


Ten Things to Know About  
**DRAFTING EFFECTIVE  
 NOTICES OF OBJECTION**

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Road Map 

**The Paper**

**10 Key Points @ 5 Minutes / Topic**  
 (Whether it Kills Me or Not)

**Questions**

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**Where's the &\$!% Paper ?**

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**Paper**

- Good technical stuff on Federal & Provincial Rules
- Stuff on Evidence, Burdens, Reverse Onuses
- Practical Approach for Effective Drafting Techniques
- **Focus of Presentation:**  
 10 Things I Think Worth Noting

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**Assumptions & Premises**

- Proper legal research completed by YOU
- Key issues identified by YOU.  
*i.e., Professional Judgment Brought to Bear*
- My focus: An approach for Effective Drafting  
*Not the only way ... just our way!*

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**Misidentification of Issues  
 will get you sued.**

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## Issue Identification

- Notices of Objection to identify ALL Issues where:
  - Specified Person filing GST Appeal
  - Large Corporation filing Income Tax appeal
  - Anyone filing Ontario RST Appeal
- Developing Jurisprudence

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## 301. (1) Meaning of "specified person" —

- (1) Where an assessment is issued to a person in respect of net tax ... an amount ... payable or remittable by the person ... or a rebate ...
- (a) the person was a **listed financial institution** described in any of subparagraphs 149(1)(a)(i) to (x) during that reporting period; or
- (b) the person was not a charity during that reporting period and the person's **threshold amounts**, determined in accordance with subsection 249(1), **exceed \$6 million** for both the person's fiscal year that includes the reporting period and the person's previous fiscal year.

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## 301. (1.2) Issue to be decided —

- (1.2) Where a person objects to an assessment in respect of which the person is a **specified person**, the notice of objection **shall**
- (a) **reasonably describe each issue to be decided**;
- (b) specify in respect of each issue the relief sought, expressed as the change in any amount that is relevant for the purposes of the assessment; and
- (c) **provide the facts and reasons relied on by the person in respect of each issue**.

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## 301. (1.3) Late Compliance —

(1.3) Notwithstanding subsection (1.2), where a notice of objection filed by a person to whom that subsection applies **does not include the information required by paragraph (1.2)(b) or (c) in respect of an issue to be decided that is described in the notice**, the Minister may in writing request the person to provide the information, and those paragraphs shall be deemed to be complied with in respect of the issue if, within 60 days after the request is made, the person submits the information in writing to the Minister.

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## 306.1 (1) Limitation on appeals to Tax Court —

306.1 (1) Notwithstanding sections 302 and 306, where a person ... is a specified person ... the person may appeal to the Tax Court ... only with respect to

(a) an issue in respect of which the person has complied with subsection 301(1.2) in the notice, ...

and ... only with respect to the relief sought in respect of the issue as specified by the person in the notice.

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Developing Jurisprudence

- Potash – ITA Resource Allocation Case
- Telus – ETA “Due Diligence Case”
- BC Transit – ETA “ITC” Case

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**A tax dispute is *not* an afternoon tea party.**

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The Advisor as Advocate

- Tax Disputes involve an Adversarial Process
- Advisors are Advocates & entitled to advocate.
- Caveats:
  - The Facts cannot be untruthful or misleading
  - The Issues and Reasons must be supportable
- Advocating is an art & the Objection is your Picasso

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**“Where is this going?”**

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Know the Audience

- Destination of Tax Dispute affects Drafting Decisions
- Common Situations:
  - Small Files & “The Last Kick at the Can”
  - “The Incomplete Audit”
  - “The File that Requires Resources”
  - “The Stuck in the Mud at Appeals File”

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**The Facts,  
The Issue,  
The Reasons.**

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You never lose a case with good facts.

## The Facts. The Facts. The Facts.

- “The Facts” critical to success of a Tax Dispute
- Half our time (*and maybe more*) spent on “the Facts”
- Not just repeating the facts ... but “preparing” them

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Don't tell me the truth – just the facts.

## Example:

“ My business partner, the other director, was going through a nasty divorce in 1996. His boyfriend had us under a court order too. We couldn't deal with our line of credit. I wasn't paying that much attention because I was the silent partner, and he was both doing the operations, and handling the admin and finance.

I later bought him out, but now he's suing us.

During that time we filed all our GST returns, but not the amounts owing. I think on one return we misstated an ITC by \$1000.

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Anyhow, I asked my business partner about what was going on from time to time. I didn't always hear from him, but when I did, he never let on that there were any GST problems.

Man, was that a nasty divorce! I was drunk most of the time anyway, and when I wasn't drunk, I was too busy taking my executive M.B.A. course to worry about that company!

But this director's liability assessment has sure got my attention now !”

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## Evidence vs. Facts

- Drafter differentiates “Facts” from “Evidence”
- Requires further Drafting Decisions:
  - What is relevant or irrelevant ?
  - What is material and immaterial ?
  - What facts focus the legal issues and support the reasons?
- The drafter becomes a “filter”

## What I heard:

“ During the relevant period, the Company was generally fully compliant with its GST obligations, albeit failing to remit GST with certain of its GST returns.

***The Inside Director.*** The person charged with operational, financial and GST compliance was Mr. X, another director of the company (the “Inside Director”). Our client, Mr. A, was an outside director, with no access or control over GST matters, relying in good faith on the Inside Director.

***Reasonable Actions of Mr. A.*** Mr. A made appropriate inquiries of the Inside Director, but was at no time was advised of any GST non-compliance. His impression, at all times, was that the Company’s GST obligations were being properly met by the Inside Director. ”

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**Spin to win.**

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## Some Basic Strategies

- Effective use of:
  - Definitional Terms
  - Headings & Subheadings
- Development of “Results Oriented Reasoning”
  - Know the legal hurdles that must be met
  - Tailor your Facts accordingly

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## Some Basic Strategies

- Caveats:
  - As before: The Facts cannot be untruthful or misleading
  - Keep some semblance of objectivity: Over Spin no good
- Always Rub Client’s Nose in the Facts

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**In complex cases,  
regurgitating all you know  
is bad strategy –  
no matter how you spin it.**

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## Compartmentalizing Facts (& Issues)

- Reality:
  - Complex facts & issues distract decision-makers
  - Distracted decision-makers don’t overturn; they uphold
- Strategy:
  - Focus on Facts & Issues at Heart of Case
  - Simplify. Then simplify again.
  - Less *is* more.
  - Consistent Use of Words & Messages

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Great facts. Now prove them!

## Supporting Your Facts

- Evidentiary Requirements & Burdens
- Rules of Evidence
- Use of Documents
- Preservation of Documents

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Hey man ... that TCP is some good stuff !

## Text, Context, Purpose

- More attention to Principles of Statutory Construction
- *Canada Trustco*, focus on
  - Text - Dictionaries & Words Judicially Considered
  - Context - Related Legislative Provisions, Regulations
  - Purpose - Explanatory Notes, Hansard, Finance Reports
- Canons / Maxims of Construction

# 10

Some ad hoc  
Confessions from the  
School of Hard Knocks

## Final Pointers

- Read & understand the FRENCH version at the start.
- Note-up every case that you are relying on.
- Read voluminous agreements “stem to stern”.
- Don’t use all 30 pages, just because you can.

