defined it, the concept of relevance favours the disclosure of evidence. Little information will be exempt from the duty that is imposed on the prosecution to disclose evidence. As this Court said in ***R.v. Dixon*** [1998] 1 S.C.R 244, "the threshold requirement for disclosure is set quite low…The Crown's duty to disclose is therefore triggered whenever there is a reasonable possibility of the information being useful to the accused in making full answer and defence" see also ***R.v. Chaplin*** [1995] 1 S.C.R. 727, at paragraphs 21, 26-27.
"While the Crown must err on the side of inclusion, it need not produce what is clearly irrelevant" (*Stinchcombe* p.339). [p. 334-5]

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

R. v. O'Connor [1995] 4 SCR 411
This case law is generally referenced and applied in respect to determining the relevancy of the disclosure requested by the accused.

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

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

The above witness testimony failed to mention that the SEP programs are specifically addressed in the **AIMS Online Manual** (see Defence Disclosure List) as a "Program Type" matched to a corresponding "Investigation Type."

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

The witness neglected to advise that the Preliminary Investigation Stage 0 and Stage 1 are facilitated in the guise of an audit and that the evidence and information gathered is transferred

as a "referral" to the Stage 2 Investigations, where this compilation of information is generally sufficient to services the preparation ITO without any additional investigation activity.

The witness fails to advise that CRA and their predecessors have devised a proprietary program used to camouflage the Preliminary Investigation Stage 0 and Stage 1 activity as an audit performed by auditors.

By not volunteering disclosure regarding the Agency's administrative and accounting procedure this witness typifies the **"exclusionary style"** of testimony practiced by Agency witnesses, which the "**Defence Disclosure List"** is intended to overcome by educating defence teams in respect to the scope of relevant evidence that is available for disclosure in order to improve cross examination. The old adage prevails…"Don't ask the question if you don't know the answer". Therefore, get the answer by knowing what to request in full disclosure.

R. v. Hurly 2010 SCC 18, [2010] 1 SCR 637
This case addresses "fresh evidence" that has come to the attention of the accused wishing to introduce it into appeal proceedings, which the defence believes could have affected the result. It is likely a fifth point could be added to the Palmer list...was the subject fresh evidence due to the Crown's (ongoing) nondisclosure practice.
This case follows the testing criteria a set out in: *Palmer v. The Queen* [1980] 1 SCR 759 and *R. v. Taillefer* 2003 SCC 70, 2003 SCC 70, [2003] 3 SCR 307 (para.74), which outline 4 conditions the new evidence must meet:

- The evidence should not be generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases...;
- The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial;
- The evidence must be credible in the sense that it is reasonably capable of belief, and;
- It must be such that if believed it could be reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

The Whistle Blower's Document "Predominate Purpose" is intended to expose the covert and misleading prosecution practices by the internal AIMS Investigation/Enforcement sectors within the Canada Revenue Agency (CRA), formerly Canada Customs and Revenue Agency (CCRA) and Revenue Canada (RC). This information package has been compiled with the specific intent of undermining this organization through disclosure and in so doing expose the Crown's negligence and lack of professional behaviour.

In order to accomplish this objective, defence in pre-trial disclosure submissions and throughout the trial must become armed with a wide range of investigation processes and procedure knowledge relevant to the *Jarvis* "record" and "the totality of the circumstances." It becomes obvious that disclosure from this sector of the Agency thrives on complexity and specializes on

the creation of a plethora of esoteric procedures that could easily unfold indefinitely (disclosure begets disclosure), all of which is relevant. Therefore, the Crown becomes hesitate in opening this Pandora's Box knowing it will result in new case law imposing significant disclosure liability on the Crown and on the Agency. Certainly, the defence cannot be blamed for the scope of disclosure. It is a bed of interconnecting investigation cover up practices that the Agency with the help of the Crown has made. Therefore, it is reasonable that they are the ones to lay in it as the dust settles where it may.

Please help with the objective of this document by distributing it to all first line defence lawyers/teams and those subjects under attack

Feel free in contacting the undersigned with any questions you may have. We are pleased to assist in any way possible and interested learning more about your specific experiences and circumstances. Certainly, let us know how the information in this Document has affected your Case in respect to your greater awareness and evidence Disclosure Applications.

Until the entire tax regimes are properly discredited and dismantled from both Canada and the USA, there will be ongoing new procedures and new evidence discovered that will require revision updates from time to time regarding this...

"Whistleblower's Document"

Clint A. Kimery
682 Adams Street
Regina, Saskatchewan
S4N 6R8
gunner@accesscomm.ca
1(306)775-2626