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To: The Honourable Members of the Finance Committee

Thank you for the opportunity to make a submission regarding the FATCA IGA implementation portion of Bill C-31 (budget implementation).

I and other U.S. Persons in Canada* feel that **allowing implementation of this foreign law by Canadian law implemented in Bill C-31 will set a dangerous precedent of discrimination by national origin and loss of human rights for a segment of Canadians who will no longer have the same protection under the Canadian Charter of Rights and Freedoms as any other Canadians no matter their national origin or the national origin of their parents.**

- ***Many of these Canadians** chose to become naturalized Canadian citizens, for myself in 1975 — **they ARE Canadians.**

- ***Many of these Canadians** were born and raised in this country, never registered with the U.S., never lived or worked in the U.S., never had any benefit from the U.S. — only Canada. One of those (and many just like him) is my 40-year old son (and other Canadians) born in Canada to U.S. citizen parents. My son happens to have a developmental disability and, as he would not understand the concept of “citizenship” (as in U.S. citizenship-based taxation), he cannot renounce his so-called automatically acquired U.S. citizenship at a U.S. Consulate and further must not have the influence of anyone else to do so.

  The U.S. Department of State / U.S. Consulate regulation is also that for a person with a ‘mental incapacity’ (which would also include someone with age-related dementia), a parent, a guardian or a trustee for that person does not have the RIGHT to renounce U.S. citizenship on that person’s behalf, even with a court order. This segment of Canadians is ENTRAPPED into U.S. citizenship and will have, yearly, the responsibilities and cost of administration for U.S. tax returns and account reporting each year at great U.S. professional tax accounting (and often U.S. tax law) expense. **They ARE Canadians.**

- ***Many of these Canadians** were born in the U.S. to Canadian parents, returning to Canada as infants with their parents days later, or as children. **They have always been and what should only be - Canadians.**

Some people make things happen – the Government of Canada is making things happen too fast, without complete research and thought of consequences for the country and families and individuals by allowing U.S. extra-territorial law come into Canada.

Some people watch things happen – other unaware Canadians as this is not in any way in the media and has been negotiated and signed behind closed doors from the victims of this, Canadian families and individuals. Those deemed U.S. Persons in Canada – we watch in horror (although many, I am sure, still do not know this will affect them).

Most Canadians will then ask "What happened?" as the leaders of their country have allowed extra-territorial U.S. law take precedence over Canadian law, deeming a segment of the Canadian population second-class to any others by waiving their rights under the Canadian Charter of Rights and Freedoms. They then, too late, may wonder the next country to hunt for their former nationals in Canada.

That the government of Canada will not stand up to protect U.S. Person fellow Canadians is deplorable. Canada is saying a U.S. law takes precedence over their Canadian citizenship so they are second-class to any other Canadians, discrimination by “U.S.” national origin. The Harper government is saying Canada is no longer a SOVEREIGN country that makes its own law but allows the law of a foreign country to come in to take precedence over Canadian law.

The Government of Canada says it is U.S. law and Canadian Parliament cannot overturn it. The Government of Canada is allowing the United States to define what constitutes a “U.S. Person for taxation purposes.” It is U.S. law, but it should have no validity beyond their borders, that is without Canadian complicity.

There is no protection whatsoever for dual citizens (who are in Canada and under Canadian jurisdiction. Under international and Canadian law they are ONLY Canadian citizens) in the Agreement. The tax treaty does not permit the collection of taxes from such “dual citizens” by Canada on behalf of the United States, but Bill C-31will provide for the violation of their privacy and the transmission of their financial data to the U.S. against their wishes.

Renunciation is not an option for some due to draconian penalties the IRS would impose. Becoming “U.S. tax compliant” would drain financial resources of 1,000,000 +/- Canadians. The cost to the Canadian economy could be hundreds of billions of dollars.

My family's situation

Charlie Angus, MP said "Citizenship is something sacred." I agree for those not entrapped into it, with no way out, it may be. I renounced my U.S. citizenship (in fact was told decades ago I was losing it by becoming a Canadian citizen) as it was my CHOICE to become a Canadian citizen and that is what is sacred to me.

I believe that there should be a CLAIM to U.S. (or any other citizenship), never an automatic "gifting" of one. The U.S. also believes a U.S. citizenship is sacred and that it takes precedence over my son's citizenship by birth in Canada. My son and others like him with a 'mental incapacity' are entrapped into an extraneous U.S. citizenship with no way out, for any amount of money paid to any U.S. tax or immigration / nationality professional. My son, born in Canada, raised in Canada, never registered with the U.S., never had any benefit from the U.S., was automatically "gifted" his U.S. citizenship by his in Canada birth to two U.S. citizens. Canada is where my son has lived all of his 40 years. His *supposed* U.S. citizenship is extraneous. His family lives in Canada; it is his family and the Canadian and provincial governments of Canada who have provided his supports — not the U.S.A.

I hired a Washington, DC nationality / immigration lawyer to confirm my son's U.S. status and give possibilities for his renunciation. Result was that my children were U.S. citizens from the moment of their births. And, straight from the U.S. Department of State:

DOS persons he talked with have "sympathy" for such cases. However, the developmentally disabled person will have to have FULL understanding of what he's doing; if any question of lack of comprehension and grasping meaning and importance of ramifications, they could NOT approve such a case. **From DOS point of view, U.S. citizenship is precious. and they have therefore established fundamental requirements for "compelling reason". Even though there is the risk that a person's financial resources could run out before his/her life was over, they will never approve a renunciation for financial / economic reasons. DOS has NEVER had such a renunciation case approved due to "compelling circumstances".** Bottom line: "compelling reason" in their regulations is not helpful to my son's case. I could sue – **persons he talked with at DOS are SURE no one would ever win such a case as the courts view the discretionary action that DOS has would take precedence.**

Does it not make more sense that a second U.S. (or any other) citizenship be opted into, when there are facts that make that a possibility? With an opt-out only (as is now the case), those with a 'mental incapacity' (even age-related dementia) are entrapped as their parents, their guardians or their trustees cannot renounce U.S. citizenship on their behalf, even with a court order.

As this segment of the population, Canada's most vulnerable of U.S. Persons in Canada, who have no way to renounce U.S. citizenship and exit the U.S. system, surely

Canada needs to protect them. I am ashamed that Canada is betraying my son and the sons and daughters of other U.S. Person families. The banks and the CRA are moving closer and closer to human rights violations. "Identify relationships between one account holder to another to ensure that individuals who are subject to FATCA guidelines are also identified regarding the relationships to other customers as well." (My son's financial accounts, including his RDSP and TFSA, are HELD by me as his trustee. I have identified all of these accounts to the U.S. in my Foreign Bank Account Reports (FBARs – now referred to as FINCEN 114 Form). I am no longer a U.S. citizen as I have renounced, but I am the Holder of my son's RDSP so, unless my son is protected, there will always be a U.S. liability for what I am to leave for his care when I die.

I am operating under the assumption that my son needs to present himself at a consulate and present evidence that would support his claim to U.S. citizenship so it could be evaluated and a judgement made. Since the U.S. Government requires that he do this himself with no influence from another, and be aware of what he is claiming, technically, his right is a non-issue. He can't claim something he can't understand anymore than he could renounce it. I am not allowed to do either for him, so if the U.S. Government wants to come after him or me, first they have to mount a case to prove he is a citizen in the first place. I doubt they would bother. But, what will my local CANADIAN financial institution and what will the CRA do? If a financial institution wants to know his status, I will simply – and honestly– say that he isn't a U.S. citizen. He is a Canadian citizen, born and raised. It's a gamble and work-around to make me look like a criminal.

There will be other families like mine who won't know what I have determined I must do to try to protect my son. Will Canada protect these others? Others who have no extra energy to face something like this on top of dealing with having a family member with some disability? Such families also will not likely have extra savings they can pay to U.S. tax and accounting professionals to correctly do U.S. IRS Forms 3520 and 3520A for what the U.S. considers "foreign trusts" held in their local Canadian "foreign financial institutions".

What does Canada get in exchange for putting up with FATCA?

In general, what you get for signing an agreement to enforce FATCA is a pledge that the U.S. will do its best to share some of its information on your country's potential tax cheats. **Not a duty to reciprocate your efforts, but a "we'll try hard" promise. That's because the U.S. government does not, at the moment, have permission to force U.S. banks to share information with foreign governments.** That comes from Congress. It is right now faux promise.

Even worse for Canada, this country is the exception—the only country with which the U.S. has an automatic information-sharing agreement. Now, the trouble with FATCA is that it demands some new information: **not about the Canadian assets and incomes of people who live in the U.S. but about THE ASSETS AND INCOMES OF PEOPLE**

WHO LIVE IN CANADA BUT MIGHT HAVE TIES TO THE U.S. While Canadian taxation, thankfully, is based on residency—you owe the CRA if you've been living in Canada—the U.S. has started demanding that its citizens file taxes regardless of where they live.

Essentially, for U.S. Persons in Canada, especially citizens, and it should apply to Permanent Residents as well:

- We do not give a damn that the U.S. passed some law.
- We do not give a damn that the U.S. has CBT or RBT.
- **What we care about is how we are viewed as Canadian Citizens in Canada.**
- **Calling U.S. Dual or making U.S. hyphenated is questioning our loyalty. Calling U.S. "Americans who happen to reside in Canada" is the ultimate insult. It is clearly discriminatory and, in fact, VERY RACIST. What do you call Chinese who have become Canadian citizens? What do you call Mexicans who become Canadian citizens? What do you call Iranians who have become Canadian citizens, taken the Oath of Canadian Citizenship in good faith and honour?**

Please have a read of this in-depth article on U.S. harsh treatment of Canadian mutual funds as PFICs, mentions FATCA context, punitive and costly compliance costs, underscores uselessness/unfairness of the PFIC rules as applied to Canadian funds, needless punishment of those holding them, refers to the Canada-U.S. tax treaty, etc. Addresses outrageous compliance burden; costs in time, fees and information:

> *Stephanie Ray, Comment, Getting Caught Between the Borders: The Proposed Exemption of the Canadian Mutual Fund from the Passive Foreign Investment Company Rules, 37 Fordham Int'l L.J. 823 (2014)*
>
> http://fordhamilj.org/files/2014/04/Ray_FILJ_GettingCaught.pdf
> http://fordhamilj.org/articles/getting-caught-between-the-borders-the-proposed-exemption-of-the-canadian-mutual-fund-from-the-passive-foreign-investment-company-rules/
>
> See for example;
> "……With the onset of the Foreign Account Tax Compliance Act ("FATCA") in 2014, Canadian financial services companies are forced to disclose information on U.S. taxpayers to the IRS. This forced disclosure program will likely expose U.S. taxpayers residing in Canada who have not been filing Form 8621 to report PFIC holdings."
>
> "1. Outrageous Compliance Costs
> Requiring a PFIC owner to file Form 8621 is very time consuming and burdensome, even for U.S. tax specialists.146 The form instructions indicate that the estimated time to properly comply with the PFIC filing requirements is over thirty-one hours per PFIC.

> It is nearly impossible for the average PFIC investor to complete the form without incurring the added cost of consulting tax experts."

U.S. Persons in Canada are a *minority group*. The age group most hit by this is the over 40 years of age, coming up to retirement or already retired. We do what we can do now-- we protest any way we can or lawsuits… getting the message out to as many people we can… **to ensure our rights as Citizens of Canada… not as "dual" or whatever description**. To see this hidden in an omnibus bill makes U.S. wonder what other things will be done to violate our rights without U.S. knowing because it can be slipped into an omnibus bill.

I concur with this proposal that I and others are presenting for your consideration:

Canada could unilaterally amend the IGA via the implementation treaty with a simple "notwithstanding" clause to the effect of "Notwithstanding any other provision of this Act or the IGA, no Canadian citizen resident in Canada or other permanent resident of Canada shall be considered to be a "U.S. Person" for purposes of the Act or the IGA". The IGA would be unamended – the implementation Act would simply gut it of its Charter-violating aspect…

The Act is amended by inserting after subsection 4(1) thereof the following:

> "section 4 (1.1) Notwithstanding any other provision of this Act or the Agreement, for all purposes related to the implementation of this Act and the Agreement, "U.S. Person" and "Specified U.S. Person" shall not include any person who is a Canadian citizen or is a landed immigrant ordinarily resident in Canada."

That simple amendment, made to the implementing Act, would put the ball right back in Treasury's court. They can deem all Canadian financial institutions non-compliant and bring their own financial house of cards down about their own heads (as withholding, while possibly lawful in the U.S., will not excuse the withholder in any other jurisdiction, including Canada). It would take a positive act on the part of Treasury to blacklist the entire country. They would not be able to point to 10 cents of revenue that they would be seeking to protect in so doing. Further, as pointed out above, Canada would have more than enough fodder to retaliate in kind given the far larger magnitude of U.S. investments in Canada (most of which, unlike bank accounts, can't be moved overnight). All they would have to do is pretend that the IGA is compliant and drive on. It would be a brilliant move by the Government were they to allow themselves to be backed into it due to a serious Charter Challenge.

Opinion is that amendment would be best in the enabling law and not in the IGA because the enabling act can be amended in Parliament, but an IGA amendment would require Finance Canada to submit the revisions to U.S. Treasury for approval.

The Harper Conservatives and Finance Canada have been consistent in their unwillingness to listen to Canadians on this and many other issues. It is a government of MANAGEMENT, not of democracy.

Here is a suggested amendment to the FATCA enabling legislation and/or the IGA.

"Notwithstanding any other provision of this Act or the Agreement, for all purposes related to the implementation of this Act and the Agreement, "U.S. Person" and "Specified U.S. Person" shall not include any person who is a Canadian citizen or legal permanent resident who is ordinarily resident in Canada."

With a Conservative majority on the Finance Committee and in the House, I realize this amendment would be likely to fail. However, it may force Conservatives into voting against it, showing they clearly will not stand up for Canadian citizens and residents who were born in the United States.

CONSTITUTIONAL CHALLENGE

Alliance for the Defence of Canadian Sovereignty (ADCS)/L'Alliance pour la défense de la souveraineté canadienne (ADSC) is established in Canada/est créée au Canada

We have now incorporated a Canadian non-profit organization with Corporations Canada:

"Alliance for the Defence of Canadian Sovereignty (ADCS)/L'Alliance pour la défense de la souveraineté canadienne (ADSC)"

ADCS/ADSC is not affiliated with any other organization.

The present Board Directors are listed below. Other individuals critical in setting up ADCS/ADSC are Gwendolyn Brock, K. Badger, and many others. Lynne Swanson will chair the legal challenge committee.

The overall purpose of the Corporation is to defend Canadian sovereignty and protect all persons in Canada from the attempts of other countries to impose their "extra-territorial legislation" on Canada."

Its immediate objective is to fund a legal challenge to oppose changes in Canadian laws that would impose the U.S. FATCA law on all people in Canada.

Given that the Canadian government has extensive financial resources (courtesy of the taxpayers of Canada), significant monies need to be raised. We are counting on your support.

Stephen Kish (Chair)
John Richardson (co-Chair)
Patricia Moon (Secretary/Treasurer)
Carol Tapanila (Director)

About some of the persons involved:

Lynne Swanson will chair the Legal Challenge Committee. She has the website: http://maplesandbox.ca/ and here is the announcement there: http://maplesandbox.ca/2014/alliance-for-the-defence-of-canadian-sovereignty-adcslalliance-pour-la-defense-de-la-souverainete-canadienne-adsc-is-established-in-canadaest-creee-au-canada/.

John Richardson (Chair) and Dr. Stephen Kish (co-Chair) will be presenters at the May 2nd ACA (American Citizens Abroad) Debate / Forum at the University of Toronto: http://isaacbrocksociety.ca/2014/04/23/toronto-friday-may-2nd-forum-debate-on-cbt-citizenship-based-taxation-vs-rbt-residence-based-taxation/#more-28185.

FYI, here is a submission they made to the U.S. Senate Finance Committee: John Richardson, Willard Yates, Stephen Kish, Request for Tax Rules Changes for U.S. Citizens Overseas: Submission to the Senate Finance Committee, January 2014, http://citizenshipsolutions.ca/wp-content/uploads/2014/01/RichardsonYatesKishJan232014SFCSubmission.pdf.

Patricia Moon has been with Isaac Brock Society blog for U.S. Persons around the world since its inception, as have I, Carol Tapanila.

Here is a link to a recent article that I was interviewed for. (Many, many negative comments for this U.S. Associated Press article at yahoo.com – but some reasonable and thus. appreciated. It's a complex story to tell to someone within the U.S. The hateful comments from persons within the U.S. for persons choosing to come to Canada and raise their families here rather than the U.S. make one think of the McCarthy era): http://isaacbrocksociety.ca/2014/04/24/associated-press-adam-geller-interviews-persons-who-dont-fit-the-stereotype/.

Sincerely,

Carol L. Tapanila

Calgary, AB, Canada