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Our File No.: 35635-0001

November 9, 2015

VIA E-MAIL

Department of Justice Canada
900-840 Howe Street
Vancouver BC V6Z 2S9

**Attention: Donnaree Nygard
Michael Taylor and Oliver Pulleyblank**

Dear Sirs/Madam:

**Re: *Hillis et al. v. AGC et al.*
Federal Court File No. T-1736-14**

As you know, as a result of the federal election held on October 19, 2015, a new federal government – a Liberal majority government led by Prime Minister Justin Trudeau – has taken office. Members of the new government have on numerous occasions expressed significant concerns regarding the impact of FATCA, in particular with respect to the privacy interests of Canadians. Many of the concerns they have raised are the same or consistent with the issues the plaintiffs have identified in this litigation.

For example:

- In a June 4, 2014 National Post op-ed titled “An Attack On Our Privacy”, Liberal Revenue Critic Emmanuel Dubourg wrote that “[w]e must deny the Conservatives permission to allow the transmission of personal information [to the United States] without the authorization of a judge, under the pretense of combating tax evasion.”
- In the House of Commons on April 8, 2014, Liberal MP Hedy Fry stated that the IGA and the Impugned Provisions raise “concerns about privacy and sovereignty.”
- In the House of Commons on April 28, 2014, then Liberal Foreign Affairs Critic Marc Garneau stated that he “and the Liberal Party of Canada have strong and profound disagreements with FATCA and its implementation, particularly as it infringes on privacy rights and the charter, forces the Canada Revenue Agency to do the IRS’ dirty work, and infringes upon our sovereignty”.
- On June 4, 2014 in the House of Commons Mr. Garneau called FATCA “an attack on our privacy.”

- In a June 25, 2015 letter to Lynne Swanson, Mr. Trudeau stated that “[t]he Liberal Party of Canada believes that the Conservative government’s efforts to safeguard the personal privacy of Canadians have been inadequate.” Mr. Trudeau also confirmed the responsibility of the Canadian government to protect the rights of Canadian citizens from foreign governments: “The Government of Canada has a responsibility to stand up for its citizens when foreign governments are encroaching on their rights.” For your convenience, a copy of Mr. Trudeau’s letter to Ms. Swanson is enclosed with this letter.

Further, Liberal Party members have questioned the constitutional validity of the Impugned Provisions, which the plaintiffs are challenging in this litigation:

- In the House of Commons on April 8, 2014, Liberal MP Hedy Fry stated that “Constitutional law experts have been saying that this agreement violates the Charter of Rights and Freedoms, yet no one was consulted.”
- An August 26, 2015 entry on the website for Liberal Candidate (and now elected MP) Darrell Samson states that the Liberal Party has “concerns that the agreement reached with the U.S. may not stand up to a Constitutional challenge given that it forces the banks to treat clients differently based on their national origin, something forbidden by Section 15 of the Charter of Rights and Freedoms.”¹

Also like the plaintiffs, Liberal Party members have expressed the concern that the Impugned Provisions violate s. 241 of the *Income Tax Act*. For example, in the June 4, 2014 National Post op-ed by Liberal Revenue Critic Emmanuel Dubourg, referred to above, Mr. Dubourg states as follows:

The largest assault by the Conservatives against personal information came in the form of Bill C-31, the omnibus budget implementation bill. This bill would amend the Income Tax Act, allowing an officer of the CRA to provide confidential information to domestic or foreign police organizations. This breach of Canadian tax secrecy is dangerous. Under this act, an official could unilaterally disclose confidential information, regardless of whether criminal proceedings had been initiated.

Section 241 of the current Tax Act is clear: “Except as authorized by this Article, a) no official or other representative of a government entity may knowingly provide any confidential information to any person or knowingly permit the service; b) knowingly allow any person to have access to confidential information.” Instances when officials can provide confidential information are clearly stated in the law, or they can do so with the authorization of a judge. This is the way it should be.

Further, an October 11, 2011 entry on the website of then Deputy Liberal Leader Ralph Goodale (now Minister of Public Safety), titled “Fighting the ‘Long Arm’ of the U.S. Tax Man”, is consistent with the plaintiffs’ contention that Canada is not a tax haven, and that on this and other bases the information to

¹ <https://darrellsamson.liberal.ca/liberal-party-position-on-u-s-foreign-account-tax-compliance-act-fatca/>

be shared by Canada with the United States pursuant to the Impugned Provisions does not meet the “may be relevant” standard mandated by Article XXVII of the Canada-US Tax Treaty:

After all, Canada is not some illicit tax haven. We don’t condone or encourage improper evasion schemes. Our own domestic tax laws are enforced effectively. And we have elaborate treaties with other countries, including the United States, on taxation issues

...

Our government must stand shoulder-to-shoulder with innocent citizens and taxpayers – to inform and assist them in fending-off abusive American tax enforcement proceedings.²

Finally, Mr. Trudeau himself stated in the aforementioned June 25, 2015 letter to Ms. Swanson that the Liberal Party believes “that the deal reached between Canada and the U.S. is insufficient to protect the affected Canadians.” Our view is that this statement clearly reflects an intention to repeal or amend the relevant legislation so that it *does* sufficiently protect affected Canadians and the sovereignty of Canada.

Given that the incoming federal government has expressed serious concerns that are the same or similar to the issues raised by the plaintiffs in this litigation, the plaintiffs request that you forward this letter to the new Attorney General of Canada and Minister of Justice, the Honourable Jody Wilson-Raybould, and the new Minister of National Revenue, the Honourable Diane LeBouthillier, and advise us as soon as possible whether your instructions have changed in respect of the defence of the litigation, and/or whether our clients can expect that legislative or executive measures will be taken to obviate the need for this litigation. In the meantime, we are instructed to ensure that the trial of the constitutional issues not addressed in the Summary Trial not be delayed such that a decision can be rendered prior to the next scheduled exchange of information on or before September 2016.

To that end, please provide your completed list of documents as soon as possible, and in any event no later than November 30, 2015.

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per:



Joseph J. Arvay, Q.C. *

* A Law Corporation

JJA/amb
Encl.

² <http://ralphgoodale.ca/blog/fighting-the-long-arm-of-the-u-s-tax-man/>



Justin P.J. Trudeau

COPY

Leader of the Liberal Party of Canada
Chef du Parti libéral du Canada

June 25th, 2015

Lynne Swanson
Alliance for the Defence of Canadian Sovereignty
283 College Street
P.O. Box 67678
Toronto, ON M5T 3M1

Dear Ms. Swanson,

Thank you for taking the time to write to me with your concerns regarding the Foreign Account Tax Compliance Act (FATCA).

The safeguarding of personal privacy has become an increasingly important issue to all Canadians. The government's move to ensure that information is reported to the U.S. through the Canada Revenue Agency (CRA) and not directly from banks was a positive step; however, the implications of having the CRA report to a foreign government agency about Canadian citizens are still troublesome. The Liberal Party of Canada believes that the Conservative government's efforts to safeguard the personal privacy of Canadians have been inadequate.

While the United States has the right to target tax evaders using offshore accounts, targeting hard working Canadians who pay taxes is unfair. The Government of Canada has a responsibility to stand up for its citizens when foreign governments are encroaching on their rights. We believe that the deal reached between Canada and the U.S. is insufficient to protect affected Canadians.

Thank you once again for writing to me; I always appreciate it when Canadians take the time to share their concerns with me. It is through such exchanges of ideas and opinions that I can best represent not only my constituents, but all Canadians.

Sincerely,

Justin P. J. Trudeau
Member of Parliament for Papineau

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