
Taxonomizing Discretion:
An Analysis of Administrative Discretion in British Columbia's
Consumption Tax System

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EXECUTIVE SUMMARY

INTRODUCTION

British Columbia's four consumption tax statutes include a significant number of provisions that are explicitly discretionary in nature. These provisions allow administrators—the director and other administrators with powers delegated by the director—to make decisions that affect taxpayers. Discretionary powers of this type in tax legislation are a form of “structured uncertainty” (Pagone, 2009, p. 899).

This uncertainty gives rise to taxpayer needs for certainty or predictability and to administrative needs for resources and procedures to maintain a fair tax system. This need felt by administrators is reflected in the motivation for carrying out the practice-based research described by this paper: this research was undertaken to provide Jordan Goss, Executive Director of the Consumer Taxation Programs Branch, British Columbia Ministry of Finance, with a fulsome accounting of all of the discretionary provisions under her control as the director of British Columbia's consumption taxes.

The first objective of this research was to marry discretionary provisions with descriptions of the administrative policies that guide the exercise of those provisions. This exercise would identify ambiguity in policies, missing policies, and also flag cross-statute inconsistencies in administrative policy descriptions.

Secondarily, academic research on the phenomenon of administrative discretion was conducted in order to address the question of how best to manage administrative discretion within the consumption tax system. As part of this, the following questions were also addressed:

- What are the hazards associated with administrative discretion?
- How does openness in the exercise of discretion affect fairness?
- How can openness be achieved?
- What other methods are important to the management of administrative discretion?

This paper was prepared within the context of a background that includes a renewed focus on consumption taxes in British Columbia: the last decade has seen the introduction of a carbon tax (in 2008) and the disappearance (in 2010) and reappearance (in 2013) of the provincial sales tax.

METHODS

At a high level, the research project can be divided into (1) a literature review focused on administrative discretion and related topics, and (2) a qualitative study of British Columbia's consumption tax statutes and administrative policies related to those statutes (the “Client Study”).

The literature review was performed by identifying an initial pool of relevant sources and by leveraging the information and references in these sources to identify further avenues of inquiry. Inclusion and exclusion decisions were made with two considerations in mind. First, the breadth of the literature review was intended to include all topics frequently addressed in the general literature on administrative discretion. Second, a relevance lens was applied to this broad collection so as to emphasize the topics and sources most relevant to the study of administrative discretion in British Columbia's consumption tax system, and to deemphasize the topics and sources that are less relevant.

The Client Study was divided into four stages. In stage 1, a computer-assisted document analysis was conducted to identify all director-exercisable discretionary provisions in the consumption tax statutes and associated regulations. These provisions were recorded and coded to describe their function. In stage 2, a second computer-assisted

document analysis was performed to identify publicly-accessible administrative policies (i.e., those recorded in tax bulletins, manuals, notices, forms, web pages, and the *Tax Interpretation Manual*) corresponding to the provisions identified within stage 1. Any policies identified in stage 2 were coded for openness and clarity. In stage 3, a search for non-publicly-accessible administrative policies was undertaken for all provisions not matched to policies in stage 2. In stage 4, the data collected within the first three stages was sorted to group discretionary provisions such that equivalent or comparable provisions across the different consumption tax statutes would be associated with one another. These groupings were then analyzed to determine whether administrative policy descriptions were consistent or inconsistent across the statutes.

FINDINGS

The literature review determined that the primary hazard associated with administrative discretion is arbitrary or capricious decision-making of one form or another (Anisman, 1975, p. IV; Davis, 1969, p. 3; Galligan, 1986, pp. 143 & 155; Roberts, 1975, pp. 147-148). Openness, achieved through the selective use of various “structuring” information sources, was identified as a means of promoting justice as a hedge against arbitrariness; justice, in turn, is inextricably linked with fairness (Davis, pp. 24, 55, & 97; Rawls, 1958, p. 164). Besides structuring, the introduction of checks through oversight or through the provision of appeal rights is another means of managing administrative discretion (Davis, pp. 55, 142, & 144).

In stage 1 of the Client Study, British Columbia’s consumption tax statutes were found to contain 360 explicit director-exercisable discretionary provisions.¹ Stage 2 matched 263 of these provisions to administrative policy descriptions in publicly-accessible information sources. Of these 263 administrative policy descriptions, 146 were clear and 117 were ambiguous. In stage 3, the 97 provisions not previously matched with administrative policy descriptions were further analyzed, and 59 of them were matched with administrative policy descriptions from non-publicly-accessible sources. 38 provisions remained unmatched. It was determined that 27 of these had never been used, leaving a remainder of 11 in-use discretionary provisions for which no administrative policy descriptions could be found. The stage 4 review of cross-statute consistency determined that when equivalent or comparable provisions in different statutes are grouped, descriptions of administrative policies are at least somewhat inconsistent in 33% of those groupings.

In the context of the literature, the Client Study indicates that not all of the discretionary provisions in British Columbia’s consumption tax system are equal in importance. Certain categories of provisions—those pertaining to inspection and audit, registration, and powers to affect the tax outcomes of transactions—are potentially most contentious. A fairly strong degree of structuring is evident in the consumption tax system, although improvements can be made to the structuring of the provisions associated with the latter two of the three potentially contentious categories noted previously, and checks are also present. Cross-statute consistency in administrative policy descriptions is important in the consumption tax system, and can be improved with minor changes to information sources utilized by the ministry.

RECOMMENDATIONS

This paper makes eight recommendations to improve the discretionary environment in British Columbia’s consumption tax system. These are listed below in an order that mirrors the structure of the analysis in this report.

Recommendation 1: Improve *Tax Interpretation Manual* Access

Free access to the *Tax Interpretation Manual* should be introduced in order to make this manual a more open source.

¹ As the consumption tax statutes were during the research period. Legislation introduced during the composition of this report included minor changes to the discretionary environment. In keeping with recommendation 6 of this report, these changes can be analyzed and addressed in a future project.

Recommendation 2: Explore Taxpayer Participation in Structuring

The ministry should explore the feasibility of designing and hosting a self-publishing platform within which taxpayers could elect to make their own (self-redacted) rulings, audit conclusion letters, and appeal decision letters open.

Recommendation 3: Focus on Stage 3 “Nil”-Coded Provisions

Work should be undertaken to establish and document administrative policies for the 11 in-use discretionary provisions for which no administrative policy descriptions could be found, and to review the remaining 27 apparently unused provisions to determine whether policies can be made proactively or whether certain provisions can be flagged for repeal.

Recommendation 4: Transform Grey Policy into Open Policy

The non-publicly-accessible administrative policy descriptions (“grey policy”) matched to 59 of the discretionary provisions should be converted into open policies by including them in a publicly-accessible information source.

Recommendation 5: Enhance Structuring of Higher-Risk Provisions

Two of the three most potentially contentious categories of discretionary provisions exhibited below-average degrees of structuring, and should be targeted for the creation of open and clear policy statements.

Recommendation 6: Structure New Discretionary Powers

For current and future legislative projects, a policy analyst should be tasked with reviewing and appropriately structuring all discretionary powers that are changed or created.

Recommendation 7: Rectify Cross-Statute Inconsistencies

The data table created in stage 4 of the Client Study should be reviewed in detail and used to address cross-statute inconsistencies in administrative policy descriptions.

Recommendation 8: Formalize Oversight Procedures in Branch Business Plans

Branches within the ministry’s Revenue Division should include formal oversight objectives in their branch business plans.

TABLE OF CONTENTS

Acknowledgements	i
Executive Summary.....	ii
Introduction.....	ii
Methods.....	ii
Findings.....	iii
Recommendations	iii
Table of Contents.....	v
List of Figures/Tables.....	vii
1.0 Introduction	1
2.0 Methodology and Methods	4
2.1 Methodology	4
2.2 Methods.....	4
2.2.1 Literature Review Methods	4
2.2.2 Client Study Data Collection	5
2.3 Delimitation.....	7
3.0 Literature Review	8
3.1 General Literature: Administrative Discretion	8
3.1.1 The Contributions of K.C. Davis	8
3.1.2 Categorizing Administrative Discretion	9
3.1.3 The Case for Providing Statutory Authority for Administrative Discretion	10
3.1.4 The Hazards of Administrative Discretion	10
3.1.5 Addressing the Hazards	11
3.1.6 Anisman and Efforts to Catalogue Discretionary Provisions in Statutes	13
3.2 Discretion in Tax Administration.....	14
3.2.1 Non-GAAR Hazards to Taxpayers	14
3.2.2 GAAR Provisions	15
3.2.3 Summary of Discretion in Tax Administration.....	17
3.3 Fairness	17
3.4 Summary of the Literature	18
3.5 Application of the Literature to the Client Study	19
3.5.1 Stage 2: Coding Publicly-Accessible Administrative Policies	20
3.5.2 Stage 3: Coding Non-Publicly-Accessible (Grey) Administrative Policies.....	21

3.5.3 Stage 4: Horizontal Consistency Scan	22
4.0 Client Study Findings	23
4.1 In-Scope Provisions.....	23
4.2 Openness and Clarity	25
4.3 “Grey” Policy	26
4.4 Horizontal Consistency	26
5.0 Discussion and Analysis	28
5.1 The Relative Importance of Discretionary Provisions in British Columbia’s Consumption Tax System	28
5.2 Structuring and Checking the Exercise of Discretion.....	32
5.2.1 Structuring Administrative Discretion in the Consumption Tax System	32
5.2.2 Checking Administrative Discretion in the Consumption Tax System	35
5.3 Cross-Statute Consistency in the Exercise of Discretion	36
5.4 Fairness	37
5.5 Summary of Analysis	38
6.0 Recommendations	39
6.1 Improve <i>Tax Interpretation Manual</i> Access	39
6.2 Explore Taxpayer Participation in Structuring	39
6.3 Focus on Stage 3 “Nil”-Coded Provisions	40
6.4 Transform Grey Policy into Open Policy	40
6.5 Enhance Structuring of Higher-Risk Provisions	40
6.6 Structure New Discretionary Powers	41
6.7 Rectify Cross-Statute Inconsistencies	41
6.8 Formalize Oversight Procedures in Branch Business Plans	41
6.9 Alternatives Not Recommended	42
7.0 Conclusion.....	43
References	44
Appendices	48
Appendix A: Client Study Data, Stages 1 through 3	49
Appendix B: Client Study Data, Stage 4	111

LIST OF FIGURES/TABLES

Figure 1: An Example of Stage 1 Coding as Shown in MS Access	6
Figure 2: Number of Discretionary Provisions by Tax Type.....	23
Figure 3: Number of Discretionary Provisions by Category	24
Figure 4: Discretionary Provisions on the Stage 2 Hierarchy.....	25
Figure 5: Breakdown of Stage 3 Results	26
Table 1: Examples of Representative Provisions by Category	6
Table 2: Stage 2 Hierarchy	21
Table 3: Measure of Horizontal Consistency.....	26
Table 4: Proposed Arrangement of Stage 1 Categories by Contentiousness	29
Table 5: Structuring Administrative Discretion.....	32
Table 6: Structuring in the Three Most Potentially Contentious Stage 1 Categories.....	35
Table 7: Checking Administrative Discretion	35

1.0 INTRODUCTION

In British Columbia, there are four provincial consumption taxes: a carbon tax, a tax on fuels, a general sales tax, and a tobacco tax (collectively, the “four tax types”). These taxes are imposed, respectively, under four separate statutes—the *Carbon Tax Act* (S.B.C. 2008, c. 40) (“CTA”), *Motor Fuel Tax Act* (R.S.B.C. 1996, c. 317) (“MFTA”), *Provincial Sales Tax Act* (S.B.C. 2012, c. 35) (“PSTA”), and the *Tobacco Tax Act* (R.S.B.C. 1996, c. 452) (“TTA”)—which include a significant number of provisions that are explicitly discretionary in nature.

The exercise of discretion by an administrator (as opposed to an elected member of the executive branch of government) is referred to as administrative discretion. That is, in legislation, a discretionary provision cannot operate without a decision being made. For instance, where a statute provides that a penalty *may* be imposed (as opposed to providing that a penalty *must* be imposed), the operation of the penalty provision requires that a decision to impose the penalty be rendered by an authorized person. In this paper, this form of discretion is referred to as explicit discretion because it is specifically authorized by words in a statute.²

Pagone (2009), in discussing the phenomenon of administrative discretion in tax law, refers to discretionary provisions as a form of “structured uncertainty” (p. 899). Thus, when some measure of uncertainty is a hallmark of British Columbia’s consumption tax system, two problems are evident:

1. Taxpayers³ deserve predictability; nevertheless, discretion is more easily associated with uncertainty. Certain forms of uncertainty may impede commerce (Pagone, 2009, pp. 903 & 907).
2. The Ministry of Finance is committed to the principle of fairness in tax administration (while making this commitment, the meaning of “fairness” is left open to interpretation), and needs tools and procedures to fulfil its commitment.

These problems are symbiotically related: the need for tools or procedures for tax administrators is a response to taxpayers’ needs for predictability. Indeed, the practice-based research (the “Client Study”) described by this paper was conducted in order to address a need, expressed by the primary statutory decision maker (the “director”⁴), for a more fulsome understanding of the discretionary powers within the ambit of her administrative mandate.

This paper addresses the question of how best to manage administrative discretion within the consumption tax system. As part of this, the following questions are specifically addressed:

- What are the hazards associated with administrative discretion?
- How does openness in the exercise of discretion affect fairness?
- How can openness be achieved?
- What other methods are important to the management of administrative discretion?

Foremost, the Client Study addresses the client-expressed objective of marrying discretionary provisions in British Columbia’s consumption tax statutes to descriptions of relevant administrative policies that guide the exercise of this

² A discussion of legislative language associated with explicit discretion can be found in section 2.2.2.1.

³ For simplicity, this paper uses the term “taxpayer” to refer collectively to people who pay taxes and to businesses that collect and remit taxes. Additionally, while the CTA, MFTA, and TTA use “security” schemes that require businesses at the top of the supply chain to remit security (an amount equal to tax) to government, the term “tax” may be read in this paper so as to refer to tax or security.

⁴ The title of “director” is used in all four consumption tax statutes to refer to the person appointed to administer the statutes. A “deputy director” with powers equal to those of the director is not named by the consumption tax statutes, but has been appointed under the authority found in the *Interpretation Act* (R.S.B.C. 1996, c. 238, s. 22). Operationally, the deputy director is the head of the Consumer Taxation Audit Branch, and is directly responsible for the auditors who undertake compliance activities under the consumption tax statutes.

discretion. It also identifies ambiguous and missing administrative policy descriptions and flags cross-statute inconsistencies in the descriptions of administrative policies, thereby highlighting specific discretionary provisions for which additional work (beyond the scope of the project) should be undertaken. It is focused on the explicit discretionary powers of the director and therefore does not address forms of discretion other than explicit discretion, nor does it address explicit discretionary powers exercisable by the Minister of Finance or the Lieutenant Governor in Council.

These boundaries closely mirror those established by Anisman (1975), who authored a somewhat comparable effort to catalogue and categorize explicit discretion in the federal statutes of Canada. In Anisman's words, "an attempt to provide an exhaustive catalogue of discretionary powers would...be doomed to failure *ab initio*" (p. 2). An "exhaustive" study would include forms of discretion other than explicit discretion—for instance, the type of discretion manifested in administrators' readings of statutes. However, whereas Anisman excluded explicit discretion found in the federal regulations, this study of British Columbia's consumption tax system does contemplate discretionary provisions found in the regulations associated with the statutes.

The client for this project is Jordan Goss, Executive Director of the Consumer Taxation Programs Branch, British Columbia Ministry of Finance. Ms. Goss is appointed by the Minister of Finance to act as the director for all four of British Columbia's consumption taxes. The Consumer Taxation Programs Branch, led by Ms. Goss, is comprised of approximately 125 tax administrators who perform compliance, registration, refund, and analysis activities related to the four consumption taxes. The Client Study findings and the accompanying academic research on managing administrative discretion are presented to Ms. Goss in the form of this paper. Electronic copies of the data tables used to record and summarize the Client Study findings are also being provided to Ms. Goss and it is anticipated that these will be used by staff to improve the management of the discretionary environment in the consumption tax system.

This paper was prepared within the context of a background that includes a renewed focus on consumption taxes in British Columbia. The province's earliest foray into consumption tax came nearly one century ago with the introduction of a tax on fuels in 1924 (Ministry of Finance (British Columbia), 2014, TIM/MFTA/General Rulings/1 – History of Fuel Tax/R.1). However, the last decade has proved to be particularly noteworthy inasmuch as it has seen the introduction of a new consumption tax (the CTA, in 2008) and the disappearance (in 2010) and reappearance (in 2013) of the provincial sales tax. Given this long history, coupled with the more recent upheaval in British Columbia's consumption tax environment, it is conceivable that the body of administrative policies that has developed over time may contain gaps or inconsistencies.

This introduction is followed by six chapters numbered two through seven. This organization is briefly detailed below:

Chapter two describes the methodology and methods employed in the research that underlies this paper.

Chapter three presents a review of the literature on the topics of administrative discretion, discretion in tax administration, and fairness. This review responds to the research question and sub-questions pertaining to the management of administrative discretion. This chapter also demonstrates how the literature was used to bring focus and relevance to the Client Study.

Chapter four details the findings for the Client Study and addresses the practical research objective in describing how the Client Study research methods were applied to yield inventories enumerating the discretionary provisions and administrative policies used in British Columbia's consumption tax system.

Chapter five analyzes these findings in the context of the literature.

Chapter six provides a series of recommendations for improving the discretionary environment in British Columbia's consumption tax system and contains a brief discussion of alternatives that are not recommended.

Finally, **chapter seven** contains some concluding remarks on administrative discretion in the consumption tax system.

2.0 METHODOLOGY AND METHODS

2.1 METHODOLOGY

This paper summarizes a cross-sectional qualitative study with descriptive and exploratory objectives. In this section, methodological considerations, as they relate to the objectives of the research, are detailed.

The practical task of associating discretionary provisions with administrative policy statements was cross-sectional in its approach: statutes and administrative policies were reviewed as they existed at the time the research was conducted. The research did not consider the evolution of the statutory provisions or the administrative policies for two reasons. Firstly, a review of older versions of the statutes and administrative policy statements would expand the scope of the research to unmanageable levels. Second, such an expansion would risk obscuring the findings most relevant to the client—namely those which describe the state of the statutes and administrative policy statements as they exist at the present time.

Public administration research should be “relevant for practice” (Dodge, Ospina, & Foldy, 2005, p.287). With this in mind, the twin objectives of description and exploration address the needs of the client, who identified the need for an inventory of discretionary provisions and a review of the administrative approach to the discretionary provisions. These explicit needs of the client are directly addressed by the descriptive research, which consisted of cataloguing and categorizing discretionary provisions and administrative policies. The exploratory research (including a review of the relevant literature and the identification of discretionary powers for which administrative policy statements are ambiguous, missing, or inconsistent between tax types) anticipates and responds to the more implicit client needs by highlighting avenues for additional research or action.

2.2 METHODS

At a high level, the research project can be divided into (1) a literature review focused on administrative discretion and related topics, and (2) a qualitative study of British Columbia’s consumption tax statutes and administrative policies related to those statutes (the Client Study). The methods employed in this research are described below.

2.2.1 LITERATURE REVIEW METHODS

An initial scan of the literature was performed in order to identify prevalent themes and authors in the field of administrative discretion. This preliminary review revealed that the literature on administrative discretion was overwhelmingly generalist (as opposed to taxation-specific) and most frequently described the experience with administrative discretion in the United States, but that literature from other jurisdictions and literature specific to the phenomenon of discretion in tax administration does also exist and would prove useful to this study.

The literature review—both searching and reading—was undertaken concurrent to collecting, recording, and analyzing data for the Client Study. The overlap of these processes was intentional as it would allow for information encountered in one activity to sharpen the focus in the other. For instance, inventorying the discretionary general anti-avoidance rule (“GAAR”) in the PSTA⁵ as part of the Client Study provided the impetus for expanding the number of GAAR sources to be included in the literature review.

In the initial search for relevant literature, a fairly limited collection of search terms was used. These included, in various combinations and permutations: “administrative discretion,” “administrative decision,” “delegation of power,” and “tax administration discretion.” Results from both the Summon database used by the University of Victoria libraries and the Google Scholar web database were reviewed. From these initial queries, sources with promising abstracts were reviewed in greater detail. This reading helped to identify further relevant sources and

⁵ PSTA s. 201.

issues. The process of using one source to identify others was employed iteratively until sufficient depth was achieved.

Inclusion and exclusion decisions were made with two considerations in mind. First, the breadth of the literature review was intended to include all of the topics that are frequently addressed in the general literature on administrative discretion. All of these topics were relevant, to varying extents, as it is difficult to understand the popular conceptions of and approaches to administrative discretion without having some awareness of the factors that have shaped those ways of thinking. Second, a relevance lens was applied to this broad collection of literature so as to emphasize the topics and sources most relevant to the study of administrative discretion in British Columbia's consumption tax system, and to deemphasize the topics and sources that are less relevant. For instance, a fairly significant review of the literature on the Canadian experience with the GAAR was undertaken, while very little mention of the United States *Administrative Procedure Act of 1946*, which is of central concern to much of the literature on administrative discretion, was made.

In summary, the literature review methods were designed such that they would support the higher-level research methodology, and yield a literature review that contains information relevant to understanding the exercise and implications of discretion in the administration of British Columbia's consumption taxes.

2.2.2 CLIENT STUDY DATA COLLECTION

The core deliverables of the Client Study are two inventories: one enumerating every explicit discretionary provision found in British Columbia's consumption tax statutes and one listing administrative policies corresponding to those explicit discretionary powers. The inventories are, on their own merits, intended to be useful to the client. Additionally, these inventories were designed to permit further analysis to be undertaken within the confines of this study. This section outlines the basic methods used to construct these inventories.

2.2.2.1 STAGE 1: INVENTORY OF EXPLICIT DISCRETIONARY PROVISIONS

In this first stage, a computer-assisted document analysis was conducted to identify all explicit, director-exercisable discretionary provisions in British Columbia's consumption tax statutes and associated regulations.⁶ An electronic search for the word "may," followed by a contextual reading of the search results, identified most of the relevant discretionary provisions. A careful reading of the statutes for less common means of connoting discretionary powers was undertaken and, as a result of this reading, additional electronic searches were performed for the terms "specified by the director," "as the director requires," and "authorized by the director." These additional searches identified the remainder of the in-scope provisions.

As discretionary provisions were identified, they were coded to record the associated statute, a descriptive category for the provision, and up to two specific traits to add descriptive precision to the inventory of discretionary provisions. These data elements were added with the objective of making the inventory sortable in order to group provisions with equal or similar purposes. For example, each consumption tax statute includes a discretionary penalty for tax evasion;⁷ this method of coding simplifies the task of quickly grouping these four equivalent penalty provisions, belonging to four different statutes, through a sort of the inventory to match shared categories and traits. The researcher's high degree of familiarity with the consumption tax statutes ensured that coding in stage 1 was accurate and relevant.

⁶ In this paper, references to British Columbia's consumption tax statutes also refer to the associated regulations, namely the Carbon Tax Regulation, B.C. Reg. 125/2008 ("CTR"); Motor Fuel Tax Regulation, B.C. Reg. 414/85 ("MFTR"); Provincial Sales Tax Exemption and Refund Regulation, B.C. Reg. 97/2013 ("PSTERR"); Provincial Sales Tax Regulation, B.C. Reg. 96/2013 ("PSTR"); and the Tobacco Tax Act Regulation, B.C. Reg. 66/2002 ("TTR").

⁷ CTA s. 47(1)(b), MFTA s. 45(1)(b), PSTA s. 205(b), and TTA s. 35(1)(b).

The categories used in the stage 1 coding generally reflect the manner in which the provisions are classified in the statutes, which were logically organized by their drafters into parts and divisions which group provisions according to their intended function. Some categories—for example, Registration—contain provisions from each of the statutes and illustrate some fundamental similarities in the schemes of the statutes. Other categories—for example, First Nations Tobacco—do not closely reflect statutory groupings and were created for the purposes of this study to contain unique provisions with minimal conceptual similarities to provisions in other categories. Representative examples of provisions contained in each of the provisions are provided in Table 1.

TABLE 1: EXAMPLES OF REPRESENTATIVE PROVISIONS BY CATEGORY

Category	Representative Provision	Purpose of Representative Provision
Administration	CTA s. 70(1)	Delegation of director’s powers to others
Collections	PSTA s. 221(2)	Registration of a lien against a debtor’s property
First Nations Tobacco	TTR s. 8(8)	Specify customer information retailers must collect
Inspection and Audit	MFTA s. 48(2)	Charge interest on unpaid amounts
Interjurisdictional Transport	MFTA s. 19(1)	Issue an IFTA ⁸ licence
Refunds	MFTA s. 21(1)	Pay a refund for tax portion of bad debt
Registration	PSTA s. 173(1)	Suspend a collector’s registration
Returns	CTR s. 8(2)	Specify a filing frequency for a collector
Security	MFTA s. 39(2)	Allow security-exempt purchase of fuel
Taxation	PSTA s. 27(1)	Deem a purchase to be made at fair market value

Refer to Figure 1 for an example of the data elements recorded as part of Stage 1.

ID	Statute	Reference	Category	Specific 1	Specific 2
1	CTA	16(1)	Registration	collector	null
2	CTA	16(2.1)	Registration	collector	refiner collector
3	CTA	16(2.3)	Registration	collector	retroactive appointment

FIGURE 1: AN EXAMPLE OF STAGE 1 CODING AS SHOWN IN MS ACCESS

2.2.2.2 STAGES 2 AND 3: INVENTORY OF ADMINISTRATIVE POLICIES

The inventory of administrative policies, like the inventory of discretionary provisions produced in stage 1 of the Client Study, was produced using a document analysis method. The work to assemble the inventory of administrative policies differed from that conducted during stage 1 inasmuch as it involved a wider range of sources. This section addresses the parameters established with respect to what constitutes a “policy” for the purposes of the Client Study, and discusses the data collection method at a high level. This paper acknowledges the difficulty inherent in proclaiming that a particular set of words or ideas constitutes an administrative policy. For instance, whereas there may be little debate when it comes to conferring the “policy” label on a published set of detailed and rigid rules that bring certainty to the exercise of a discretionary power, there may be some disagreement as to whether ambiguous statements (for example, a statement that a certain outcome “may” occur) or unpublished rules (known only to administrators) merit the same designation as administrative policies. The position taken in designing the Client Study was to adopt a broad conception of the term “policy” and to use data labels to describe important characteristics of the policies identified by the research. Under this broad conception, any form of statement or rule regarding the operation of a particular discretionary provision was held to constitute an administrative policy, so long as it was not merely a (verbatim) repetition of the words contained in the statutes.

In relation to British Columbia’s consumption tax system, such statements and rules can be found in a variety of sources. These include the so-called public information (“PI”) sources (tax bulletins, guides, notices, forms, and web pages, all produced by the Ministry of Finance), the more technical *Tax Interpretation Manual* (“TIM”) authored by

⁸ International Fuel Tax Agreement

the Ministry of Finance, audit files, appeal files, internal correspondence between Ministry of Finance administrators, and reports produced by the Taxpayer Administration, Compliance and Service (TACS) database used by the Ministry of Finance to administer its consumption tax system. Document analysis involving these sources was conducted in two ways, referred to herein as stages 2 and 3 of the Client Study. In both stages, the stage 1 inventory of discretionary provisions was used as a template for searching for corresponding administrative policies. As policies were identified, they were recorded and briefly described in the inventory.

Stage 2 consisted of a simple computer-assisted document analysis. This was accomplished using the ministry's Folio Views software, which packages the PI sources and the *TIM* into a single "infobase" resource for use by administrators. The infobase can be searched using keywords and legislative references. The descriptive coding recorded in stage 1 was used with this search feature to identify relevant administrative policy references in the PI and the *TIM*.

Stage 3 involved a document analysis of the remaining (non-infobase searchable) sources. In this stage, the discretionary provisions from the stage 1 inventory that remained unmatched to any administrative policy following stage 2 became the focus, and—because the utility to the client would be low⁹—no stage 3 analysis was conducted in respect of provisions already matched to administrative policies during stage 2. Because the amount of data contained in the non-infobase sources is vast and much of it is not accessible through computer-assisted search methods, these sources were accessed selectively as opposed to exhaustively, and on the basis of how likely they were to yield evidence of a particular administrative policy. The researcher's familiarity with the nature of these sources informed this selective search process. In cases where these resources did not clearly identify the existence of an administrative policy, administrators with expertise in relevant areas of the consumption tax statutes provided information regarding the exercise of particular discretionary powers.

2.3 DELIMITATION

The one delimitation of note relates to the dynamic nature of the consumption tax statutes and administrative policies. The data collection and analysis for the Client Study was conducted in late 2014 and early 2015.¹⁰ Some amendments to the consumption tax statutes were introduced to the Legislative Assembly after this work was completed, and updates to documents detailing administrative policies are made regularly. This report was written while the amendments were before the House, and the project timeline calls for the completion of the report before the planned end of the legislative session.¹¹ Therefore, no attempt has been made to incorporate the proposed amendments into the findings, and the report should be read as a representation of the discretionary landscape as it existed in the period during which the data collection and analysis took place. This delimitation gives rise to a recommendation to incorporate an appraisal of changes to the discretionary landscape into all future budget and non-budget legislative projects.¹²

⁹ Administrators in the consumption tax system rely on the PI and *TIM* as their primary sources for administrative policy references. Therefore, if an administrative policy was identified during stage 2, to conduct additional document analysis in respect of the same discretionary provisions within stage 3 would be unlikely to reveal different administrative policies from those already found in stage 2.

¹⁰ Stage 1 data collection began November 12, 2014. Data analysis preceding the composition of this paper was completed January 22, 2015.

¹¹ 4th Session, 40th Parliament.

¹² Refer to chapter six.

3.0 LITERATURE REVIEW

This study of British Columbia's consumption tax system is concerned with the phenomenon of administrative discretion, the practical exercise of discretionary powers, and the implications—for taxpayers and government—of these administrative actions. It explores the question of how administrative discretion should best be managed. Within this broad question, further inquiry is devoted to the nature of the hazards associated with administrative discretion, the effect of openness in the exercise of discretion on fairness, how openness can be achieved, and to other methods associated with the management of administrative discretion.

In order to conduct and summarize this research, it is necessary to draw upon a range of literature that this chapter organizes into three high-level categories: first, general literature on various aspects of administrative discretion is reviewed; second, literature specific to administrative discretion in the context of taxation is addressed; lastly, a brief survey of literature pertaining to the concept of fairness is conducted.

3.1 GENERAL LITERATURE: ADMINISTRATIVE DISCRETION

Scholarly interest in the phenomenon of administrative discretion has existed for quite some time (the earliest reference on administrative law addressed in this chapter—Dicey (1885)—is 130 years old), but interest in the topic increased markedly in the latter half of the 20th century. A significant part of the credit for this increase can be attributed to Kenneth Culp Davis's highly influential mid-century contributions to the field of administrative law, which, in turn, spurred others to re-conceptualize administrative discretion and to respond to, or build upon, Davis's theories. Because Davis's (1969) *Discretionary Justice: A Preliminary Inquiry*¹³ continues to shape scholarship on administrative discretion and contains so much subject matter which intersects with the present study of discretionary provisions in British Columbia's consumption tax system, the beginning of this general survey (section 3.1.1) is devoted to Davis's work. Other general literature reviewed includes works that propose categories of administrative discretion (section 3.1.2), justifications for the inclusion of discretionary provisions in the drafting of statutes (section 3.1.3), commentary on the hazards associated with administrative discretion (section 3.1.4), and literature concerned with means of addressing those hazards (section 3.1.5). The section on general literature concludes with a review of the almost non-existent, but very relevant, literature that catalogues discretionary provisions in statutes (section 3.1.6).

3.1.1 THE CONTRIBUTIONS OF K.C. DAVIS

Davis's 1951 book *Administrative Law* was “the first systematic exposition of the field,” and laid the groundwork for his similarly-titled *Administrative Law Treatise* (1958) (Levin, 2005, p. 317). The *Treatise*, in particular, drew attention to Davis and positioned him at the head of a cadre of administrative law scholars active in the mid- and latter parts of the 20th century (Friendly, 1980, pp. 471-472; Levin, p. 331). Respect for Davis's progressive approach to administrative law is demonstrated in the manner by which “often the [United States] Supreme Court not only cited to Davis's work, but seemed to take shelter in his reputation as a way of validating its assertions” (Levin, p. 318).

In 1969, Davis turned his attention to a “largely unexplored” but important corner of administrative law, and published *Discretionary Justice* (Levin, 2005, p. 331). In this book, Davis raises misgivings about the dangers of unchecked and unconstrained administrative discretion, and asks the question: “how can we reduce injustice to individual parties from the exercise of discretionary power?” (Davis, 1969, p. 216). His nuanced prescription for addressing this problem is to permit the use of properly-controlled administrative discretion when it is preferred amongst all other options (Davis, pp. 15, 17, & 20). In his own words: “let us not overemphasize either the need for discretion or its dangers; let us emphasize both the need for discretion and its dangers” (Davis, p. 25).

¹³ Hereinafter referred to as *Discretionary Justice*.

Controlling the exercise of discretion, according to Davis (1969), comes down to two approaches (used in tandem) that he refers to as “structuring” and “checking” (p. 55). Structuring is concerned with creating the conditions for order and consistency, and can be encouraged through the use of “plans, policy statements, and rules, as well as open findings, open rules, and open precedents” (Davis, pp. 55 & 97). Checking involves the incorporation of oversight into the exercise of administrative discretion: for example, one rank of administrator may review decisions made by another rank; the availability of an appeal to an “independent officer” constitutes another form of check against the arbitrary exercise of discretion (Davis, pp. 55, 142, & 144). Davis’s twin methods inform how this study approaches the management of administrative discretion in British Columbia’s consumption tax system. In particular, his affinity for structuring, as a method easily shaped and accessed by administrators, is highly influential to this practice-oriented project.

Davis’s *Discretionary Justice* is much more than a series of observations, or even of normative statements regarding the phenomenon of administrative discretion. Although it is cast as a “preliminary inquiry,” Davis does propose a way forward—namely, for any given administrative system, to find the “optimum” balance between discretion and rigidity, and to appropriately structure and check that discretion which remains desirable in that system (Davis, 1969, p. 232). And while the book’s plain style appears to anticipate interest from scholars, the judiciary, legal practitioners, and administrators, it is the last group (administrators) that is tasked by the book with providing the greatest contribution towards reform: “administrative self-confinement” is described as “*the main hope*” for preventing injustice (Davis, p. 69).

3.1.2 CATEGORIZING ADMINISTRATIVE DISCRETION

Although most works in the field of administrative discretion do not include deliberate taxonomic exercises, the few that do endeavour to draw high-level distinctions between one form of action and another are helpful inasmuch as they remind readers that discretion comes in more than one flavour.

Roberts (1975) breaks discretion down into three categories: (1) explicit discretion, (2) prosecutorial discretion, and (3) discretion found in the “appraisal of evidence” (pp. 145-147). Explicit discretion includes all discretionary powers clearly conferred upon administrators by statute. This form of discretion is also addressed by Anisman (1975), who, distinguishes between explicit discretion and “implicit discretionary powers” (pp. 2-3). Indeed, as a form of implicit discretion, prosecutorial discretion is one of the most widely discussed forms of discretion in the literature,¹⁴ and refers to decisions regarding whether or not a rule will be enforced in a particular case. As another implicit form, discretion found in evidence appraisal covers decisions that involve situational “value judgment,” such as whether the evidence provided by a tax refund applicant is sufficient to support the payment of a refund claim (Roberts, pp. 146-147).

Bryner (1987) proposes a two-category framework that views administrative discretion in the form of either (1) “legislative-like” rulemaking or (2) decisions regarding the application of rules (p. 6). In contrast with Roberts (1975), the categories contemplated by Bryner are less concerned with the legal authority (or lack thereof) that gives rise to the exercise of discretion. Rather, Roberts’s categories could generally all fit within Bryner’s second category. Bryner’s first category acknowledges a reality also noted by Davis: administrators require rulemaking discretion if they are to create rules (Davis, 1969, p. 42).

The approaches taken by Roberts (1975) and Bryner (1987) are both useful to the study of administrative discretion. However, for the purposes of this project, Roberts’s choice to look to explicit discretion as a standalone category is a critical (and practical) one because it establishes easily-identifiable boundaries for the present study, which examines explicit discretion only.

¹⁴ For examples, see: Inspector-General of Taxation (Australia), 2012, p. 140; Scholz, 1986, pp. 145-146; Shapiro, 1983, p. 1509.

If this study were to examine other forms of discretion, the boundaries would be nearly impossible to locate. Prosecutorial discretion, for instance, might be exercised in relation to nearly any provision in the consumption tax statutes—not only the obvious ones, which stipulate that the director “must” perform some action such as imposing a penalty (which might not be performed, if the director were to take a prosecutorial stance against taking the action mandated by the statute), but arguably also in relation to less obvious provisions which do not explicitly speak to the director’s role as the administrator. For instance, many provisions simply compel the taxpayer to pay tax upon satisfying certain conditions; although the director is not named in such provisions, the director could conceivably take a prosecutorial stance against the application of the provision in certain circumstances.¹⁵ Strictly speaking, the rule of law should preclude such decisions from being made; however, the amount of discourse devoted to prosecutorial discretion in the literature suggests that its exercise is not uncommon in many administrative systems. The preceding scenarios only hint at the degrees of complexity that would be added to the study if prosecutorial discretion were to be considered in-scope. The addition of other forms of discretion to the bounds of the study would make it similarly difficult to identify limits for the research.

3.1.3 THE CASE FOR PROVIDING STATUTORY AUTHORITY FOR ADMINISTRATIVE DISCRETION

The literature exhibits a general consensus around the rationale for using discretionary provisions in the drafting of statutes. Davis (1969) provides two reasons for why discretionary powers are, at times, preferred to mechanical rules: first, rules may be too difficult to design or articulate (at least by those tasked with making the rules); second, in some cases, individualization of outcomes is “better, or thought to be better,” than rigid outcomes determined by rules (p. 15). These reasons are echoed by Davis’s successors.

On the first reason, Bryner (1987) sees the use of delegated “policy-making power [as] the only logical response” to addressing the technical complexity- and knowledge-related gap that exists between legislators and administrators (p. 7). Thuronyi (1996), in a book concerned with the drafting of tax statutes, agrees that some matters are too complex to address using mechanical rules (p. 405). An interesting perspective on this reason can be found in a report detailing a review of discretionary provisions in Australia’s income tax law. This review contemplated replacing discretionary provisions with mechanical rules, and one consideration in favour of retaining any particular discretionary provision was the potential that a mechanical replacement for that discretion would result in an undesirable increase in statutory complexity (Inspector-General of Taxation (Australia), 2012, p. 142).

On the second reason, Thuronyi (1996) views discretion as providing a means around the “potential harshness of mechanical rules” (p. 405). As an Australian judge writing on the subject of discretion in tax law, Pagone (2009) points out the practical advantage found in using discretion to tailor outcomes to accommodate and acknowledge unique circumstances (p. 899). The Inspector-General of Taxation (Australia) (2012) considered enshrining in its income tax administration the principle of a “positive discretion to act in taxpayers’ favour,” which would imbue an administrator with the authority to rectify unintended outcomes in cases where a timely resolution could not be achieved by means of a legislative amendment (p. 131).

3.1.4 THE HAZARDS OF ADMINISTRATIVE DISCRETION

Nearly all of the literature on the topic of administrative discretion is concerned, to some extent, with the potential hazards of the exercise of discretion. At a high level, these hazards can be organized into two categories: those associated with the arbitrary or capricious exercise of discretion, and those which offend some other principle of governance or law.

¹⁵ An example—purely hypothetical—would be a decision by the director to selectively enforce PSTA s. 82(1) for farmers who occasionally use PST-exempt farm equipment for non-farm purposes (such as clearing snow from roadways). PSTA s. 82(1) requires a person to pay PST when they use exempt tangible personal property for a purpose that runs counter to the purpose for which the exemption was originally granted. It does not name the director, nor is it explicitly discretionary in any way; rather, it presents a rigid rule that is intended to apply without exception.

In his 17th century *Second Treatise of Civil Government*, philosopher John Locke posits that “Wherever law ends tyranny begins” (Locke, 1948, p. 99). Davis (1969) modifies and expands on this to surmise: “Where law ends, discretion begins, and the exercise of discretion may mean either beneficence or tyranny, either justice or injustice, either reasonableness or arbitrariness” (p. 3). While Davis acknowledges the binary potential in decision-making, he is unquestionably preoccupied with the negative exercise of administrative discretion and dedicates much of *Discretionary Justice* to prescribing methods—structuring and checking—for preventing arbitrariness.

Rosenblum (1974) presents a rare counterpoint to Davis’s inclination to emphasize the arbitrary exercise of administrative discretion, and opines that the problems rooted in an absence of discretion may actually outweigh those that can be ascribed to arbitrary administration (p. 51). Canadian Supreme Court Justice¹⁶ Beverly McLachlin (1992) pokes fun at those who raise the alarm about the arbitrary nature of administrative decision making:

The stereotypical character involved in administrative decision-making is a harried, blue-shirted (male) bureaucrat, with his tie undone, hair askew and bloodshot eyes, barely visible above a foot-deep pile of files, clearing his desk at 4:30 in the afternoon on a day he would rather be playing golf. His (female) secretary sits patiently taking notes. “Yes,” he says, throwing a file in her direction. “No,” he says as he throws another, and so on, until the files are finally off his desk and on his secretary’s lap. (p. 172).

McLachlin asserts that, in reality, administrators are more frequently experts and are more inclined to make decisions in adherence with a set of administrative rules than they are to resort to arbitrariness (McLachlin, 1992, p. 172).

Most scholars, however, side with Davis in finding significant fault and risk in the arbitrary or capricious use of discretion. Anisman (1975) quotes Davis’s modification of Locke, and enumerates a series of capricious hypotheticals: “The public official with discretionary powers may decide to act, or he may not; may choose one course of action, or another; may hire a stranger, or a friend; and in all of these situations may be motivated less by the public good than his own” (p. IV). Similarly, Roberts (1975) finds reason for concern with biases and ulterior motives (pp. 147-148). Galligan (1986) calls arbitrariness “the antithesis of rationality” and speaks of unfairness as a consequence of unpredictability which, itself, is a product of arbitrary decision-making (pp. 143 & 155).

Some authors are concerned with the manner in which administrative discretion may undermine other important principles. Dicey (1885) characterizes administrative power as being diametrically opposed to the proper supremacy of “ordinary law” in democracies (as cited in McLachlin, 1992, p. 168). Anisman (1975), in a review of discretionary provisions in Canadian (federal) statutes, writes that when discretion is enshrined in law, it may give the appearance that “Parliament erodes its capacity to govern” (p. IV). Bryner (1987), while acknowledging that administrative discretion is a necessary component of governance, speaks of the tension between “accountability, the rule of law, due process, expertise, and administrative efficiency” (pp. 209-210). Schuck (2012) concurs, noting issues with accountability, interference with due process, and the obfuscation of errors in administration (p. 606). McLachlin takes a pragmatic perspective on the role of administrative discretion in democratic governance, and, noting fewer hazards, suggests that “the rule of law should be viewed as embracing both law in the traditional sense as well as administrative decision-making in its modern form” (p. 177).

3.1.5 ADDRESSING THE HAZARDS

Broadly, the potential hazards of administrative discretion can be addressed through efforts to directly limit or constrain administrative power or through judicial review of administrative actions.

¹⁶ As she was then; Justice McLachlan was named Chief Justice of the Supreme Court in 2000.

3.1.5.1 DIRECTLY LIMITING OR CONSTRAINING ADMINISTRATIVE POWER

The literature presents a wide range of proposals for constraining administrative power. The most obvious method—legislative action to enact mechanical rules in place of discretionary provisions—is not given much prominence in the literature. This may indicate some level of concurrence with the type of sentiment expressed by Scholz (1986), who suggests that strict rules are ultimately frequently administered and enforced using some measure of interpretative leeway or prosecutorial discretion (pp. 145-146). And while Australia has endeavoured for approximately 25 years to reform its income tax legislation by contemplating the replacement of discretionary provisions with mechanical rules, most discretionary provisions have survived periodic reviews on the basis that they provide needed flexibility or guard against avoidance (Inspector-General of Taxation (Australia), 2012, p. 142).

If one is resigned to the inescapable reality of administrative discretion, a more practical strategy for limiting administrative power is to provide for a system in which administrative rules are devised and used to guide the exercise of discretion. Administrative rulemaking, broadly, encompasses the development of “plans, policy statements, rules, or guide-lines” that describe the administrative approach to a provision or to an issue (Davis, 1969, p. 55; Galligan, 1986, p. 168). Davis is a major proponent of administrative rulemaking, favouring rules that “replace [statutory] vagueness with clarity” and imploring administrators not to procrastinate in making rules (pp. 56-57). In Davis’s view, “the practical need...for clarification of uncertain law” could be satisfied with the simple elucidation of the administrative approach to a small number of hypothetical scenarios and delays attributable to administrative attempts to devise or articulate generalized rules are unnecessary and unjustifiable (Davis, pp. 60-61). Administrative rules, according to Davis, should also be appropriately structured, predominantly through openness—for example, by publishing the rules (Davis, p. 98). Galligan fundamentally agrees with Davis, but emphasizes that administrative rules should still permit discretion to be exercised to appropriate degrees as determined by administrators in accordance with the nature of any given rule (p. 169).

On its face, the notion that administrative power can be controlled by allowing administrators to make rules is paradoxical. It could be argued that rulemaking administrators wield a power that has a “legislative nature” (Bryner, 1987, p. 10). Bryner notes that legislators in the United States, ill at ease with this form of administrative power, have moved to frustrate administrative rulemaking by establishing high procedural thresholds for the creation of rules; in turn, this often has the contradictory effect of stymieing administrators’ efforts to fulfil the policy objectives set by government. In detailing this problem, Bryner suggests that legislators adopt a more “careful” means of controlling administrative power, in effect, deferring to the types of structuring and checking procedures advanced by Davis (Bryner, p. 209).

Another proposal from Davis (1969) is to keep administrative power in check by providing for appeals to an “independent officer” (p. 144). This differs from judicial review inasmuch as the scope of such appeals may be broader than the standards of review that would apply in a judicial review, and the appeals are handled by a person outside the judiciary.

3.1.5.2 JUDICIAL REVIEW

In contrast with the aforementioned means of limiting administrative power, judicial review provides a way of rectifying some deficiencies in administrative practice on a case-by-case basis. The standards associated with judicial review differ from jurisdiction to jurisdiction, and are fluid.

Goodnow, writing almost 100 years ago, portrays an environment in the United States wherein comparatively few administrative decisions could be exposed to judicial review, and even decisions made under the “arbitrary discretion of the tax authorities” were generally beyond review (Goodnow, 1916, p. 168). Much of the literature produced in the United States from that time up to the present is concerned with the evolution of standards of review from the reasonable basis in law standard (giving legally erroneous, but “reasonable,” administrative actions a modicum of validity) to the arbitrary and capricious standard that led to the judicial quashing of some arbitrary exercises of administrative discretion (Nathanson, 1949, pp. 471-472; Shapiro, 1983, p. 1488). The literature is also

thick with discourse on the *Administrative Procedure Act of 1946* (ch. 324, 5 U.S.C.), which, when enacted, represented an effort by the United States Congress to “frame an outline of minimum basic essentials in the administrative process,” including rules regarding standing for judicial review (Bureau of National Affairs, 1946, p. 1). Shapiro refers to this evolution as a “game of procedural catch-up” (p. 1487). Indeed, although grants of judicial review when parties have, or previously had, access to statutory remedies such as appeals are rare, the continued evolution of administrative law in the United States has Akins & Kafka (2013) counselling aggrieved taxpayers to consider making attempts at finding remedies through judicial review before resorting to the traditional appeal processes available to persons assessed by the Internal Revenue Service (para. 1).

Galligan (1986), writing on the subject of judicial review in the United Kingdom, describes a similar “piecemeal evolution of a body of doctrine in response to changing political and social factors” (p. 220). As in the United States, British courts generally refrain from providing judicial review in cases “where an alternative remedy exists” (*R v. Inland Revenue Commissioners, ex p. Preston* [1985] 1 AC 835, p. 20).

In Canada, a fairly recent decision of the Supreme Court reduced the number of standards for judicial review from three to two: correctness and reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, para. 34). Canadian courts, including those in British Columbia, have applied the same principle that keeps United States and British courts from engaging in judicial review when administrative actions are subject to statutory appeals: an example can be found in *Waterfront Marina Ltd. v. British Columbia (Liquor Control and Licensing Branch, General Manager)*, 1992 BCSC 1612.¹⁷

It is notable that judicial review, when compared with the direct systemic strategies described within section 3.1.5.1, which target administrative behaviour in a broad sense, is more of a last resort: it is narrowly available, often limited in its scope, and its impact is potentially limited to a single aggrieved party.

3.1.6 ANISMAN AND EFFORTS TO CATALOGUE DISCRETIONARY PROVISIONS IN STATUTES

While administrative discretion as a general topic has garnered a fair amount of scholarly interest, very few practical efforts to quantify and catalogue the incidence of administrative discretion in statutes have resulted in published works. A report from the Inspector-General of Taxation (Australia) (2012) indicates that some systematic review of certain forms of administrative discretion in Australia’s income tax system has occurred, but no inventory of Australia’s discretionary provisions has been published (p. 141). A 1975 study, produced by Philip Anisman for the Law Reform Commission of Canada, which—save for a brief introduction—reads like a telephone directory of discretionary provisions found in the federal statutes of Canada, represents the only piece of scholarly literature that can be identified as belonging to this more obscure, but practical, corner of the study of administrative discretion.

Anisman, in an early review of *Discretionary Justice*, praised Davis’s approach to the problems posed by administrative discretion as being “persuasive” for its “balanced and sensible” nature, and identified a need for Davis’s ideas in the Canadian administrative system (Anisman, 1969, pp. 674 & 683). Thus, it is not surprising that Anisman would embark upon an ambitious project that would ultimately yield an inventory of approximately 15,000 discretionary provisions in Canada’s federal statutes. Although Anisman had earlier expressed admiration for Davis, his 1975 inventory of statutory discretions was produced as a neutral call for further research. His introduction to the research cautioned readers that “the number of powers discovered should neither be a surprise nor a ground of either praise or criticism,” and that the meaning of the inventory could be found in something not addressed by the study: the manner in which the powers are exercised (Anisman, 1975, p. 24).

¹⁷ Hereinafter referred to as *Waterfront Marina*.

Anisman's (1975) tables listing and categorizing the discretionary provisions in the federal statutes do not appear to have been used as the basis for any subsequent studies.¹⁸ However, his methods and his call for researchers to study statutory discretions in the context of their practical exercise are of significant importance to the present study of administrative discretion in British Columbia's consumption tax system. The bounds of Anisman's study, and his rationale for selecting them, are of particular relevance. Anisman was cognizant of the enormity of his task, and thus elected to enumerate only those discretionary powers that were "explicitly conferred" by statute (to the exclusion, for instance, of discretion arising out of interpretative exercises) and to exclude provisions found in the regulations to the federal statutes (Anisman, pp. 2-3, 23-24).

3.2 DISCRETION IN TAX ADMINISTRATION

A sub-genre of the literature on administrative discretion is specifically concerned with the manifestation of discretion in taxation. This section of the literature review is divided into two components: in the first (section 3.2.1), various aspects of discretion that may be characterized as being hazardous to taxpayers are noted; in the second (section 3.2.2), a more in-depth review of the literature on GAARs is conducted.

3.2.1 NON-GAAR HAZARDS TO TAXPAYERS

The literature on administrative discretion in taxation, excluding the works discussed in section 3.2.2, is relatively thin. Some of the sources addressed in this section are general works on administrative discretion which happen to contain references to taxation. A few—namely Pagone (2009) and Britt & Ridenour (2010)—are wholly concerned with tax. Collectively, this section enumerates a variety of cases in which the existence of administrative discretion in tax legislation may be characterized as presenting hazards to taxpayers.

Not knowing the tax consequences of an activity before one undertakes that activity may be hazardous from the standpoint that taxpayers sensitive to tax costs may choose not to participate in transactions with uncertain tax outcomes. Goodnow (1916) laments that taxpayers may be left to await some form of determination by an administrator before knowing precisely the amount of tax they are required to pay (p. 167).¹⁹ Goodnow's complaint can also be considered in the context of GAAR provisions, which are discussed in section 3.2.2. Pagone (2009) provides an updated take on the same issue in calling discretion in taxation "structured uncertainty," and emphasizes the need for discretions in tax statutes to "be structured, confined, reviewable and above all predictable" (pp. 899, 906-907).

A comparative analysis of national economies conducted by Johnson, Kaufmann, & Zoido-Lobato (1998) includes taxation (rates and integrity in administration, including the exercise of discretion) as one variable in a model used to predict the incidence of underground economic activity. The authors posit that systems in which decisions are made "without effective supervision" provide conditions favourable to underground transactions, and suggest a likely causal link between the scale of the underground economy (to total gross domestic product) and the manner in which administrative discretion is exercised (Johnson, Kaufmann, & Zoido-Lobato, p. 391). This, in turn, can suggest that the unreasonable exercise of discretion in a tax system may present a hazard to taxpayers in the sense that would-be taxpayers are provided with a motivation to leave the system, thereby unfairly increasing the tax burden for those who choose to remain within the official economy.

Incentives towards the aggressive exercise of discretionary powers in tax administration have also been questioned. Britt & Ridenour (2010), in reviewing recent cases involving the administration of state-level income taxes in the United States, suggest that budgetary pressures arising out of the 2007-2008 financial crisis led administrators to use

¹⁸ Anisman (1975) is, however, cited by a handful of authors who do not rely to any significant extent on the content of his inventory, including McLachlin, who references Anisman's work as a measure of the rapid growth of administrative agencies in modern governance (McLachlin, 1992, p. 167).

¹⁹ This is generally not true of British Columbia's consumption taxes, but may arguably be applicable in respect of the director's powers to deem purchase prices under the PSTA and TTA.

alternative methods to determine the state-attributable incomes of large taxpayers when those alternative methods would increase state revenue. Additionally, they identify one case in which a state refused to use an alternative apportionment method, in spite of the fact that the standard method did not accurately reflect the taxpayer's state-attributable income, when the alternative method would have yielded less revenue for the state. In that case, a court sided with the taxpayer and faulted state administrators for failing to exercise discretion in a case where discretion was warranted (Britt & Ridenour, pp. 245-246).

3.2.2 GAAR PROVISIONS

While the issues enumerated within section 3.2.1 may certainly present significant hazards to taxpayers, the existence of GAAR provisions in tax statutes arguably results in unparalleled powers of administrative discretion. The presence and exercise of GAAR provisions has generated a fair amount of discourse in scholarly and professional circles. British Columbia's PSTA introduced a GAAR in 2013.²⁰

3.2.2.1 WHAT IS A GAAR?

To attempt to elucidate a general description of a GAAR would risk masking important differences in legal principles and tax laws that exist between jurisdictions. Therefore, as a caveat to the information provided in this section, it must be noted that the GAARs addressed in sections 3.2.2.2 and 3.2.2.3 belong to Commonwealth countries which share a basic common law tradition.

Scholars writing on the subject of GAARs often²¹ refer to the tension between GAARs and the legal principle that there is nothing inherently wrong with a taxpayer taking steps to minimize their tax liabilities: this principle originates from the 1936 *Duke of Westminster*²² case in England. In Canada, the *Duke of Westminster* principle has been applied and upheld through to the level of the Supreme Court of Canada (Arnold, 2004, p. 504). In the context of this principle, taxpayers will naturally seek to minimize the amount of taxes that they are required to pay, and it is against this backdrop that governments will seek to maintain the integrity of their tax systems through the use of GAARs. At a very high level, a GAAR is, according to Pagone (2009), "a response to what may be thought to be the 'social evil' of tax avoidance" (p. 900). "Avoidance" is distinguished from permissible "minimization" in what is arguably a very subjective manner, and a GAAR empowers statutory decision-makers to draw conclusions regarding the scheme and intent of a tax statute and to impose tax outcomes, through the exercise of a GAAR, consistent with those conclusions (Pagone, p. 900). As the sections which follow will show, this power is far from an unlimited one (GAAR determinations may lead to appeals and litigation), but remains contentious in all jurisdictions which include GAARs in their tax systems.

3.2.2.2 THE CANADIAN EXPERIENCE WITH THE GAAR

The GAAR concept has been part of the tax landscape in Canada since 1987, when a GAAR was added to the federal income tax legislation²³ (Arnold, 2004, p. 488). The idea was proposed shortly before that in a Department of Finance white paper on tax reform²⁴ which drew responses that reflected an understanding and fear of many of the risks generally associated with administrative discretion: commentators warned of arbitrariness, higher costs associated with compliance, and uncertainty (Battle, 1988, p. 93). 25 years later—when a GAAR was included in British Columbia's 2012 bill to restore its PST—the re-implemented tax was characterized by the provincial Minister of Finance as one imposed under "a new, modern, clear and more comprehensive act" (Falcon, 2012a, p. 11874).

²⁰ PSTA s. 201; brought into force April 1, 2013 by Bill 54—2012, 39th Parliament, 4th Session.

²¹ For examples, refer to Arnold, 2004, p. 504; Cooper, 2001, pp. 86-87; Freedman, 2004, p. 333.

²² *Duke of Westminster v. Commissioners of Inland Revenue*, A.C. 1 [1936].

²³ *Income Tax Act (Canada)*, R.S.C. 1985, c. 1.

²⁴ Department of Finance (Canada). (1987). *The white paper, Tax reform 1987 / The Honourable Michael H. Wilson, Minister of Finance*.

The Canada Revenue Agency has produced three separate administrative statements on the GAAR concept. The first was produced in 1988, shortly after the GAAR entered the income tax legislation. It was last revised in 2002, is approximately 5,000 words in length, and contains a number of examples of when the GAAR would, and would not, apply (Canada Revenue Agency, 2002b). The second was published in 1991, last revised in 2002, and explains the *Excise Tax Act (Canada)* (R.S.C. 1985, c. E-15) version of the GAAR in a manner that is highly technical, brief, thin on analysis, and free of examples (Canada Revenue Agency, 2002a). The final statement comes in the form of a web page, produced in 2013 and titled *Tax Avoidance*, which consists of three simple questions and answers; this resource notes that Canada has a GAAR, and appears to be targeted at a general audience rather than at tax practitioners. The page does not contain links to additional information (including to either of the two technical sources noted above) and does not describe how the GAAR is exercised (Canada Revenue Agency, 2013). To date, no administrative statements on British Columbia's PSTA GAAR have been produced.

Writing eight years after the implementation of the federal GAAR, Kellough (1995) lobs sharp criticism at the revenue agency's²⁵ administrative approach. Kellough describes the paradox found in invoking the GAAR within a legal system that recognizes the *Duke of Westminster* principle:

No clear distinction can be drawn between acceptable and unacceptable tax avoidance. At best, it can be said that acceptable tax avoidance is that which is considered acceptable by the courts, notwithstanding that it may have been considered unacceptable by Revenue Canada. (p. 1820).

The administrative use of the federal GAAR is alleged to be sometimes aggressively spurious: Kellough (1995) claims that the revenue agency routinely makes use of the GAAR without explaining the basis for its argument that the substituted tax outcome upholds the object and spirit of a particular statutory provision or set of provisions (p. 1832). The inference is that administrators understand the task of combating a GAAR assessment to be so laborious and expensive that many taxpayers will accept the outcome without challenge. Kellough also takes issue with the lack of administrative openness: he views the concept of "abuse"—something key to the application of the GAAR in Canadian income tax—as being "vague and ambiguous," and faults administrators for failing to clarify its application (p. 1827). He further suggests that the administration of the GAAR has, at times, contradicted the published administrative rules, meagre as they may be (Kellough, p. 1831).

Moskowitz & Meredith (2012) update Kellough's (1995) account after 25 years of Canadian experience with a GAAR. In commenting on the Supreme Court's 2011 decision in *Cophorne*,²⁶ the authors are optimistic about the court's approach to methodically reviewing the facts as they relate to the three statutory requirements for the application of the income tax GAAR, and posit that the unanimous decision may signal some growing consensus surrounding GAAR principles at the Supreme Court level (Moskowitz & Meredith, p. 4). However, Moskowitz & Meredith temper this optimism by noting that there remain a number of unsettled issues related to the GAAR, and point to the concept of abuse (a point raised years earlier by Kellough) as the most problematic among them. In the words of Moskowitz & Meredith, the court in *Cophorne* "seems perilously close to having reached its decision [regarding abuse] based on a 'smell' test" (p. 9).

This notion of a judicial smell test has been discussed by others, and highlights difficulties not only for the courts and for taxpayers, but also for the administrators responsible for initiating actions using the GAAR: questions of a smell test suggest that the boundaries for the reasonable invocation of the GAAR are not set, not agreed upon, or impossible to describe. In casual comments made as participants in a panel discussion on the GAAR, Justice Karen Sharlow of the Federal Court of Appeal and Justice Patrick Boyle of the Tax Court of Canada refer, respectively, to being on guard for "weird" circumstances and to using "spidey sense" in considering the application of the GAAR (both in Nanji, 2013, para. 5). Schwartz & Yip (2014), on the other hand, express confidence that the courts do make

²⁵ Revenue Canada, as it was then; the same agency is now referred to as the Canada Revenue Agency.

²⁶ *Cophorne Holdings Ltd. v. Canada*, 2011 SCC 63.

determinations in GAAR cases without “any moral or normative considerations,” but caution that “smelly” transactions continue to put taxpayers at peril of having to defend against GAAR actions initiated by the Canada Revenue Agency (pp. 130-131). This may signal that administrators are over-utilizing the GAAR.

Indications of the aggressive administrative use of the federal GAAR are evident. At one point in 2013, there were 44 active GAAR-involved cases being litigated by the Department of Justice (Nanji, 2013, para. 8). As this figure corresponds only to those cases in litigation, and not to GAAR assessments that went undisputed, nor to those in a statutory appeal stage prior to litigation, it is clear that the actual number of GAAR cases is higher. A review of tax cases in the Supreme Court of Canada after *Copthorne* is also telling: subsequent to the decision in *Copthorne*, Supreme Court decisions in *Fundy Settlement* and in *Envision Credit Union* show that GAAR arguments raised in defence of the tax assessments at issue were unnecessary, and that the assessments could stand on their own merits (*Envision Credit Union v. Canada*, 2013, para. 24; *Fundy Settlement v. Canada*, 2012, para. 19). This suggests that the administrative approach may be to use the GAAR not only when it may be necessary to uphold the spirit and intent of the legislation, but also as a failsafe measure.

3.2.2.3 THE GAAR IN NEW ZEALAND

While GAARs exist in many jurisdictions around the world, a brief discussion of New Zealand’s highly evolved GAAR is warranted as it may provide lessons for other jurisdictions with nascent GAARs or turbulent GAAR administration.

The GAAR in New Zealand appears to have settled into a relatively comfortable, if complex, existence. New Zealand is the originator of the GAAR: its first incarnation appeared in New Zealand tax law in 1878 (Elliffe, 2014, p. 148). Elliffe views New Zealand’s GAAR as a success, inasmuch as it effectively combats tax avoidance, and credits this success to “a clear-headed judiciary” which has been able to devise and consistently apply “key tests” and, importantly, to “a responsible tax administration” that does not abuse its power to invoke the GAAR (pp. 161 & 163-164).

New Zealand’s published administrative rules are particularly noteworthy. In 2013, the Inland Revenue Department (New Zealand) produced a 135-page policy statement describing how New Zealand’s income tax GAAR applies. Included in this statement is a flow chart detailing the administrative approach of the Inland Revenue Department, a comprehensive analysis of the legislation and related jurisprudence, and three detailed examples: one for which the GAAR would be invoked, and two for which it would not (Inland Revenue Department (New Zealand), 2013, pp. 2, 5, 7-8, & 95-105). The document is extremely complex, but is likely indispensable to taxpayers and practitioners involved with high-stakes, complex transactions.

3.2.3 SUMMARY OF DISCRETION IN TAX ADMINISTRATION

A variety of challenges can flow from the use of administrative discretion in tax systems. The literature highlights issues with predictability, suggests that systems with checking deficiencies encourage underground economic activity, and warns that revenue objectives may trump fairness considerations when administrators are given powers to determine the amount of tax a person is required to pay. GAARs provide administrators with significant powers to determine the tax outcomes of transactions and are notoriously difficult for taxpayers, administrators, and the courts to navigate, particularly given the *Duke of Westminster* notion of permissible avoidance. A high degree of structuring is evident in the administration of New Zealand’s GAAR, whereas publications to structure Canada’s federal GAARs are comparatively meagre.

3.3 FAIRNESS

The idea of fairness is important to the study of administrative discretion because it strikes at the heart of the reason why any person should care about the existence of discretionary powers and how they are exercised. This section explores selected literature on the concept of fairness.

Philosophers and psychologists have various ways of approaching fairness. Shaw & Olson (2012) use children as research subjects in order to test theories concerning fairness against minds unaffected by years of societal influence, and conclude that even in the absence of this conditioning, children—as would be expected from adults—are inclined to favour equal distributions of resources (p. 390). Shaw et al. (2014) expand on this finding to suggest that the fairness motivation in children is complex, and includes distinct concerns with fairness and with the appearance of fairness (p. 371). By experimenting with children, the authors propose that their findings may describe innate human traits: that is, that humans may be inherently predisposed towards equity and others' perceptions of oneself as a fair person. While these experiments analyzed children's responses to various distributions of tangible goods, the findings may have relevance to tax systems where fair access to information and equal outcomes are valued.

Rawls (1958), as a seminal scholar in the fields of justice, fairness, and politics, considers fairness to be a component (in fact, “the fundamental idea in the concept”) of justice (p. 164). In the words of Rawls, fairness can be conceived of within a game or other competitive framework:

The question of fairness arises when free persons, who have no authority over one another, are engaging in a joint activity and amongst themselves settling or acknowledging the rules which define it and which determine the respective shares in its benefits and burdens. A practice will strike the parties as fair if none feels that, by participating in it, they or any of the others are taken advantage of, or forced to give in to claims which they do not regard as legitimate. (p. 178).

This framework can be superimposed over a tax system with relative ease. Taxpayers are the “free persons” and are bound by the rules established by the relevant statutes and administrative policies. Within Rawls's framework, taxpayers will regard the system as being fair if they are not “taken advantage of, or forced to give in to [illegitimate] claims”; in other words, if there is arbitrary or capricious administration of the rules, the system will likely be viewed as being unfair (Rawls, 1958, p. 178). This conception of fairness is adopted for the purpose of analyzing the impacts of administrative discretion on fairness within British Columbia's consumption tax system, and is augmented by commentary from Davis.

Davis, like Rawls, draws a link between fairness and justice in saying: “In most circumstances, the more the private party can know about the agency's law and policy the fairer the system; the less the private party can know the lower the quality of justice” (Davis, 1969, p. 24). By reflecting on this sentence, one might posit that fairness can be equated with an expectation of justice. Galligan (1986) views fairness as concerning “the principles upon which benefits and burdens are distributed amongst the members of society,” and reminds readers that the importance of fairness rises as the level of mundanity associated with the discretionary power being exercised decreases (p. 152). Schuck (2012) cautions: “Discretion can defeat horizontal equity by treating similar cases dissimilarly” (p. 606).

3.4 SUMMARY OF THE LITERATURE

The literature on administrative discretion is marked by a renaissance, of sorts, in the concept and approaches to discretion that began with the contributions of K.C. Davis in the mid-20th century. The form of discretion examined by this paper—explicit discretion—is discretionary power conferred on administrators by statute, and is an intentional grant of flexibility from the legislative branch of government to administrators. According to the literature, this delegation of power typically occurs in recognition of complex situations or the need for individualized outcomes. Other types of discretion are identified in section 3.1.2, but are not addressed by the Client Study.

This study is, in part, in inquiry into how administrative discretion is best managed. On this broad question, the literature exhibits a general consensus with Davis's instructions that administrative discretion must be appropriately structured and checked. This finding informs the methods applied to the Client Study on a detailed level, as described in section 3.5.

This paper also examines four sub-questions pertaining to the management of administrative discretion:

What are the hazards of administrative discretion?

Observers wary of grants of administrative discretion are frequently concerned with the potential for arbitrary or capricious decision-making and, in some corners, with what is perceived to be an improper delegation of power. The hazards of arbitrariness and capriciousness give rise to a variety of predictability- and reasonableness-related criticisms pertaining to the presence of discretion in tax administration, including pointed opposition to unpredictability in the use of GAAR provisions. In seeking out the way by which administrative discretion should best be managed within British Columbia's consumption tax system, the Client Study is, by extension, concerned with reducing the potential for arbitrariness and promoting predictability in the system.

How does openness in the exercise of discretion affect fairness?

Ultimately, the responsible exercise of administrative discretion should be cognizant of fairness. Discussion of fairness as a concept can be philosophically complex, but at a basic level involves considerations of equity and justice. Davis (1969) provides the clearest comment on this question by suggesting that advances in openness—for example, by publishing information concerning administrative rules—can bring about incremental advances in systemic fairness (p. 24).

How can openness be achieved?

Davis (1969) is careful not to assume that structuring actions undertaken by administrators will necessarily be open: in describing structuring, he refers to “plans, policy statements, and rules, *as well as* open findings, *open* rules, and open precedents [emphasis added],” and later to “*open* plans [and] *open* policy statements [emphasis added]” (pp. 55 & 98). Thus, each structuring instrument is acknowledged to potentially exist in either an open (publicly-accessible) or closed (not publicly-accessible) format. Consequently, it can be said that openness must generally flow from a conscious effort to make information publicly accessible.

What other methods are important to the management of administrative discretion?

While the literature suggests that hazards can be addressed at a high level by either directly limiting or constraining administrative power or by rectifying improper administrative actions through judicial review, the first method is most relevant to this paper. Aside from structuring and checking, methods of directly limiting or constraining administrative power include the removal of statutory authority for explicit discretion (which adds to statutory complexity and adds an incentive for administrators to exercise prosecutorial discretion) and the intentional placement of obstacles by governments to frustrate the process of administrative rulemaking (which tends to be at odds with the achievement of government policy objectives). Thus, when it comes to directly limiting or constraining administrative power, various forms of structuring and checking are favoured in the literature. The less direct method of managing administrative discretion—the provision of judicial review—allows for the correction of administrative wrongdoings on a case-by-case basis, but is narrowly available and is less impactful, from a systemic reform standpoint, than structuring and checking.

3.5 APPLICATION OF THE LITERATURE TO THE CLIENT STUDY

These conclusions from the literature lead to a conceptual framework that recognizes the following maxims:

- While the existence of discretionary powers in statutes carries some inherent and undesirable risks, discretion is sometimes the best means of addressing certain problems (Davis, 1969, p. 25; Pagone, 2009, pp. 902-903; Thuronyi, 1996, p. 405)

- The hazards posed by the existence of administrative discretion can be mitigated through structuring and checking (Bryner, 1987, p. 209; Davis, pp. 55; Galligan, 1986, p. 168)
- Fairness is a component of justice, and openness is a hallmark of fair and just systems of administration (Davis, p. 24; Rawls, 1958, p. 164).

Therefore, in recognition of the literature, the Client Study is designed to:

- Identify all instances of statutory authority for explicit discretion in the consumption tax statutes,
- Identify structuring and checking instruments used in relation to these grants of explicit discretion, and
- Rank structuring instruments within a hierarchy that values openness and clarity over guardedness and ambiguity.

In accordance with this framework and these objectives, the Client Study data collection methods described in section 2.2.2 were augmented by the implementation of stage 2 and 3 coding procedures designed to permit analyses of the relative value of the individual administrative policies as structuring instruments. Additionally, the literature informs a final stage of the Client Study—stage 4—in which the data collected within the first three stages were used to test for systemic consistency in the administrative policies. The following sections detail the ways by which the literature was used to bring focus and relevance to the Client Study.

3.5.1 STAGE 2: CODING PUBLICLY-ACCESSIBLE ADMINISTRATIVE POLICIES

The second stage of the Client Study collected data on administrative policies from the PI sources and the *TIM*, both of which are publicly-accessible sources of information on British Columbia’s consumption tax system. Because Davis (1969) emphasizes openness as the “most useful” characteristic of any structuring instrument, the data collected in stage 2 were coded for openness (p. 98). As predictability was also valued in the literature, and because better access to information does not automatically lead to predictability, coding of the stage 2 data also assessed the clarity of the publicly-accessible administrative policies (Galligan, 1986, p. 155; Inspector-General of Taxation (Australia), 2012, p. 141; Pagone, 2009, pp. 906-907).

British Columbia’s consumption tax PI is extensive, and currently consists of 122 tax bulletins, five guides, 146 notices, 94 forms, and a formidable network of web pages. The PI is generally written in plain language, and combines summaries of the consumption tax statutes with examples of how tax applies in various situations. PI sources can be accessed over the internet, through archives in the *TIM*, and in hard copy at government offices, including front-line Service BC locations distributed throughout the province. Therefore, the PI sources can be described as being open. By contrast, the *TIM*—also produced by the British Columbia Ministry of Finance—is written for an audience of administrators and tax practitioners, sometimes eschews plain language in favour of precise meaning, and contains information perceived to be too specific for PI sources such as tax bulletins. Importantly, it is technically publicly accessible, but only by paid subscription; therefore, it is less open than the ministry’s PI.

The first of the two elements of coding in stage 2 was designed to describe the degree of openness associated with each administrative policy. Because administrative policies found in the PI sources are more open than those in the *TIM*, coding to identify the source of an administrative policy reference—a “P” (for “public information”) code or a “T” (for “*Tax Interpretation Manual*”) code—was used as a marker of openness. If a particular administrative policy was found in both the PI and the *TIM*, both codes (“P” and “T”) were recorded in the inventory. For discretionary provisions without administrative policies discovered in the stage 2 document analysis, “N” (for “null”) codes were added to the inventory. Thus, coding possibilities signifying openness included “PT,” “P,” “T,” and “N.”

The second element of coding in this stage reflected subjective judgments made by the researcher with respect to the clarity of any administrative policies identified in stage 2. To make this determination, a basic test concerned with a reasonable reading was used: a “clear” policy was held to be one that is not contradictory (e.g., if it is described in PI

and in the *TIM*, it is described consistently) and that is predictable in its exercise if read reasonably. An ambiguous policy may be contradictory between sources or its exercise may otherwise be difficult to predict. If a statement regarding an administrative policy was clear, a “C” (for “clear”) code was added to the relevant record in the inventory; conversely, if a statement was ambiguous, an “A” (for “ambiguous”) code was added.

These two elements combined to yield an array of descriptive codes. For example, a clear administrative policy described only in the PI would be coded “PC,” and an ambiguous administrative policy found in both the PI and the *TIM* would be coded “PTA.”

The objective of ranking structuring instruments used in British Columbia’s consumption tax system is fulfilled by a 7-tiered hierarchy that results out of a combination of the two coding elements applied in Stage 2 of the Client Study. The hierarchy indicates a preference for administrative policies described in PI over administrative policies that are described in the *TIM*,²⁷ and for administrative policies that are clear.²⁸ Refer to the hierarchy as shown in Table 2.

TABLE 2: STAGE 2 HIERARCHY

1.	PTC
2.	PC
3.	TC
4.	PTA
5.	PA
6.	TA
7.	N

3.5.2 STAGE 3: CODING NON-PUBLICLY-ACCESSIBLE (GREY) ADMINISTRATIVE POLICIES

Davis (1969) acknowledges that administrative discretion can be managed (to a lesser extent) through the use of structuring instruments that are not open—for example, through the creation of unpublished rules (p. 55). Stage 3 of the Client Study was designed to determine, in respect of British Columbia’s consumption tax system, whether any discretionary provisions without associated administrative policies in the publicly-accessible sources could be associated with administrative policies that are not publicly accessible—that is, policies that are only known to administrators. To this end, further document analysis using “grey” sources (audit files, appeal files, internal correspondence, and reports from the TACS database) was performed for all discretionary provisions associated with an “N” code from stage 2, and a basic coding method was implemented to mark the existence or non-existence of grey administrative policies.

“S” (for “staff”) codes were added to relevant records in the inventory of discretionary provisions for all administrative policies identified in stage 3, and brief descriptions of the administrative policies were recorded. Where it was found that no “S” code could be assigned to a particular record, a “nil” code was added and a brief explanation for the absence of the “S” code was recorded. Because administrative policies discovered at this stage are not open, comparison with the stage 2 hierarchy is not particularly useful; however, the “S” code remains useful to the client as it is a signifier that although an administrative policy exists, it is not open.

While “nil” codes (indicating a lack of an administrative policy) were only added after a number of likely sources were checked, it is impossible to say that every “nil”-coded provision definitely lacks an administrative policy.

²⁷ For instance, PC (denoting a clear policy described in a PI source only) is ranked higher than TC (denoting a clear policy described in the *TIM* only) because the PI is a more open source than the *TIM*.

²⁸ For instance, TC (denoting a clear policy described in the *TIM* only) is ranked higher than PTA (denoting an ambiguous policy described in the PI and in the *TIM*). Although the higher-ranked policy is less open than the lower-ranked policy, clarity is valued over ambiguity.

However, it can also be said that if any administrative policy remained hidden after the searches performed in stage 3, the existence of such a policy as a policy is debatable.

3.5.3 STAGE 4: HORIZONTAL CONSISTENCY SCAN

The literature supports the addition of a fourth, analysis-oriented, stage to the Client Study. As scholarship on the topic of administrative discretion is frequently concerned with the risk of arbitrariness and, as a corollary, the desire for predictability, stage 4 endeavoured to analyze the four tax types as existing within a system (as opposed to four unrelated systems) in which administrative uniformity is expected by taxpayers.

In this final stage of the Client Study, an analysis of horizontal policy consistency using the combined inventories of discretionary provisions and administrative policies—grouping comparable discretionary provisions belonging to different tax types and testing for consistency in the corresponding administrative policies—was performed. For instance, in this stage: (1) the discretionary penalty for tax evasion found in each of the four statutes²⁹ would be grouped together as comparable provisions, and (2) an examination of the associated administrative policies would be made in order to determine whether the policies that apply to the imposition of these penalties are consistent or inconsistent between the statutes. The term “horizontal” is applied to this analysis to recognize that it compares how administrative policies are described in relation to provisions that are essentially the same, but which practically exist alongside one another in different statutes.

Because British Columbia’s consumption tax statutes were drafted at different times by different individuals, it cannot be expected that the language and terminology will be wholly consistent between the statutes. Therefore, it was important to group comparable provisions based on strong conceptual similarities as opposed to requiring that provisions be truly equal within a grouping. These conceptual similarities are manifested in the category and trait coding added to the inventory of discretionary provisions in stage 1. Therefore, grouping was accomplished by electronically sorting the combined inventories of discretionary provisions and administrative policies according to these stage 1 categories and traits.

Subsequent to grouping comparable provisions, a comparison of the administrative policies, as recorded in stages 2 and 3, was made in order to determine whether the policies were consistent or inconsistent within these groups. Subjectivity entered into the task of determining whether administrative policies were consistent or inconsistent within each stage 4 grouping. The standard followed in making these decisions was one of substantial consistency and allowed for minor differences in manner in which administrative policies were described; policies were only held to be inconsistent within a grouping if the descriptions of two or more policies could suggest to a reasonable taxpayer or practitioner that different administrative approaches were possible within the grouping. If, within a group of comparable provisions, the administrative policies were substantially consistent, a code of “0” was assigned to the group; if inconsistency was noted, a code of “1” was assigned to the group.

²⁹ CTA s. 47(1)(b), MFTA s. 45(1)(b), PSTA s. 205(b), and TTA s. 35(1)(b).

4.0 CLIENT STUDY FINDINGS

This chapter briefly summarizes the results of the Client Study. Figures and one table are used to summarize the data at a high level. Complete results for stages 1 through 3 can be found in Appendix A, *Data Table: Stages 1-3*, while detailed results for stage 4 can be found in Appendix B, *Data Table: Stage 4*.

Findings for the literature review are briefly summarized in section 3.4, and the literature review findings are integrated with the Client Study results in chapter five.

4.1 IN-SCOPE PROVISIONS

The computer-assisted document analysis performed in stage 1 of the Client Study identified a total of 360 discretionary provisions exercisable by the director. These provisions were distributed across the four tax types in a manner generally consistent with the length and complexity of the statutes. Figure 2 shows this distribution.

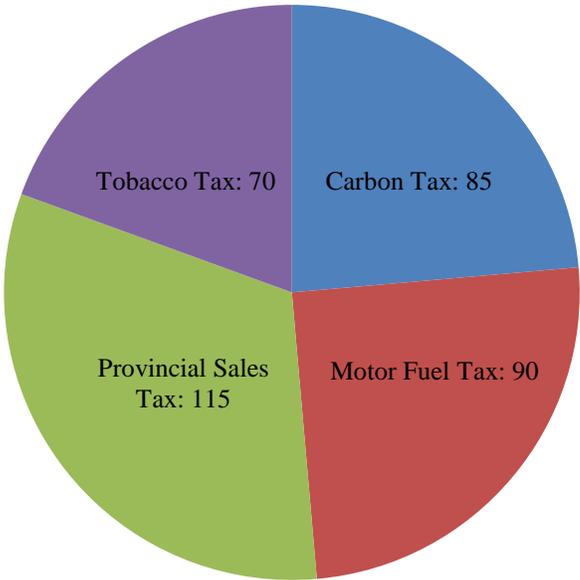


FIGURE 2: NUMBER OF DISCRETIONARY PROVISIONS BY TAX TYPE

This number of 360 discretionary provisions carries some meaning for the director in the sense that it creates an awareness of the volume of discretionary provisions that fall within her mandate as the primary statutory decision maker for British Columbia’s consumption taxes. However, because the construction of statutes varies between jurisdictions and according to their purpose, one cannot easily take this number as an indication that discretion is more or less prevalent in British Columbia’s consumption tax statutes than in it is in other British Columbia statutes or in statutes of any kind belonging to other jurisdictions.

A total of 10 categories were established during the process of coding discretionary provisions in stage 1 of the Client Study. Of these categories, Inspection and Audit (91 provisions) and Registration (86) contained significantly more discretionary provisions than any other category; combined, these two categories accounted for nearly half of the discretionary provisions in the study. Taxation (7 provisions) was one of the least populous categories but,

arguably, contained the most contentious of any of the discretionary powers.³⁰ The complete distribution of the discretionary provisions within the 10 categories is shown in Figure 3.

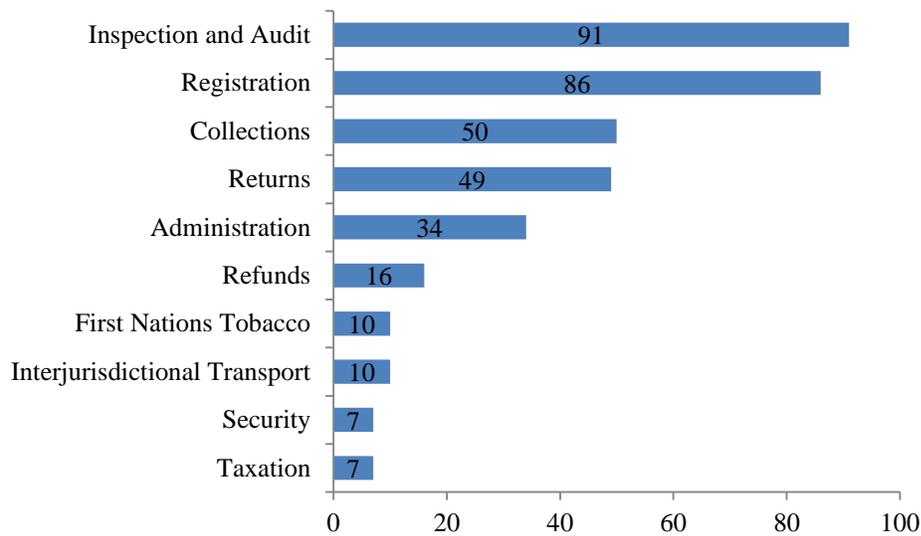


FIGURE 3: NUMBER OF DISCRETIONARY PROVISIONS BY CATEGORY

Examples of representative provisions associated with each of the ten categories are listed in Table 1, found in section 2.2.2.1. An exhaustive pairing of discretionary provisions to descriptive categories can be found in Appendix A. However, in order to enhance the reader’s understanding of the nature of each of these categories and the provisions within them, this section provides general descriptions of the makeup of these categories as they are reflected in the inventory of discretionary provisions:

- *Administration*, with 34 provisions, is predominantly concerned with minor acts (for example, establishing rules concerning records) which support or are ancillary to the smooth functioning of the consumption tax system.
- *Collections*, with 50 provisions, equips the director with a variety of tools that can be deployed with the object of compelling debtors to satisfy their debt obligations with respect to consumption taxes, penalties, and interest.
- *First Nations Tobacco*, with 10 provisions, provides the director with a variety of registration, administrative, and compliance powers unique to British Columbia’s “exempt sale retail dealer” scheme that permits tax-exempt sales of tobacco to First Nations consumers. (These provisions were inventoried separately because this tobacco sales scheme is unique within the consumption tax statutes.)
- *Inspection and Audit*, with 91 provisions, contains powers to assess taxes, penalties, and interest, and to enable the director to conduct the compliance activities which precede the issuance of assessments.
- *Interjurisdictional Transport*, with 10 provisions, supports two international transport agreements³¹ to which British Columbia is a party, and provides the director with powers related to licensing and administration. (These provisions were inventoried separately because they have no analogues outside of these schemes.)
- *Refunds*, with 16 provisions, equips the director with the authority to provide certain refunds and to make rules respecting the process for claiming certain refunds.

³⁰ For further discussion on the composition of the Taxation category, refer to chapter five, Discussion and Analysis.

³¹ The International Fuel Tax Agreement (which interacts with the CTA and MFTA) and the International Registration Plan (which interacts with the PSTA).

- *Registration*, with 86 provisions, provides the director with an array of powers to issue, withhold, suspend, cancel, and place conditions on authorizations and registrations that businesses are required to obtain under the consumption tax statutes.
- *Returns*, with 49 provisions, allows the director to shape various aspects of the consumption tax filing and payment regimes by establishing filing frequencies and by making stipulations as to the form and manner by which returns and payments must be conveyed to government.
- *Security*, with seven provisions, contains a series of exemptions from the CTA, MFTA, and TTA security schemes that the director may elect to provide to certain persons in the interest of administrative efficiency. Essentially, these exemptions eliminate the need for security to be paid and subsequently refunded in cases where no tax is exigible from persons at the bottom of the supply chain.
- *Taxation*, with seven provisions, provides the director with significant powers to affect the manner by which tax is imposed—for instance, by deeming a purchase price or by invoking the PSTA GAAR.

4.2 OPENNESS AND CLARITY

The hierarchy established out of the stage 2 coding is intended to show a preference for administrative policy descriptions that are both open (discoverable by taxpayers and practitioners) and clear (descriptions are not inconsistent between sources, and administrative actions are reasonably easy to predict). At a very high level, the results are reasonably favourable in terms of openness, and not as favourable in terms of clarity.

Figure 4 shows how the discretionary provisions were distributed within the stage 2 hierarchy.

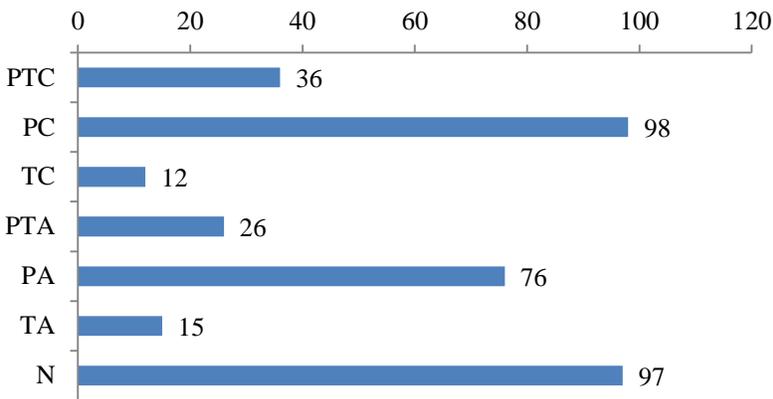


FIGURE 4: DISCRETIONARY PROVISIONS ON THE STAGE 2 HIERARCHY

Openness was measured by whether an administrative policy description could be found in one or both of the PI and the *TIM*. Of the 360 in-scope provisions, 263 (Figure 4 bars labelled PTC, PC, TC, PTA, PA, and TA), or 73%, had associated administrative policy descriptions in some publicly-accessible source. Of these 263, the vast majority—236 (Figure 4 bars labelled PTC, PC, PTA, and PA), or 90%—had administrative policy descriptions in PI sources (as opposed to being described in the less-accessible *TIM* only).

Stage 2 coding for clarity revealed mixed results. 146 (Figure 4 bars labelled PTC, PC, and TC), or 41%, of the 360 in-scope provisions were associated with clear administrative policy descriptions. 117 (Figure 4 bars labelled PTA, PA, and TA), or 33%, were ambiguous. The remaining 97 provisions (Figure 4 bars labelled N) could not be scored either clear or ambiguous because they had no associated administrative policies identified during stage 2. Despite the absence of any clear or ambiguous coding for these provisions, their exercise could not be described as predictable (at least by taxpayers or practitioners), so the lack of publicly-accessible administrative policy descriptions essentially added to the ambiguity already identified in stage 2.

4.3 “GREY” POLICY

Further analysis of the 97 N-coded provisions was conducted within stage 3 of the Client Study, with the objective of determining, for each provision, whether a “grey” administrative policy (i.e., a policy not described in a publicly-accessible source) existed.

It was found that the majority of these provisions did have associated grey policies. Research identified administrative policies for 59, or 61%, of the 97 provisions. As a result, it can be said that administrative policies—both publicly-accessible and grey—exist for 322, or 89%, of the 360 in-scope discretionary provisions.

“Nil” codes were assigned to the remaining 38 provisions, and reasons to explain the absence of any administrative policy were recorded. 27 of these provisions had never been used and no policy had been developed. (One of the 27 unused provisions required circumstances to be prescribed by regulation in order for the discretion to be exercised, but no circumstances have been prescribed.) 11 of the provisions had been used but had no associated administrative policies. These “nil” codes ultimately signal some degree of disconnect between the creation of discretionary provisions in legislation and the administrative policy development process. Figure 5 details the results of stage 3.

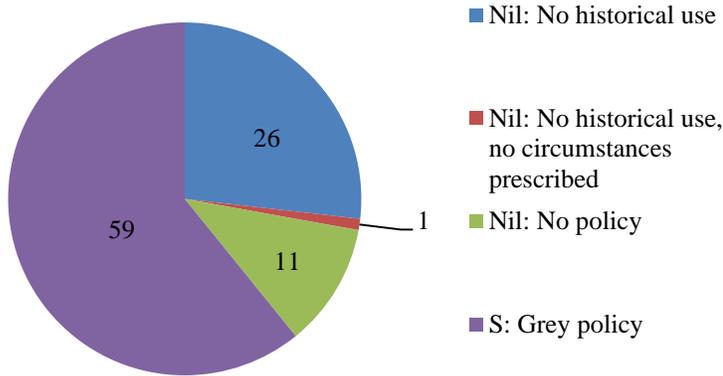


FIGURE 5: BREAKDOWN OF STAGE 3 RESULTS

4.4 HORIZONTAL CONSISTENCY

In stage 4 of the Client Study, the combined inventories of discretionary provisions and their corresponding administrative policies were rearranged to group comparable discretionary provisions across tax types in order to test for consistency in the manner by which administrative policies are described. This analysis would, for instance, identify problematic scenarios such as one in which the ministry purports to apply one policy in exercising comparable penalty provisions in the CTA, MFTA, and TTA, but another (different) policy to exercise an equivalent penalty provision in the PSTA. Brief findings are summarized in Table 3.

TABLE 3: MEASURE OF HORIZONTAL CONSISTENCY

Number of provisions in study	360
Number of cross-statute groupings	69
Number of provisions included in groupings	241
Groupings (%) exhibiting policy inconsistency	33%

The process of grouping comparable provisions yielded a set of 69 groups. Because some provisions are unique, not all of the 360 in-scope provisions were placed into one of these groups. 241 of the provisions did fit within the groups, while 119 were unique and did not.

When the analysis of horizontal policy consistency was performed, it was found that the administrative policy descriptions were substantially consistent in 46, or 67%, of the 69 groups. Some degree of inconsistency³² was noted in 23, or 33%, of the groups.

³² Refer to section 3.5.3 for a discussion of the standard applied when determining whether administrative policy descriptions were consistent or inconsistent.

5.0 DISCUSSION AND ANALYSIS

This chapter contextualizes the Client Study findings within the literature. This analysis includes a study of the relative importance of the various discretionary provisions in British Columbia's consumption tax system, a review of the approaches to structuring and checking in the consumption tax system, discussion of cross-statute consistency in describing administrative policies, and a review of British Columbia's position on fairness.

5.1 THE RELATIVE IMPORTANCE OF DISCRETIONARY PROVISIONS IN BRITISH COLUMBIA'S CONSUMPTION TAX SYSTEM

While much of the literature is concerned exclusively with exercises of administrative discretion which present the potential for outcomes that are unquestionably egregious, Galligan (1986) reminds us that:

Many instances of discretionary power do not raise directly issues of fairness; the decision to establish a new town, to paint road signs orange, or to increase the number of buses at peak hour, do not obviously do so. Yet in other contexts discretionary powers do raise questions of fairness or justice in one or other of its senses. (p. 152).

This sentiment serves as a useful platform upon which the array of discretionary powers identified in stage 1 of the Client Study can be analyzed. Arguably, approximately half of the director-exercisable discretionary provisions provide the director with relatively mundane powers. The remaining provisions, unless the exercise of administrative discretion is properly controlled, have the potential to lead to serious concerns involving fairness or justice. To adapt Galligan's (1986) analogy, it may be said of British Columbia's consumption tax administration that the decision to require tax returns to be filed quarterly,³³ to delegate authority to audit staff,³⁴ or to authorize a taxpayer to destroy their records before the five-year default retention period has ended,³⁵ will not involve significant considerations of fairness or justice. By contrast, taxpayers are theoretically more susceptible to violations of fairness or justice when the director deems a purchase price to be different from the one nominally associated with a transaction,³⁶ imposes an administrative penalty for an attempt to evade paying tax,³⁷ or determines the tax consequences of a transaction using the GAAR.³⁸

Obviously, because of the large number of in-scope provisions, it is not practical to analyze each provision in this manner within this chapter. Rather, one purpose of the Client Study was to produce an inventory of discretionary provisions that could be used to conduct further analysis outside the mandate of this study, and this deliverable can be found in Appendix A. Additionally, general descriptions of the makeup of the 10 categories established within stage 1 can be found in section 4.1. As an alternative to analyzing each provision individually, it is reasonable to propose that the 10 stage 1 categories can be regarded as providing a fairly reliable means of gauging the magnitude of potential hazards to taxpayers. Individual discretionary provisions must still be considered on their own merits, but the spectrum shown in Table 4 proposes an arrangement of the stage 1 categories that corresponds, at a general level, to the contentiousness associated with the discretionary provisions contained within each category.

³³ For example, under CTR s. 8(2).

³⁴ For example, under MFTA s. 61(1).

³⁵ For example, under TTR s. 18(3).

³⁶ For example, under PSTA s. 27(1).

³⁷ For example, under CTA s. 47(1)(b).

³⁸ For example, under PSTA s. 201(3).

TABLE 4: PROPOSED ARRANGEMENT OF STAGE 1 CATEGORIES BY CONTENTIOUSNESS

Generally Benign	Mixed	Potentially Contentious
Administration	Collections	Inspection and Audit
Interjurisdictional Transport	First Nations Tobacco	Registration
Returns	Refunds	Taxation
Security		

With few exceptions,³⁹ the literature exhibits a concern with the arbitrary or capricious exercise of administrative discretion. For this reason, in gauging the potential hazards associated with each of the 10 stage 1 categories, consideration was given to the possible outcomes that could arise out of the arbitrary or capricious exercise of the provisions within these categories. The degrees of contentiousness—generally benign, mixed, and potentially contentious—reflect the magnitudes of harm that could result out of these outcomes. Generally, provisions in the categories considered *generally benign* could be exercised in an arbitrary or capricious manner without significant negative impacts to taxpayers. Provisions in the categories considered *mixed* could be exercised in an arbitrary or capricious manner with either a somewhat negative impact to taxpayers or, in the case of a small minority of the provisions found in these categories, with a greater negative impact to taxpayers. Generally, provisions in the categories considered *potentially contentious* could carry a significant negative impact for taxpayers if exercised in an arbitrary or capricious manner.

With reference to the list of general qualities of each category found in section 4.1, the following list explains this proposed arrangement:

- *Administration* is *generally benign* because the director’s powers associated with this category authorize only minor acts related to the administration of the consumption tax statutes. For example, a decision by the director to decline a taxpayer’s request to destroy records before the mandated retention period has ended⁴⁰ has no meaningful impact on that taxpayer beyond matters of convenience.
- *Interjurisdictional Transport* is *generally benign* because it provides the director with very limited powers related to the administration of two international transport agreements. Although some of the powers permit the director to suspend or cancel International Fuel Tax Agreement licences,⁴¹ such actions may inconvenience licensees but do not fully impair their abilities to engage in business.
- *Returns* is *generally benign* because it enables the director to establish the parameters within which persons must file returns and remit collected taxes to government, and these parameters pose no material hazards to taxpayers. For example, requiring a business to file returns on a monthly basis rather than on a quarterly basis may result in some measure of inconvenience, but does not raise meaningful issues of fairness or justice.
- *Security* is *generally benign* because it consists of a collection of provisions used by the director to exempt certain persons from the CTA, MFTA, and TTA security schemes in cases where transacting within the security scheme would require security to be paid only to be later refunded. A decision to exercise or not to exercise any of these provisions only results in a convenience or inconvenience, but does not present significant issues of fairness or justice.
- *Collections* is *mixed* because the provisions within the category may inconvenience taxpayers to varying degrees, some of which begin to raise issues of fairness or justice. The frequently-used method of recovering tax debts by placing a demand on a debtor’s bank account⁴² may result in some measure of

³⁹ McLachlin (1992, p. 172) and Rosenblum (1974, p. 51) regard the threat associated with arbitrariness to be overstated in the literature.

⁴⁰ For example, by declining to exercise CTR s. 32(2).

⁴¹ For example, by exercising MFTA s. 19(4).

⁴² For example, by exercising CTA s. 63(2).

inconvenience, but collection efforts are also anticipated by most debtors, who are aware that they are required to pay a debt and have received advance notice of impending actions to recover the debt. However, arguably more severe powers can also be found within this category, including provisions in the CTA and PSTA that permit the director to obtain an injunction ordering a business to cease operations.⁴³

- *First Nations Tobacco* is *mixed* because it imbues the director with unique powers to shape and regulate the market for tax-exempt tobacco products. For instance, in administering the exempt sale retail dealer scheme, the director attempts to balance the interests of permitting sales to meet the “legitimate demand for tax-exempt tobacco products” in a geographical area against the need to protect provincial revenue by preventing tax-exempt tobacco from being diverted into the black market (Ministry of Finance (British Columbia), 2010, pp. 3-4). Thus, by prohibiting a new retailer from selling tax-exempt tobacco because an adequate supply is already available,⁴⁴ the director impacts the ability of that retailer to earn a profit from selling tax-exempt tobacco. This does raise issues of fairness and justice, but the severity of those issues is limited: retailers not permitted to sell tax-exempt tobacco may still sell other goods, including taxable tobacco products.
- *Refunds* is *mixed* because of the theoretical potential for harm in the arbitrary exercise of the refund payment authorities associated with the category. To allow refunds in some cases and to disallow them in others when there are no material differences in the underlying facts would raise issues of fairness and justice. However, the category-level potential for contentiousness is tempered by the category’s inclusion of discretionary provisions that are more benign (for example, provisions authorizing the director to specify the form and manner for claiming certain refunds)⁴⁵ and because most refund provisions in British Columbia’s consumption tax statutes are not discretionary: on the whole, discretionary refunds represent a fairly minor segment of the consumption tax refund scheme.
- *Inspection and Audit* is *potentially contentious* because nearly all of the provisions in the category have the potential to carry significant monetary impacts for taxpayers (in the form of assessments of tax, penalty, and interest) or to interfere with a person’s privacy (for example, provisions authorizing the director to enter premises).⁴⁶ The arbitrary exercise of nearly any provision in this category would raise issues of fairness and justice.
- *Registration* is *potentially contentious* because nearly all of the provisions in the category permit the director to issue, withhold, suspend, cancel, or place conditions on authorizations and registrations that businesses are required to obtain. If a business does not hold a valid authorization or registration, or if it holds an authorization or registration encumbered by unreasonable conditions, its ability to operate within the law would be severely constrained. Therefore, the arbitrary exercise of the provisions associated with this category would raise issues of fairness and justice.
- *Taxation* is *potentially contentious* because its provisions provide the director with powers to override the manner in which tax would ordinarily apply (or not apply) to transactions were it not for the intervention of the director. The arbitrary exercise of any of the provisions in this category would raise issues of fairness and justice.

Discretionary provisions associated with the Taxation category provide the director with relatively more latitude in determining the application of tax than those in other categories, and can be regarded as providing the greatest potential for hazard if the exercise of discretion is not appropriately controlled. This is because hazards are found not only in the theoretical arbitrary or capricious exercise of the provisions in this category, but also because the ordinary, reasonable, and defensible use of the provisions can be very difficult to predict.

⁴³ CTA s. 68 and PSTA s. 225. (Neither provision has been used.)

⁴⁴ By exercising TTR s. 8(6).

⁴⁵ PSTA s. 159(4) and PSTA s. 160(3).

⁴⁶ The director may enter premises pursuant to CTA s. 43(1), CTA s. 43(2), MFTA s. 41(1), and PSTA s. 194(2).

All but one of these provisions in the Taxation category are found only within the PSTA. (Under the TTA,⁴⁷ the director has the power to deem the wholesale price of a cigar to be something other than the nominal wholesale price of a cigar.) Under the PSTA, which imposes tax on the purchase price of a taxable good or service, the director has the power to substitute a fair market value purchase price for the nominal purchase price of a good or service.⁴⁸ This PSTA provision is most often exercised as a means of countering the problem of under-reporting prices associated with private purchases of vehicles, but can be applied to any transaction that falls within the tax base.⁴⁹ From a taxpayer's perspective, it is generally difficult⁵⁰ to predict if, when, and how the director will exercise this power. In this context, Goodnow's (1916) complaint that the tax treatment of a transaction may sometimes require administrative action to finalize rings somewhat true (p. 167). However, in the case of the director's power to deem prices under the PSTA (and, to some extent, the TTA), the specific nature of the uncertainty is different from that contemplated by Goodnow, as British Columbia taxpayers know how much tax is payable absent the potential exercise of the director's discretionary power, but must nevertheless remain cognizant of the potential for the amount to be varied. A very similar example of this form of uncertainty can be found in the existence of the PSTA GAAR.

In its first two years of existence, British Columbia's PSTA GAAR has yet to be used, let alone tested in court. But because the PSTA GAAR is drafted so similarly to the GAARs in the *Income Tax Act (Canada)* (R.S.C. 1985, c. 1, s. 245) and the *Excise Tax Act (Canada)* (R.S.C. 1985, c. E-15, s. 274), the hazards associated with and the perceptions of the PSTA GAAR, should it be exercised, are likely to be similar to those elucidated in the literature with respect to the federal GAARs. The concept of abuse has proved to be nebulous at the federal level (Kellough, 1995, p. 1827; Moskowitz & Meredith, 2012, p. 9). There is no reason to believe the experience will be any different in British Columbia unless jurisprudence on the concept evolves before the PSTA GAAR is used. That the PSTA GAAR has gone unused, however, may be a promising sign, particularly in light of how often the federal GAARs appear to be used: this may be an indicator that the PSTA is tightly drafted, or of a cautious approach to administration. Interestingly and somewhat problematically, one cannot look to the parliamentary record to glean insights into how the legislative branch of government conceived of the future exercise of the PSTA GAAR: committee stage debate for Bill 54—2012⁵¹ spanned three days, but was concluded only a few provisions short of reaching debate on the GAAR; as a result, what is arguably the most significant grant of administrative discretion in the whole of British Columbia's consumption tax statutes was passed without explicit discussion (Falcon, 2012b, p. 12691).

The different rationales for using discretionary provisions in the drafting of statutes can also be examined in the context of the spectrum in Table 4. The complex administrative environment, and the inability of the legislative branch of government to provide statutory rules detailed enough to address this complexity, is the reason behind many statutory grants of administrative discretion (Bryner, 1987, p. 7; Davis, 1969, p. 15; Thuronyi, 1996, p. 405). A review of the discretionary provisions in the *generally benign* and *mixed* columns of Table 4 suggests that the potential for administrative complexity was likely a key contributor to the decisions to make these particular provisions discretionary. In essence, these are low-profile, "nuts and bolts"-type provisions that permit the director, operating in a complex environment, to make decisions integral to the smooth operation of British Columbia's consumption tax system. The second reason why statutes may provide for administrative discretion is to allow for the individualization of outcomes (Davis, p. 15; Pagone, 2009, p. 899). In noting that administrative discretion can augment fairness to taxpayers by substituting just outcomes in place of harsh ones, Thuronyi views this reason from one perspective (p. 405). However, this form of administrative discretion can also serve to yield outcomes perceived

⁴⁷ TTA s. 2(1.3).

⁴⁸ PSTA s. 27(1).

⁴⁹ A fulsome examination of PSTA s. 27 was made in the committee stage of Bill 54—2012, but examples provided in that debate only referred to the usage of the provision in relation to vehicles (Falcon & Ralston, 2012, p. 12473).

⁵⁰ PSTA s. 27(1) was coded PA in stage 2 of the Client Study.

⁵¹ 39th Parliament, 4th Session.

to favour or protect the administrative system. This motivation can be seen in many of the provisions associated with the categories in the *potentially contentious* column of Table 4. For instance, the discretionary provisions which permit the director to issue administrative penalties, to suspend or cancel registrations, and to invoke the GAAR all serve to make individualized, system-protecting actions possible. It should further be noted that the administrative complexity rationale was also a likely consideration in the drafting of some of the provisions belonging to the *potentially contentious* column.

Clearly, not all of the discretionary provisions in British Columbia’s consumption tax statutes are equal in importance. While the high-level findings described in chapter four provide a useful picture of the discretionary environment in the consumption tax system, it is better to consider the provisions in the context of their stage 1 categories, and best to analyze their exercise on a provision-by-provision basis using the data contained within Appendix A.

5.2 STRUCTURING AND CHECKING THE EXERCISE OF DISCRETION

Because the literature exhibits a general consensus with Davis’s prescription to appropriately structure and check administrative discretion, this section consists of an analysis of British Columbia’s efforts within this context.

5.2.1 STRUCTURING ADMINISTRATIVE DISCRETION IN THE CONSUMPTION TAX SYSTEM

Table 5 contrasts Davis’s (1969) examples of structuring with actions taken by British Columbia. As Table 5 indicates, British Columbia utilizes, to varying extents, all of the approaches Davis proposes for structuring administrative discretion. Its usage of policy statements and rules is significant and its comparatively modest use of the other tools is not necessarily indicative of a major shortcoming in British Columbia’s approach to the in-scope provisions. This examination of structuring begins with a survey of the various information sources used by British Columbia (section 5.2.1.1) and concludes with an analysis of how these sources relate to Davis’s approaches to structuring administrative discretion (section 5.2.1.2).

TABLE 5: STRUCTURING ADMINISTRATIVE DISCRETION

Davis	British Columbia
(Open) plans	PI (to a very limited extent)
(Open) policy statements	PI, <i>TIM</i> , rulings
(Open) rules	PI, <i>TIM</i> , rulings, grey policy
(Open) findings, precedents, reasons	Rulings, audit conclusion letters, appeal decisions
Fair informal procedure	PI

Note. Approaches to structuring in the left-hand column are proposed by Davis. Adapted from *Discretionary Justice: A Preliminary Inquiry* (pp. 55 & 98), by K. C. Davis, 1969, Baton Rouge: Louisiana State University Press.

5.2.1.1 INFORMATION SOURCES IN BRITISH COLUMBIA’S CONSUMPTION TAX SYSTEM

British Columbia does not have any stand-alone information source dedicated to the phenomenon of administrative discretion in its consumption tax system. Rather, the information sources described in this section are all means by which any form of information pertaining to the consumption tax system, including information involving the in-scope provisions, is communicated to taxpayers, practitioners, or administrators.

This paper, in section 3.5.1, has already described the primary information source used by the ministry: the PI. The Client Study indicates that 236 of the 360 in-scope provisions were associated with some sort of administrative policy description in the PI: some were clear, and some were ambiguous.

The next most significant information source—the paid-access, specialist-oriented *TIM*—is similarly addressed in section 3.5.1. The *TIM* is published electronically by a private sector vendor under contract with the province, and is provided to the province in a format compatible with Folio Views software, which requires a paid licence for use.

The same content is sold by the private sector vendor and incorporated into a larger collection of tax information—it is this product which is purchased and accessed by individuals outside government. Thus, government derives no revenue from the paid-access model. Stage 2 of the Client Study indicated that the *TIM* contains administrative policy descriptions for 89 of the in-scope provisions.

Information in relation to a specific fact pattern can be obtained from the Ministry of Finance through its consumer tax rulings program. Rulings are issued by e-mail to requestors, and are not published. However, ad hoc revisions to the PI and/or the *TIM* are made when staff involved with the rulings process identify concepts or pieces of information suitable for broader consumption.

Grey policy of the type identified within stage 3 of the Client Study is another form of information in British Columbia's consumption tax system. While grey policy is inherently undocumented, it does reflect the existence of administrative rules. In the Client Study, grey policy was found to be associated with 59 of the in-scope provisions.

Finally, information is provided to individual taxpayers in the form of audit conclusion letters and appeal decision letters. Information conveyed using these sources pertains to specific taxpayers and specific circumstances, and is not published. It is, however, available to administrators for reference purposes.

SECTION 5.2.1.2 BRITISH COLUMBIA'S INFORMATION SOURCES WITHIN THE DAVIS FRAMEWORK

In Davis's (1969) words, "Openness is a natural enemy of arbitrariness, a natural ally in the fight against injustice" (p. 226). While Davis was writing on the topic of administrative discretion generally, it can be argued that openness has justifiable limits in the realm of tax administration. Since the time of Davis's writing, mounting concerns for privacy and efforts to safeguard "confidential" taxpayer information have been evident, and some have argued that the protection of taxpayer information is integral to the proper functioning of voluntary compliance-oriented tax systems (Laury & Wallace, 2005, pp. 427-428). Therefore, this review acknowledges the tension between Davis's preference for openness and conventions surrounding privacy in tax matters.

The first approach⁵² to structuring advocated by Davis (1969) is the use of open plans. In British Columbia's consumption tax system, examples of open plans as they relate to the in-scope provisions are rare. One example can be found in *Notice 2013-008, PST Education Program*, which outlines a temporary program (related to the 2013 re-implementation of the PST) that provided taxpayers with the opportunity to request audit-like reviews that did not carry penalty and interest implications (Ministry of Finance (British Columbia), 2013). In essence, it signalled a phasing-in of the director's discretionary penalty and interest policies for the PST. The scarcity of open plans of this type is indicative of the relatively static nature of the policies that inform British Columbia's consumption tax administration.

Policy statements are the second tool in Davis's (1969) prescription for structuring administrative discretion, and are at the core of British Columbia's approach. PI sources are at the fore (with 236 administrative policy descriptions associated with the in-scope provisions) and are vital for their openness. There is a significant overlap between the 89 administrative policy descriptions found in the *Tax Administration Manual* and those also contained in PI sources, but stage 2 of the Client Study indicated that 27 administrative policy descriptions are found exclusively in the *TIM*. Because information in the *TIM* is not confidential, this finding indicates a minor shortcoming inasmuch as openness is concerned: policy statements made exclusively in the *TIM* are less likely to be read by taxpayers. Finally, policy statements are also made in rulings. These are generally repetitions or contextual adaptations of policy statements already found in one or both of the sources noted above, and do not contribute significantly to systemic openness as rulings are not published by the Ministry. To publish tax rulings—even in a redacted form so

⁵² The chronology in this section follows that set out in Table 5. All references to Davis are to *Discretionary Justice* (Davis, 1969, pp. 55 & 98).

as to remove details identifying the requestor—poses privacy issues as information critical to taxpayers’ business interests could be revealed.

Analysis of Davis’s (1969) third approach—rules—in relation to British Columbia’s consumption tax system differs minimally from that which applies to British Columbia’s use of policy statements. British Columbia’s use of rules in consumption tax administration can be differentiated from its use of policy statements inasmuch as grey policy can be better characterized as a set of rules than as statements (given their undocumented nature). However, many rules are described in PI sources, the *TIM*, and in rulings in the same manner that policy statements are made. For example, the director is authorized by statute⁵³ to specify the form (the data elements and the layout) of a collector’s PST return, and this specification is made by way of a rule described in PI sources.

Davis’s (1969) approaches concerning findings, precedents, and reasons—listed fourth in Table 5—are somewhat difficult to discuss in relation to British Columbia’s consumption tax system, as the system does not include a formal adjudicatory body of the type found in many of the agencies addressed by Davis’s work.⁵⁴ However, some relevance can be found in the rulings, audit, and appeal⁵⁵ functions within the consumption tax system. In all of those functions, information concerning the exercise of the in-scope provisions is generally provided in writing, but is never published for public consumption (for example, in PI or the *TIM*) unless it is generalized so as to preserve privacy. While all rulings, audit conclusion letters, and appeal decision letters are available to administrators for reference purposes, information contained in these sources is not open.

The final approach to checking administrative discretion proposed by Davis (1969) is to promote fair informal procedure. British Columbia’s effort in this regard is evidenced in a piece of PI—the *Taxpayer Fairness and Service Code*⁵⁶—that contains pledges concerning “standards and behaviour” and states the Ministry’s position on certain taxpayer “rights” (Ministry of Finance (British Columbia), 2012, p. 1). The high-level commitments made in this publication are not enshrined in legislation, so do represent a form of informal procedure.

Ultimately, if the common thread between all of these approaches is the broad concept of administrative rulemaking, the Client Study reveals that British Columbia’s consumption tax system exhibits strong tendencies towards “administrative self-confinement” (Davis, 1969, p. 69). With the inclusion of the stage 3 findings concerning grey policy, there exist only 11 in-use⁵⁷ discretionary provisions with no associated administrative policy. 10 of these 11 provisions are associated with the tobacco tax, which further diminishes the prospect that any significant systemic flaw exists; rather, additional work on establishing tobacco tax administrative policies would substantially close this gap.

Stage 2 results indicated that British Columbia’s consumption tax system is supported by a fairly open set of administrative policy descriptions, but that the level of clarity in those descriptions is not as advanced. However, even Davis (1969) sees value in administrative statements that are “only slightly less vague” than ambiguous grants of discretion made by statute (p. 56). More important than across-the-board openness and clarity is the task of ensuring that administrators “locate the optimum degree of structuring *in each respect for each discretionary power* [emphasis added]” (Davis, p. 99). Indeed, if the Ministry were to enhance its information sources such that every in-scope provision would be coded PTC under the stage 2 criteria, the information sources might become so complex as to cause some readers difficulty in locating information relevant to their circumstances.

⁵³ PSTA s. 186(1).

⁵⁴ For instance, the Federal Trade Commission, p. 70; the United States Parole Board, p. 126; the National Labor Relations Board, p. 205.

⁵⁵ Refer to section 5.2.2 for further discussion of the appeal function.

⁵⁶ Refer to section 5.4 for further discussion of the *Taxpayer Fairness and Service Code*.

⁵⁷ Provisions scored “nil” with no historical use are not included in this figure.

Therefore, it is important to consider how the exercise of administrative discretion is structured for those in-scope provisions which exhibit the highest potential for significant violations of fairness or justice. To echo section 5.1, it is not practical to examine the structuring of each provision within this chapter. However, a higher level examination of the openness and clarity associated with the three most potentially contentious stage 1 categories of discretionary powers is possible and provides useful insights into the state of structuring where it matters most. Table 6 provides this summary.

TABLE 6: STRUCTURING IN THE THREE MOST POTENTIALLY CONTENTIOUS STAGE 1 CATEGORIES

Stage 1 Category	Number of In-Scope Provisions	Number (%) of Open ⁵⁸ Administrative Policy Descriptions	Number (%) of Clear ⁵⁹ Administrative Policy Descriptions
Inspection and Audit	91	75 (82%)	55 (60%)
Registration	86	60 (70%)	25 (29%)
Taxation	7	3 (43%)	2 (29%)
All Stage 1 Categories	360	263 (73%)	146 (41%)

Using the All Stage 1 Categories figures in Table 6 as a baseline, it is evident that the exercise of administrative discretion as it relates to provisions associated with the Inspection and Audit category is structured at a level higher than the in-scope provisions generally. However, the other potentially contentious categories—Registration and Taxation—exhibit structuring significantly below the baseline.

5.2.2 CHECKING ADMINISTRATIVE DISCRETION IN THE CONSUMPTION TAX SYSTEM

Table 7 contrasts Davis’s (1969) examples of checking with characteristics of British Columbia’s consumption tax system. In this section, the principle of check as it relates to the consumption tax system is analyzed.

TABLE 7: CHECKING ADMINISTRATIVE DISCRETION

Davis	British Columbia
Oversight: review of actions by other administrators	Yes (examples vary by type of administrator)
Appeal to an independent officer	Statutory appeals
Judicial review	Technically possible but unlikely

Note. Approaches to checking in the left-hand column are proposed by Davis. Adapted from *Discretionary Justice: A Preliminary Inquiry* (pp. 55, 142, & 144), by K. C. Davis, 1969, Baton Rouge: Louisiana State University Press.

The first form of check⁶⁰ described by Davis (1969) is oversight, wherein “one officer should check another, as a protection against arbitrariness” (p. 142). While the director is named as the statutory decision maker for each of the in-scope provisions from British Columbia’s consumption tax statutes, letters of delegation are used to permit lower-level administrators to exercise discretionary provisions relevant to their roles. These lower-level administrators work within hierarchical section and branch structures which facilitate checks to be performed between peers or, more traditionally, on a vertical orientation whereby managers or supervisors scrutinize the actions taken by their subordinates. An example can be found in the Consumer Taxation Audit Branch, which has recently implemented a program that involves randomly selecting audit and refund files for review by supervisors and audit staff (E. Symes, personal communication, January 13, 2015).

⁵⁸ Count (and percentage) of provisions with stage 2 codes of PTC, PC, TC, PTA, PA, and TA.

⁵⁹ Count (and percentage) of provisions with stage 2 codes of PTC, PC, and TC.

⁶⁰ The chronology in this section follows that set out in Table 7. All references to Davis are to *Discretionary Justice* (Davis, 1969, pp. 55, 142, & 144).

Davis's (1969) second approach to checking the exercise of administrative discretion involves appeals to an independent officer. British Columbia's consumption tax statutes provide for appeals—not to an administrator, but to the Minister of Finance (CTA, s. 56; MFTA, s. 50; PSTA, s. 211; TTA, s. 23). In practice, a consumption tax appeal case is investigated by an appeals officer, who is mandated to provide a “fair and impartial review” before making a recommendation to the minister for a formal decision (Ministry of Finance (British Columbia), 2015a, pp. 2 & 6).

The final component of check described by Davis (1969) is judicial review. In relation to British Columbia's consumption taxes, there exists a theoretical possibility that administrative decisions may be subject to judicial review. However, because British Columbia courts have applied⁶¹ the same principle that keeps United States and British courts from engaging in judicial review when administrative actions are subject to statutory appeals (of the type discussed above), judicial review of administrative decisions made under British Columbia's consumption tax statutes is extremely unlikely to occur.

5.3 CROSS-STATUTE CONSISTENCY IN THE EXERCISE OF DISCRETION

Consistency is essentially the opposite of arbitrariness. While no literature was found to address cross-statute administrative consistency in the manner that this issue was examined within stage 4 of the Client Study, a general concern with arbitrariness is evident in the literature.⁶²

In one sense, the fact that the British Columbia's four consumption taxes are segregated into four separate statutes seems, in itself, arbitrary. If the four taxes were imposed under a single statute, there would be no reason to consider cross-statute policy consistency; the director would simply be expected to administer the discretionary provisions within that statute without being arbitrary. However, there are technical and practical impediments to combining the consumption tax statutes: the CTA, MFTA, and TTA utilize security schemes while the PSTA does not; additionally, redesigning the legislative underpinnings for the consumption tax system would be a major project with relatively minor benefits. Therefore, the question of cross-statute consistency in administration is an important one to British Columbia's consumption tax system, and one to which the principles of structuring and checking can be applied.

Because the Client Study reviewed administrative policy descriptions and did not include observations of actual administrative practices, the results from stage 4 reflect the degree of consistency in those descriptions, and not necessarily in practices. Indeed, it is likely that there are some stage 4 groupings for which practices are consistent across the statutes, but for which the descriptions are not. An example can be found in the three-tiered administrative penalty provisions⁶³ found in each of the consumption tax statutes: although there are no substantial differences between the provisions, the general consumption tax bulletin that deals with penalty and interest topics has not been updated to reflect the 2013 re-implementation of the PST and, as a result, the descriptions of the policies used to guide the administration of these provisions differs (Ministry of Finance (British Columbia), 2011, pp. 3-5; Ministry of Finance (British Columbia), 2014, TIM/PSTA/s. 205/Int.). As section 4.4 indicates, two thirds of the stage 4 groupings exhibited cross-statute consistency in administrative policy descriptions. Additional structuring by ensuring consistency in the administrative policy descriptions for provisions within the remaining stage 4 groupings is one approach to controlling the exercise of administrative discretion.

Consistency in the practical exercise of administrative discretion can also be encouraged through the principle of check. In British Columbia, both the oversight and appeals processes referred to in section 5.2.2 serve to promote consistent behaviour between administrators, and will identify anomalous exercises of administrative discretion.

⁶¹ Refer to discussion of *Waterfront Marina* in section 3.1.5.2.

⁶² Refer to section 3.1.4 for commentary on arbitrariness.

⁶³ CTA s. 47, MFTA s. 45, PSTA s. 205, and TTA s. 35.

5.4 FAIRNESS

As section 3.3 indicates, this paper approaches fairness through a Rawlsian lens and acknowledges Davis's (1969) assertion that access to information improves systemic fairness (p. 24). As the application of the Rawlsian framework to a tax system would see an apprehension of unfairness arise out of arbitrary or capricious administration, this study focuses on the actions taken by administrators to promote the consistent exercise of administrative discretion. These actions by administrators find theoretical support in Davis's (1969) call for "administrative self-confinement" in pursuit of justice (p. 69). British Columbia has not made any pronouncements specific to the intersection of administrative discretion and fairness, but does speak to fairness in administration in its budget materials and in its *Taxpayer Fairness and Service Code*.

In the *2015/16 – 2017/18 Service Plan* for the Ministry of Finance, released as part of British Columbia's 2015 spring budget, the ministry pledges to administer the tax system "in a manner that is fair and respectful to citizens and taxpayers" (Ministry of Finance (British Columbia), 2015b, p. 13). However, because this commitment is made as part of the ministry's broader objective of "responsive, effective and fair revenue, tax and benefit administration that funds provincial programs and services," few of the strategies enumerated in the document bear directly upon fairness (none of them in a way which would align with the approaches contemplated by this paper); rather, they are more closely associated with promoting convenience and enhancing the Province's revenue collection capabilities (Ministry of Finance (British Columbia), p. 13).

The *Taxpayer Fairness and Service Code* approaches fairness in administration more directly, and structures and checks administrative discretion in some of the ways addressed by section 5.2, by describing a series of eight taxpayer "rights":

- The right to courtesy and respect
- The right to privacy and confidentiality
- The right to fair treatment
- The right to obtain help
- The right to complete, accurate, clear and timely information
- The right to understand the business we conduct with you
- The right to dispute resolution
- The right to an appeal.

(Ministry of Finance (British Columbia), 2012, pp. 2-9).

The right to fair treatment represents a stance in opposition to arbitrariness. The *Taxpayer Fairness and Service Code* provides a number of examples of how this right is manifested within British Columbia's tax system, including:

- making just, fair and timely decisions in accordance with the law by taking into account all circumstances relevant to the decisions [the ministry is] making;
- consistently applying penalty and interest policies when obligations have not been met; and
- abiding by written advice, in the form of a tax ruling or interpretation letter...[when the advice is] in accordance with the law.

(Ministry of Finance (British Columbia), 2012, p. 3).

The right to complete, accurate, clear and timely information focuses on a commitment to provide fulsome information on the tax system (Ministry of Finance (British Columbia), 2012, p. 5). This information includes the PI sources so critical to structuring the exercise of administrative discretion. As Davis (1969) binds information accessibility to systemic fairness, the inclusion of this right in the *Taxpayer Fairness and Service Code*, so long as it respected in practice, is essential to the promotion of fairness in the consumption tax system.

Checks on administrative discretion are introduced through the right to dispute resolution and the right to an appeal (Ministry of Finance (British Columbia), 2012, pp. 8-9). These two rights differ inasmuch as dispute resolution constitutes an informal procedure and can be characterized as oversight, whereas the right to an appeal is guaranteed by statute.

Although the *Taxpayer Fairness and Service Code* contains the term “code” in its title, it is not codified in the sense that it carries the weight of a statute. However, it is a public statement of the ministry’s stances on a variety of factors impacting fairness and embodies a significant commitment towards forms of structuring and checking in British Columbia’s consumption tax system. At a very high level, it accords with the Rawlsian framework inasmuch as it is concerned with consistency. Importantly, it does not cast these commitments as the outside limits of fairness: administrators can and do take steps to enhance fairness in other ways, such as implementation of the audit oversight procedure described in section 5.2.2.

5.5 SUMMARY OF ANALYSIS

A synthesis of the literature review and Client Study findings can be summarized in four parts.

First, not all of the discretionary provisions in British Columbia’s consumption tax system are equal in importance. Stage 1 categories can be useful predictors of contentiousness: provisions associated with the Inspection and Audit, Registration, and Taxation categories present the greatest risk to fairness and justice if the exercise of administrative discretion is not appropriately controlled.

Second, a fairly strong degree of structuring in the consumption tax system is evident, although improvements can be made in relation to the Registration and Taxation stage 1 categories, and checks—in the form of oversight in the audit process, dispute resolution, and statutory appeals—are also present.

Third, cross-statute consistency in the administration of comparable discretionary provisions in British Columbia’s consumption tax statutes is important. Administrative policy descriptions are predominantly consistent in the current environment, but analysis of the groupings in Appendix B indicates that added consistency is possible with minor changes to the information sources utilized by the ministry.

Lastly, the ministry has made an interesting commitment to taxpayers in publishing the *Taxpayer Fairness and Service Code*. While this document is not technically binding on the ministry, it does represent a public commitment to various means of promoting fairness without limiting further administrative efforts to enhance fairness in the consumption tax system.

6.0 RECOMMENDATIONS

This chapter considers the analysis from the preceding chapter in making eight recommendations (sections 6.1 through 6.8) to improve the discretionary environment in British Columbia’s consumption tax system. The chapter concludes (in section 6.9) with a brief discussion of alternative options that were not included in the recommendations.

6.1 IMPROVE *TAX INTERPRETATION MANUAL* ACCESS

The current *TIM*, although technically accessible to the public, is an obscure source of information typically accessed by professionals only. It is the information source chosen by the ministry as a repository for all consumption tax interpretations and policies deemed to be too complex or too narrowly-applicable for inclusion in a PI source. The Rawlsian “game” of fairness—adapted in a tax context for this paper—would function best if all taxpayers have equal and fulsome access to information. This would ensure that taxpayers are uniformly equipped to identify arbitrary or capricious administrative decisions: Schuck (2012) reminds us that administrative errors are difficult to detect in an information vacuum (p. 606). Anything short of equal and fulsome access—for instance, the current system in which some taxpayers hire professionals who pay for access to the *TIM*, and in which some taxpayers have no knowledge of the existence of the *TIM*—is not completely fair. This paper recommends that the paid access model for the *Tax Interpretation Model* be abandoned. This recommendation accords with Davis’s (1969) proposition that incremental increases in access to legal and policy information brings about incremental enhancements to fairness (p. 24).

Because the publishing contract for the *TIM* requires the vendor to provide the content in a proprietary (Folio Views) format and permits the vendor to resell the content, the path to making the *TIM* a more open source of information is somewhat more complicated than if government self-published the content. Openness could be enhanced relatively quickly if government were to provide free access through public libraries, although this would require additional Folio Views licence purchases. Over the longer term, government should transition to a non-proprietary format (such as HTML) in order to facilitate easier access to the *TIM* for non-paying users. The continued use of the Folio Views format (Folio Views software originated in the late 1980s) appears to be more a vestige of a long-standing publishing arrangement than an indication of a conscious effort to organize information in a fashion that will benefit users. Changing the publishing format would require an amendment to the publishing contract or a move to in-house publishing.

This recommendation does not mean that the complex and specific information in the *TIM* must be given the same prominence as the information in the current PI sources. Rather, the recommendation is simply to remove the greatest barrier to accessing the information.

As a consideration over the longer term, government should stay abreast of developing technologies that may ultimately prove far more valuable than the current PI and *TIM* resources. “Cognitive computing” applications that not only contain information but which also absorb and analyze information may one day offer the capability to answer complex tax questions (Haikara, 2015, para. 11).

6.2 EXPLORE TAXPAYER PARTICIPATION IN STRUCTURING

The structuring of administrative discretion in British Columbia’s consumption tax system is accomplished primarily through the use of policy statements and does not rely heavily on open findings, precedents, or reasons. As section 5.2.1.2 indicates, the application of these terms to the consumption tax system is somewhat limited as they are more easily associated with administrative tribunals or bodies which engage in similar adjudicatory activities. However, there are comparisons to be found in the information conveyed by the ministry to individual taxpayers within the rulings, audit, and appeal processes. Because privacy considerations prevent the ministry from making

this information open, this paper recommends that the ministry explore the feasibility of designing and hosting a self-publishing platform within which taxpayers could elect to make their own (self-redacted) rulings, audit conclusion letters, and appeal decision letters open. As with the previous recommendation, this recommendation stems from Davis's (1969) proposition suggesting a correlation between openness and fairness (p. 24).

Such a platform could conceivably result in a vast increase in the volume of open information pertaining to the exercise of administrative discretion and would, in theory, make arbitrariness very easy to identify. However, the viability and utility of such a system would depend very much upon taxpayer altruism in the sense that voluntary participation by a taxpayer would be for the betterment of the system for taxpayers collectively. Most participating taxpayers would likely realize very few quantifiable direct benefits that could be attributed to their sharing of rulings, audit conclusion letters, and appeal letters, as the purpose of sharing would be not only to expose arbitrary exercises of discretion but to establish a body of examples illustrating "normal" or non-arbitrary exercises of discretionary power.

6.3 FOCUS ON STAGE 3 "NIL"-CODED PROVISIONS

Stage 3 of the Client Study identified a set of 38 discretionary provisions for which no administrative policies exist. A detailed review indicated that the absence of policy for many of these can be attributed to a lack of active use: no evidence of use was found for 27 of these provisions. These findings give rise to a recommendation that work be undertaken to establish and document administrative policies for the 11 in-use "nil"-coded provisions and to review the remaining 27 apparently unused provisions with an eye to determining whether administrative policies can be made on a proactive basis or whether certain of these provisions are truly unnecessary and can be flagged for repeal. Although only 38 provisions were coded "nil" in stage 3 of the Client Study, the recommended actions represent a prudent step towards what Davis (1969) terms "administrative self-confinement": establishing and documenting policies is a structuring action, and (potentially) finding that some powers are unnecessary requires a reasoned reassessment of the mechanical rule versus discretion question previously addressed at the time the statutes were drafted (p. 69).

6.4 TRANSFORM GREY POLICY INTO OPEN POLICY

Another finding associated with stage 3 of the Client Study was that 59 in-scope provisions are associated with grey policy. Because this represents a significant portion of the 360 discretionary provisions in British Columbia's consumption tax statutes, this paper recommends that structuring be enhanced through the conversion of these grey policies into open policies.

At a minimum, administrative policy descriptions for these provisions should be included in the *TIM*. However, in keeping with Davis's (1969) advice that structuring be tailored to suit particular discretionary powers, it is recommended that decisions over whether administrative policy descriptions should be made in a PI source or the *TIM* be made on a provision-by-provision basis (p. 99).

6.5 ENHANCE STRUCTURING OF HIGHER-RISK PROVISIONS

Analysis within section 5.2.1.2 determined that the degree of structuring associated with two of the three higher-risk stage 1 categories was markedly lower than that associated with the in-scope provisions considered as a whole. This paper recommends that the creation of open and clear policy statements (preferably in PI sources) be prioritized for provisions in the Registration and Taxation categories, with a goal of making these the most structured of the 10 categories.

This recommendation recognizes that the degree of structuring appears to be appropriate for most of the in-scope provisions. At present, there are no loud calls for clarity or consistency in relation to the exercise of any discretionary power in British Columbia's consumption tax system. However, recognizing the below-average

structuring associated with the Registration and Taxation categories and taking the prudent step of making these the most structured of any of the categories would signal that the administration is not as much a “player” in the consumption tax system as it is a neutral arbiter of the rules of play.

It is further understood that it is not always possible to publish policy statements that are simultaneously general and clear. In such cases, clarity should be enhanced as recommended by Davis (1969), who suggests that actions to produce policy statements “resolving one or more hypothetical cases, without generalizing” can result in meaningful clarity, and are far preferable to the type of cautious administrative stalling that results when an agency “feels unprepared to locate the lines that will have to be located if a generalization in a rule is to have any significance” (pp. 60-61).

6.6 STRUCTURE NEW DISCRETIONARY POWERS

The Client Study presents a picture of the discretionary environment as it existed at the time the research was conducted. Changes to the consumption tax statutes are made on a regular basis. As a result, efforts to improve structuring based on the Appendix A data (for example, by following the recommendations in sections 6.3 through 6.5) will have less impact over time as amendments are made to the consumption tax statutes. Therefore, it is recommended that for each current and future legislative project affecting the consumption tax statutes, a policy analyst be tasked with reviewing and appropriately structuring all discretionary powers that are changed or created. This recommendation is made in recognition of Davis’s (1969) imploration for administrators to undertake structuring actions “at the earliest feasible time” (pp. 55-56).

6.7 RECTIFY CROSS-STATUTE INCONSISTENCIES

As section 5.3 reports, the incidence of cross-statute consistency in administrative policy descriptions was found to be generally positive, with two thirds of the stage 4 groupings exhibiting no significant signs of inconsistency. Further progress can be made by refining selected administrative policy descriptions such that they are consistent between statutes. Therefore, it is recommended that Appendix B be reviewed in detail and that stage 4 groupings associated with inconsistent administrative policy descriptions be addressed. This recommendation responds to the dominant segment of the literature⁶⁴ that holds arbitrariness to be more than a theoretical hazard, and recognizes that the division of the four consumption tax types into separate statutes is a somewhat arbitrary design that should not result in or justify the compartmentalization of administrative policy according to tax type.

6.8 FORMALIZE OVERSIGHT PROCEDURES IN BRANCH BUSINESS PLANS

The method of check most easily controlled by administrators is oversight. The formal oversight procedure recently implemented by the Consumer Taxation Audit Branch serves as an excellent example of a prudent check on administrative decision-making. This paper recommends, in keeping with Davis’s (1969) assertion that “institutional decisions at their best draw much strength from their built-in systems of checks and balances,” that branches within the ministry’s Revenue Division include formal oversight objectives in branch business plans (p. 143).

Including these objectives in the planning process would ensure that oversight activities are precisely described and their performance measured. Importantly, the formalization of these procedures would increase the likelihood that they are actually carried out and that individual administrators make decisions with the knowledge that those decisions are subject to the scrutiny of others.

⁶⁴ As typified by Anisman (1975, p. IV), Davis (1969, p. 3), Galligan (1986, p. 155), and Roberts (1975, pp. 147-148).

6.9 ALTERNATIVES NOT RECOMMENDED

As section 5.2.1 illustrates, structuring the exercise of administrative discretion is accomplished largely through the provision of information, preferably in an open form. Davis (1969) prescribes six different types of information⁶⁵ that can be provided in aid of structuring, but cautions readers of *Discretionary Justice* that his reference to these various methods should not be construed as meaning that maximum use of each method should be made; rather, administrators should take a reasonable approach to tailoring structuring to individual discretionary powers (p. 99). Thus, while it might be possible to utilize the data collected in the Client Study to maximize the use of each method in structuring administrative discretion in British Columbia's consumption tax system, some of the more aggressive approaches to structuring considered as part of the formulation of the preceding recommendations would likely prove to be inefficient uses of information.

The first approach would be to release the contents of Appendix A essentially as they appear in this paper. This could be accomplished in a relatively crude manner by simply making the data available in MS Access or MS Excel format, or somewhat more elegantly by hiding the data behind a filter in a web-based interface. Some degree of structuring would occur regardless of the scale of the release: for instance, a minor improvement to structuring would be made by releasing this data to ministry administrators only, or a more significant impact could be found in the open release of the data.

The second approach would involve the incorporation of the Appendix A data into a tax bulletin. This is a variation on the first approach but would involve a significant amount of editing in order to produce a bulletin that conforms to the PI standards (for readability) established by the ministry.

Neither approach is recommended. They ignore Davis's (1969) advice to establish degrees of structuring appropriate to individual discretionary powers (p. 99). From a practical standpoint, they would add unnecessary clutter to a suite of information that works fairly well. It is better that this suite of information be well curated for ease of reference by taxpayers, practitioners, and administrators, and to make improvements through fine-tuning as opposed to large-scale injections of relatively contextless data.

⁶⁵ Refer to the first four rows of Table 5.

7.0 CONCLUSION

Who is right: McLachlin and Rosenblum, who dismiss the spectre of arbitrariness as a relatively minor or non-existent bogeyman on the administrative landscape, or the much louder chorus, led by Davis, which regards the potential for harm through arbitrariness as something very much within the realm of ordinary possibility? (Davis, 1969, p. 25; McLachlin, 1992, p. 172; Rosenblum, 1974, p. 51). The answer most likely varies from administrative system to administrative system. Certainly, complaints over the Canadian GAARs suggest that at least corners of the federal tax system are not free from peril. This research found no similar allegations of arbitrariness in relation to British Columbia's consumption tax administration; however, the province's PST GAAR has yet to be exercised. Broadly speaking, discretionary powers in British Columbia's consumption tax system appear to be fairly well structured and checked. This confinement may be one factor in promoting a responsible administration in the consumption tax system, and may be something to which the absence of controversy can be ascribed.

This study is valuable, however, for revealing ways in which the fine-tuning of the approach to managing administrative discretion in the consumption tax system can yield further improvements. These improvements would, given the existence of an already responsible administration, serve to clarify matters for taxpayers and to reduce the potential for any perception of arbitrariness in administrative decision-making. The first seven of the eight recommendations contained within chapter six can be viewed collectively as promoting openness and responsible structuring in the manner advocated by Davis. This paper's strong emphasis on structuring is a reflection of the fact that comparatively fewer initiatives can be undertaken by administrators in aid of strengthening checks on administrative discretion. However, in this vein, the final recommendation (that oversight procedures be formalized) does address checking in a meaningful way by increasing the likelihood that oversight occurs and is visible to administrators throughout the system.

Finally, British Columbia should be congratulated for producing its *Taxpayer Fairness and Service Code*. Without using the language of Davis or others concerned with the intersection of justice and administrative discretion, the *Taxpayer Fairness and Service Code* contains a number of elements which bear conceptual similarities to the structuring and checking approaches that Davis prescribes. While the document has no legal effect, it does carry moral weight and has played an important role in British Columbia's consumption tax administration since its inception. The recommendations made by this paper are consistent with the province's commitment to fairness in the administration of its taxes.

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APPENDICES

APPENDIX A: CLIENT STUDY DATA, STAGES 1 THROUGH 3

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
1	CTA	16(1)	Registration	collector	null	PTC	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable	MFT-CT 001	CTA s. 16			
2	CTA	16(2.1)	Registration	collector	refiner collector	TC	director requires applicant to comply with statutory obligations and to own/operate a refinery in Canada		CTA s. 1/"refiner collector"			
3	CTA	16(2.3)	Registration	collector	retroactive appointment	N				S	Would be exercised in all conceivable situations - all vendors operating within BC should be encouraged to apply for retroactive appointment	Dec 11/14 ruling letter to CTAB; Jan 12/15 conversation with Hugh Hughson
4	CTA	19(1)	Registration	retail dealer	null	PC	director may establish suitability using a 19(2) agreement re: duties and conditions, must be financially viable	CT 001				
5	CTA	19(2)	Registration	retail dealer	agreement	PA	agreement may include providing a letter of credit	CT 001				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
6	CTA	20(1)	Registration	special agreement	registered consumer	PTA	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable; director may appoint, but "not required to"	MFT-CT 004	CTA s. 20			
7	CTA	21(1)	Registration	special agreement	registered air or marine service	PTA	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable	CT 005	CTA s. 21; CTR s. 5; CTR s. 6			
8	CTA	22	Registration	limitation	collector, registered consumer, registered air or marine service	TC	limitation exercised to result in appropriate use (e.g., rail carrier limited to light fuel oil used as locomotive fuel)		CTA s. 22			
9	CTA	23(2)	Registration	suspension or cancellation	suspension	PA	an authorization may be suspended "where applicable"; for non-compliance; automatic suspension under MFTA	CT 005; MFT-CT 001; MFT-CT 004; MFT-CT 006				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
10	CTA	23(4)	Registration	suspension or cancellation	cancellation	PA	an authorization may be cancelled "where applicable"; for non-compliance; automatic cancellation under MFTA	CT 005; MFT-CT 001; MFT-CT 004; MFT-CT 006				
11	CTA	30(6)	Security	exemption	collector	PTA	exemption provided "in writing" from the ministry is available; exemption may be provided if customer is a registered consumer or OOP	MFT-CT 001	CTA s. 30			
12	CTA	31(2)	Security	exemption	deputy collector	PTA	exemption provided "in writing" from the ministry is available; exemption may be provided if customer is Status Indian on reserve, registered air/marine service, or OOP	MFT-CT 001	CTA s. 31			

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
13	CTA	32(2)	Security	exemption	retail dealer	PTA	director requires EFR applicant to enter into an agreement re: duties and conditions; exemption may be provided if customer is Status Indian on reserve, registered air/marine service, or OOP	MFT-CT 002	CTA s. 32			
14	CTA	35(5)	Returns	inventory allowance	null	PTC	director allows inventory allowance to be deducted if tax return and payment are filed on time; business entitled to full allowance provided they have capacity to store at least 1,000 litres of fuel	MFT-CT 001	CTA s. 35; CTR s. 42			
15	CTA	38(1)	Refunds	bad debts	null	PTC	refunds allowed when claimed on return or on application with evidence	CTB 001	CTA s. 38			
16	CTA	38(2)	Refunds	bad debts	null	PTC	refunds allowed when claimed on return or on application with evidence	CTB 001	CTA s. 38			

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
17	CTA	40(a)	Refunds	prescribed refunds	null	TC	technical bridge to CTR s. 24-29 and s. 40-40.1; CTA s. 40 discretion is exercised if director exercises corresponding discretion in regulations		CTA s. 40			
18	CTA	43(1)	Inspection and Audit	enter premises	null	PC	auditor contacts business in advance, minimizes disruption, enters during normal business hours	CTB 003				
19	CTA	43(2)	Inspection and Audit	enter premises	combustibles	PC	auditor contacts business in advance, minimizes disruption, enters during normal business hours	CTB 003				
20	CTA	44(1)	Inspection and Audit	estimate	return not filed or substantiated	N				S	All delinquency cases are manually reviewed and the decision to assess is made on a case-by-case basis	Dec 23/14 email from Sandra Crowe
21	CTA	44(4)	Inspection and Audit	waiver	estimate	PC	agreement advertised as available at the option of the taxpayer	CTB 003				
22	CTA	45(4)	Inspection and Audit	limitation period	wilful default or fraud	PC	no limitation period for wilful default or fraud	CTB 003				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
23	CTA	45(5)	Inspection and Audit	waiver	failure to pay or remit	PTC	agreement advertised as available at the option of the taxpayer; waiver permits unclaimed deductions from earlier periods to be considered	CTB 003	CTA s. 45			
24	CTA	46(1.1)(a)	Inspection and Audit	reduction of penalty	person liable to pay has paid	N				S	would always exercise if auditor is in possession of information demonstrating that person liable to pay has paid	Jan 13/15 email from Preet Rai
25	CTA	46(1.1)(b)	Inspection and Audit	reduction of penalty	person liable to pay would get refund	N				S	would always exercise if auditor is in possession of information demonstrating that person liable to pay would get refund	Jan 13/15 email from Preet Rai
26	CTA	46(5)	Inspection and Audit	limitation period	wilful default or fraud	PC	no limitation period for wilful default or fraud	CTB 003				
27	CTA	46(6)	Inspection and Audit	waiver	penalty	PC	agreement advertised as available at the option of the taxpayer	CTB 003				
28	CTA	47(1)(a)	Inspection and Audit	penalty	100% wilful	PC	penalty applies if taxpayer wilfully failed to remit; examples provided	CTB 005				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
29	CTA	47(1)(b)	Inspection and Audit	penalty	25% evasion	PC	penalty applies if taxpayer evaded through false or deceptive statement, or through fraud; examples provided	CTB 005				
30	CTA	47(1)(c)	Inspection and Audit	penalty	10% other	PC	penalty applies if taxpayer had knowledge of liability or in cases of repeat non-compliance; examples provided	CTB 005				
31	CTA	47(2)	Inspection and Audit	penalty	sale before collector appointment	PC	penalty equal to the amount of security that should have been paid	MFT-CT 001				
32	CTA	47(3)	Inspection and Audit	penalty	security from retroactive collector	N				S	Would "generally" be applied in all cases where a retroactive appointment was made	Dec 11/14 ruling letter to CTAB
33	CTA	47(5)	Inspection and Audit	penalty	wilful sale before collector appointment	PC	penalty applies if person continues to wilfully sell (i.e., after ss. 3 penalty)	MFT-CT 001				
34	CTA	50(1)	Inspection and Audit	deemed board member	provide records and information	PC	will request information if ministry believes a person acted as a board member	CTB 006				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
35	CTA	50(2)	Inspection and Audit	deemed board member	power to deem	PC	will exercise and notify person	CTB 006				
36	CTA	51(1.1)	Inspection and Audit	notice of assessment	notice for assessment of interest	PC	notice of assessment for audit will show interest	CTB 003				
37	CTA	52(1)	Inspection and Audit	assessment against board member	null	PA	only after reasonable efforts to collect from corporation have failed	CTB 006				
38	CTA	55(2)	Inspection and Audit	interest	up to date of notice of assessment	PC	interest on all audit assessments of tax; no interest on penalty if paid within 30 days; grace for first late return / payment	CTB 005				
39	CTA	55(3)	Inspection and Audit	interest	interest on security	PC	interest on all audit assessments of tax; references to "tax" in the bulletin include security	CTB 005				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
40	CTA	55(5)	Inspection and Audit	interest	netting - net assessment	PTA	may net if refund amount is confirmed before completion of audit; TIM is written such that netting is standard practice, but uses a net refund example - also note TIM entry technically refers to an obsolete provision rewritten in Budget 2014	CTB 003	CTR s. 38			
41	CTA	55(10)	Inspection and Audit	interest	time amount became owing to government	N				S	when assessment is made for an isolated error, interest calculated from the month following the end of the month in which the tax event occurred; for assessments pertaining to a number of errors over a period of time, a mid-point is used	Audit manual s. 4.11.3
42	CTA	55(11)	Inspection and Audit	interest	time amount became owing by government	N				S	refund claims entered as "category 2" interest, so no interest paid unless delay > 60 days from date claim is perfected	Sample of claims on TACS

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
43	CTA	55.1	Inspection and Audit	interest	after date of notice of assessment	PC	interest charged from the issue date of the notice of assessment on any amount still owing	CTB 003				
44	CTA	59(1)	Collections	bond	requirement	PA	collector may be required to provide a bond	Notice 2008-021				
45	CTA	59(4)	Collections	bond	application of bond to debt	N				S	used as required by Collections; notice of intent to exercise provision is sent to debtor by registered mail	Jan 7/15 email from Rob Kovacs
46	CTA	61(1)	Collections	summary proceedings	issuance of certificate	PA	certificate may be filed in BC Supreme Court	GEN 001				
47	CTA	61(2)	Collections	summary proceedings	filing of certificate	PA	certificate may be filed in BC Supreme Court	GEN 001				
48	CTA	63(2)	Collections	attachment of funds	general	PA	may garnish wages, bank funds, or accounts receivable	GEN 001				
49	CTA	63(3)	Collections	attachment of funds	specific	PA	may garnish wages, bank funds, or accounts receivable	GEN 001				
50	CTA	64(2)	Collections	lien	registration of lien	PA	lien may be placed on real or personal property	GEN 001				
51	CTA	64(8)	Collections	lien	revision of lien	N				nil	(no historical use)	Jan 7/15 email from Rob Kovacs

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
52	CTA	64(10)	Collections	lien	discovery of associated corporation	N				S	used as required by Collections; requires initial approval within the Collections branch, then memo outlining reasons for belief is sent by Collections to the director, then information is requested	Jan 7/15 email from Rob Kovacs
53	CTA	64(11)	Collections	lien	determination regarding associated corporation	N				S	used with 64(10), Collections staff issue memos to the director with a recommendation as to how the provision should be exercised	Jan 7/15 email from Rob Kovacs
54	CTA	64(12)(b)	Collections	lien	registration of lien against associated corporation	N				S	exercised concurrent to 64(11); liens are registered only against property used in conjunction with the business	Jan 7/15 email from Rob Kovacs
55	CTA	64(13)	Collections	lien	seizure of personal property	PA	may seize and sell assets	GEN 001				
56	CTA	68	Collections	cease operations	null	N				nil	(no historical use)	Jan 7/15 email from Rob Kovacs
57	CTA	70(1)	Administration	delegation	director's powers or duties	PTC	clear from scheme of public info and TIM that delegation is practiced in order to administer the Act	overall scheme	overall scheme			

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
58	CTA	70(3)	Administration	delegation	director's powers or duties to external persons	TC	duties regarding motive fuel user permits and collection of deposits delegated to Ministry of Transportation		CTA s. 70			
59	CTA	72(1)	Administration	demand notice	null	N				S	used very rarely by CTAB and Collections; use requires approval by executive	Review of demand letters on TACS
60	CTA	74	Administration	conversion formula	null	PTC	various conversion factors are published	Conversion Factors for Fuel	CTA s. 74			
61	CTA	77(2)	Administration	designation of analyst	null	TA	analyst may be designated and asked to verify the type or mixture of a fuel		CTA s. 77			
62	CTR	4(2)	Registration	special agreement	registered consumer	PTA	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable; director may require proof that OOP usage is for an exempt purpose	MFT-CT 004	CTR s. 4			

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
63	CTR	5(1)	Registration	special agreement	registered air service	PTA	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable	CT 005	CTA s. 21; CTR s. 5			
64	CTR	6(1)	Registration	special agreement	registered marine service	PTA	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable	CT 005	CTA s. 21; CTR s. 6			
65	CTR	6(2)	Registration	special agreement	registered marine service	PTA	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable	CT 005	CTA s. 21; CTR s. 6			
66	CTR	8(2)	Returns	filing frequency	collector	PTA	established according to amount of security payable annually; cash flow may also be considered	MFT-CT 001	CTR s. 8			

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
67	CTR	10(2)	Returns	filing frequency	retail dealer of natural gas	PTA	established according to amount of tax to be remitted annually; cash flow may also be considered	CT 001	CTR s. 10			
68	CTR	11(2)	Returns	filing frequency	registered consumer	PTA	established according to amount of tax payable annually; cash flow may also be considered	Notice 2008-019	CTR s. 11			
69	CTR	12(3)	Returns	filing frequency	registered air or marine service	PTA	established according to amount of tax payable annually; cash flow may also be considered	CT 005	CTR s. 12			
70	CTR	13(4)	Returns	filing frequency	self-assessment	PA	established according to amount of tax payable annually	MFT-CT 006				
72	CTR	32(2)	Administration	records	early destruction	PA	written authorization is required in order to proceed with early destruction	CTB 003				
73	CTR	33	Administration	records	outside BC	TA	offshore companies may be authorized to keep and retain records outside BC		CTR s. 33			

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
74	CTR	39(4)	Interjuris. Transport	distance estimate	IFTA deposit	PA	deposit based on estimated per KM consumption and estimated KMs to travel; implied that taxpayer's estimates are accepted	MFT-CT 008				
75	CTR	39(5)	Interjuris. Transport	distance estimate	IFTA deposit	N				S	authority is delegated to Ministry of Transportation staff, who will use maps, distance charts, internet resources or other means of estimating if the default rule cannot be used	Commercial Transport Procedures Manual p. 2.6
76	CTR	41.2(1)(a)	Registration	exempt fuel retailer	issue permit	PA	director requires applicant to enter into agreement re: terms and conditions of authorization	MFT-CT 002				
77	CTR	41.2(1)(b)	Registration	exempt fuel retailer	conditions and limitations	PC	director requires applicant to enter into agreement re: terms and conditions of authorization	MFT-CT 002				
78	CTR	41.3(1)	Registration	exempt fuel retailer	set security-free percentage for exempt fuel retailer	PC	after appointment as an EFR, a specified percentage will be set	MFT-CT 002				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
79	CTR	41.3(2)	Registration	exempt fuel retailer	set different percentages for different fuel types or different fuel retailers	PA	percentage may vary by type of fuel; variation across retailers is implied in public info	MFT-CT 002				
80	CTR	41.3(3)(a)	Registration	exempt fuel retailer	change security-free percentage for exempt fuel retailer with notice	PA	may be changed if "longer-term" shift in exempt sales is noted	MFT-CT 002				
81	CTR	41.3(3)(b)	Registration	exempt fuel retailer	set or change security-free percentage for exempt fuel retailer without notice	N				S	director proposes and confirms changes in writing and in advance of the effective date of the changes	Review of EFR accounts on TACS
82	CTR	41.3(4)	Registration	exempt fuel retailer	change security-free percentage for exempt fuel retailer without notice	PTA	may be changed if "longer-term" shift in exempt sales is noted; may be exercised if change is appropriate and requested by the EFR	MFT-CT 002	CTR s. 41.3			
83	CTR	41.5(2)	Returns	filing frequency	exempt fuel retailer	TA	established according to amount of fuel sold and/or cash flow		CTR s. 41.5			

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
84	CTR	41.6(1)	Registration	suspension or cancellation	suspension	PA	an authorization may be suspended "where applicable"; for non-compliance; automatic suspension under MFTA	MFT-CT 002; MFT-CT 006; Notice 2008-040				
85	CTR	41.6(3)	Registration	suspension or cancellation	cancellation	PA	an authorization may be cancelled "where applicable"; for non-compliance; automatic cancellation under MFTA	MFT-CT 002; MFT-CT 006; Notice 2008-040				
86	CTR	42(1)	Returns	inventory allowance	null	PTC	director allows inventory allowance to be deducted if tax return and payment are filed on time; business entitled to full allowance provided they have capacity to store at least 1,000 litres of fuel	MFT-CT 001	CTR s. 42			
87	MFTA	12(2)	Administration	SCBCTA fee	authority to charge and deduct	N				S	\$20000 fee assessed annually; fee reduces amount disbursed to SCBCTA	Review of disbursements on TACS

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
88	MFTA	12(3)	Refunds	SCBCTA tax refund	authority to deduct	N				S	refunds paid by ministry are deducted from disbursements to SCBCTA	Review of disbursements on TACS
89	MFTA	14(1)	Registration	coloured fuel	authorization to colour	PA	director may authorize colouring at any of four locations enumerated	MFT-CT 003				
90	MFTA	14(4)	Registration	suspension or cancellation	suspension	PTA	an authorization may be suspended for non-compliance; TIM implies policy is to escalate consequences as permitted by regulation	MFT-CT 003	MFTA s. 14			
91	MFTA	14(6)	Registration	suspension or cancellation	suspension without notice	PTC	an authorization may be suspended for non-compliance; no notice provided when there is an immediate risk to revenue	MFT-CT 003	MFTA s. 14			
92	MFTA	14(9)	Registration	suspension or cancellation	reinstatement	N				nil	(no historical use)	Jan 12/15 conversation with Hugh Hughson

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
93	MFTA	14.1(1)	Registration	coloured fuel	authorization to sell	PA	director requires applicant to enter into agreement re: terms and conditions of authorization	MFT-CT 003				
94	MFTA	16.3(3)	Registration	coloured heating oil/non-motor fuel oil	authorization to sell	PA	director requires applicant to enter into agreement re: terms and conditions of authorization	MFT-CT 003				
95	MFTA	19(1)	Interjuris. Transport	licensing	IFTA	PTA	licence will be issued or renewed with completed application and fee payment; may refuse to license if history of non-compliance or if person doesn't meet definition of a "carrier"	MFT-CT 008	MFTA s. 19			
96	MFTA	19(4)	Interjuris. Transport	suspension or cancellation	IFTA	PA	a licence can be suspended or revoked for a failure to file or pay returns	MFT-CT 008				
97	MFTA	21(1)	Refunds	bad debts	null	PTC	refunds allowed when claimed on return or on application with evidence	CTB 001	MFTA s. 21			

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
98	MFTA	21(2)	Refunds	bad debts	null	PTC	refunds allowed when claimed on return or on application with evidence	CTB 001	MFTA s. 21			
99	MFTA	24.1(a)	Refunds	prescribed refunds	null	N				S	technical bridge to various MFTR refunds; MFTA s. 24.1(a) discretion is exercised if director exercises corresponding discretion in regulations	Technical
100	MFTA	28(1)	Registration	collector	null	PTC	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable	MFT-CT 001	MFTA s. 28			
101	MFTA	28(2)	Registration	limitation	collector	N				S	appointment is limited to a subcategory (e.g., marine diesel) as appropriate - limitation reflects business model of collector	Review of collector appointments on TACS
102	MFTA	28(2.1)	Registration	collector	refiner collector	N				S	appointments are made for all eligible collectors	Review of all known refiners on TACS
103	MFTA	28(2.3)	Registration	collector	retroactive appointment	N				S	Would be exercised in all conceivable situations	Jan 12/15 conversation with Hugh Hughson

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
104	MFTA	29(2)	Administration	relabelling	authorization to relabel	PC	authorization to relabel non-motor fuel oil into heating oil is given to persons described in public info	MFT-CT 003; Notice 2013-007				
105	MFTA	30(1)	Registration	suspension or cancellation	suspension	PTA	an authorization may be suspended for non-compliance; automatic suspension under CTA; impetus to suspend without notice is to immediately stop non-compliance and protect revenue	MFT-CT 001; MFT-CT 006	MFTA s. 30			
106	MFTA	30(2)	Registration	suspension or cancellation	cancellation	PA	an authorization may be cancelled for non-compliance; automatic cancellation under CTA	MFT-CT 001; MFT-CT 006				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
107	MFTA	37(1)	Registration	special agreement	registered consumer	PTC	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable; if doubts about financial viability, a bond may be required	MFT-CT 004	MFTA s. 37			
108	MFTA	37(2)	Registration	limitation	registered consumer	PC	appointments are tailored to appropriate subcategories to match the business model of the registered consumer	"Listing of Registered Consumers" web page				
109	MFTA	37.1(1)	Registration	suspension or cancellation	suspension	PA	an authorization may be suspended for non-compliance; automatic suspension under CTA	MFT-CT 004; MFT-CT 006				
110	MFTA	37.1(3)	Registration	suspension or cancellation	cancellation	PA	an authorization may be cancelled for non-compliance; automatic cancellation under CTA	MFT-CT 004; MFT-CT 006				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
111	MFTA	38(6)	Security	exemption	collector	PA	exemption provided "in writing" from the ministry is available	MFT-CT 001				
112	MFTA	39(2)	Security	exemption	deputy collector	PTC	exemption provided "in writing" from the ministry is available; exemption provided if fuel purchased for resale OOP or to EFR customers	MFT-CT 001	MFTA s. 39			
113	MFTA	40(2)	Security	exemption	retail dealer	PTC	director requires applicant to enter into an agreement re: duties and conditions; exemption provided if fuel purchased for resale OOP or to EFR customers	MFT-CT 002	MFTA s. 40			

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
114	MFTA	40.1(3)	Returns	inventory allowance	null	PTA	public info indicates no inventory allowance provided; TIM indicates \$250 inventory allowance provided; no amount prescribed in MFTR - appears TIM incorrectly copied from corresponding CTA entry	Notice 2012-002; FIN 154 - April 1, 2012	MFTA s. 40.1			
115	MFTA	41(1)	Inspection and Audit	enter premises	null	PC	auditor contacts business in advance, minimizes disruption, enters during normal business hours	CTB 003				
116	MFTA	42(1)	Inspection and Audit	estimate	return not filed or substantiated	TA	may be used for any type of return, but overdue IFTA returns are highlighted in the TIM		MFTA s. 116			
117	MFTA	42(3)	Inspection and Audit	waiver	estimate	PC	agreement advertised as available at the option of the taxpayer	CTB 003				
118	MFTA	43(4)	Inspection and Audit	limitation period	wilful default or fraud	PC	no limitation period for wilful default or fraud	CTB 003				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
119	MFTA	43(5)	Inspection and Audit	waiver	failure to pay or remit	PC	agreement advertised as available at the option of the taxpayer	CTB 003				
120	MFTA	44(1.1)(a)	Inspection and Audit	reduction of penalty	person liable to pay has paid	N				S	would always exercise if auditor is in possession of information demonstrating that person liable to pay has paid	Jan 13/15 email from Preet Rai
121	MFTA	44(1.1)(b)	Inspection and Audit	reduction of penalty	person liable to pay would get refund	N				S	would always exercise if auditor is in possession of information demonstrating that person liable to pay would get refund	Jan 13/15 email from Preet Rai
122	MFTA	44(5.1)	Inspection and Audit	limitation period	wilful default or fraud	PC	no limitation period for wilful default or fraud	CTB 003				
123	MFTA	44(6)	Inspection and Audit	waiver	penalty	PTC	agreement advertised as available at the option of the taxpayer; waiver permits unclaimed deductions from earlier periods to be considered	CTB 003	MFTA s. 44			
124	MFTA	45(1)(a)	Inspection and Audit	penalty	100% wilful	PC	penalty applies if taxpayer wilfully failed to remit; examples provided	CTB 005				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
125	MFTA	45(1)(b)	Inspection and Audit	penalty	25% evasion	PC	penalty applies if taxpayer evaded through false or deceptive statement, or through fraud; examples provided	CTB 005				
126	MFTA	45(1)(c)	Inspection and Audit	penalty	10% other	PC	penalty applies if taxpayer had knowledge of liability or in cases of repeat non-compliance; examples provided	CTB 005				
127	MFTA	45(2)	Inspection and Audit	penalty	sale before collector appointment	PA	penalty equal to the amount of security that should have been paid	MFT-CT 001				
128	MFTA	45(3)	Inspection and Audit	penalty	security from retroactive collector	N				nil	(no historical use)	Jan 13/15 email from Preet Rai; review of MFTA assessments on TACS
129	MFTA	45(5)	Inspection and Audit	penalty	wilful sale before collector appointment	PC	penalty applies if person continues to wilfully sell (i.e., after ss. 3 penalty)	MFT-CT 001				
130	MFTA	45.2(1)	Inspection and Audit	deemed board member	provide records and information	PC	will request information if ministry believes a person acted as a board member	CTB 006				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
131	MFTA	45.2(2)	Inspection and Audit	deemed board member	power to deem	PC	will exercise and notify person	CTB 006				
132	MFTA	45.3(1)	Inspection and Audit	penalty	coloured fuel	PTA	penalty may be imposed; TIM implies penalty will be imposed as a deterrent	MFT-CT 003	MFTA s. 45.3			
133	MFTA	45.4(1)	Inspection and Audit	penalty	heating oil or non-motor fuel oil used contrary to 16.7(2)	PTA	penalty may be imposed; TIM implies penalty will be imposed	MFT-CT 003	MFTA s. 45.4			
134	MFTA	45.4(2)	Inspection and Audit	penalty	heating oil or non-motor fuel oil used contrary to 16.7(3) or (4)	PTA	penalty may be imposed; TIM implies penalty will be imposed	MFT-CT 003	MFTA s. 45.4			
135	MFTA	46(1.1)	Inspection and Audit	notice of assessment	notice for assessment of interest	PC	notice of assessment for audit will show interest	CTB 003				
136	MFTA	46.1(1)	Inspection and Audit	assessment against board member	null	PA	only after reasonable efforts to collect from corporation have failed	CTB 006				
137	MFTA	48(2)	Inspection and Audit	interest	up to date of notice of assessment	PC	interest on all audit assessments of tax; no interest on penalty if paid within 30 days; grace for first late return/payment	CTB 005				
138	MFTA	48(3)	Inspection and Audit	interest	interest on security	PC	interest on all audit assessments of tax; references to "tax" in the bulletin include security	CTB 005				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
139	MFTA	48(5)	Inspection and Audit	interest	netting - net assessment	PTA	may net if refund amount is confirmed before completion of audit; TIM is written such that netting is standard practice, but uses a net refund example - also note TIM entry technically refers to an obsolete provision rewritten in Budget 2014	CTB 003	MFTA s. 71			
140	MFTA	48(10)	Inspection and Audit	interest	time amount became owing to government	N				S	when assessment is made for an isolated error, interest calculated from the month following the end of the month in which the tax event occurred; for assessments pertaining to a number of errors over a period of time, a mid-point is used	Audit manual s. 4.11.3

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
141	MFTA	48(11)	Inspection and Audit	interest	time amount became owing by government	N				S	refund claims generally entered as "category 2" interest, so no interest paid unless delay > 60 days from date claim is perfected; claims coded "tax paid in error" are entered as "category 1" interest and midpoints have been used	Sample of claims on TACS
142	MFTA	48.1	Inspection and Audit	interest	after date of notice of assessment	PC	interest charged from the issue date of the notice of assessment on any amount still owing	CTB 003				
143	MFTA	53(1)	Collections	bond	requirement	PTA	collector may be required to provide a bond; IFTA carrier generally only required to provide bond if bad compliance history	Notice 2008-035	MFTA s. 53			
144	MFTA	53(3)	Collections	bond	application of bond to debt	N				S	used as required by Collections; notice of intent to exercise provision is sent to debtor by registered mail	Jan 7/15 email from Rob Kovacs
145	MFTA	55(1)	Collections	summary proceedings	issuance of certificate	PA	certificate may be filed in BC Supreme Court	GEN 001				
146	MFTA	55(2)	Collections	summary proceedings	filing of certificate	PA	certificate may be filed in BC Supreme Court	GEN 001				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
147	MFTA	57(2)	Collections	attachment of funds	general	PTC	may garnish wages, bank funds, or accounts receivable; generally served in respect of bank accounts and only once repeated requests for payment have not proved fruitful	GEN 001	MFTA s. 57			
148	MFTA	57(3)	Collections	attachment of funds	specific	PTC	may garnish wages, bank funds, or accounts receivable; generally served in respect of bank accounts and only once repeated requests for payment have not proved fruitful	GEN 001	MFTA s. 57			
149	MFTA	57.1(2)	Collections	lien	registration of lien	PA	lien may be placed on real or personal property	GEN 001				
150	MFTA	57.1(8)	Collections	lien	revision of lien	N				nil	(no historical use)	Jan 7/15 email from Rob Kovacs

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
151	MFTA	57.1(10)	Collections	lien	discovery of associated corporation	N				S	used as required by Collections; requires initial approval within the Collections branch, then memo outlining reasons for belief is sent by Collections to the director, then information is requested	Jan 7/15 email from Rob Kovacs
152	MFTA	57.1(11)	Collections	lien	determination regarding associated corporation	N				S	used with 57.1(10), Collections staff issue memos to the director with a recommendation as to how the provision should be exercised	Jan 7/15 email from Rob Kovacs
153	MFTA	57.1(12)(b)	Collections	lien	registration of lien against associated corporation	N				S	exercised concurrent to 57.1(11); liens are registered only against property used in conjunction with the business	Jan 7/15 email from Rob Kovacs
154	MFTA	57.1(13)	Collections	lien	seizure of personal property	PA	may seize and sell assets	GEN 001				
155	MFTA	61(1)	Administration	delegation	director's powers or duties	PTC	clear from scheme of public info and TIM that delegation is practiced in order to administer the Act	overall scheme	overall scheme			

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
156	MFTA	61(3)	Administration	delegation	director's powers or duties to external persons	TC	duties regarding motive fuel user permits and collection of deposits delegated to Ministry of Transportation		MFTA s. 61			
157	MFTA	63.1(1)	Administration	demand notice	null	TA	examples of when authority is helpful are provided in TIM, but no general guidelines for when authority should be exercised		MFTA s. 63.1			
158	MFTA	63.2	Administration	conversion formula	null	PTC	various conversion factors are published	Conversion Factors for Fuel	MFTA s. 63.2			
159	MFTA	66(1)	Administration	designation of analyst	null	TA	analyst may be designated and asked to verify the type or mixture of a fuel		MFTA s. 66			
160	MFTR	1.1(2)	Registration	special agreement	registered consumer	PC	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable	MFT-CT 004				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
161	MFTR	2(2)	Returns	filing frequency	collector	PC	established according to amount of security payable annually	MFT-CT 001				
162	MFTR	5.02(2)	Administration	records	early destruction	PA	written authorization is required in order to proceed with early destruction	CTB 003				
163	MFTR	26(2)	Interjuris. Transport	suspension or cancellation	IFTA	PA	a licence can be suspended or revoked for a failure to file or pay returns	MFT-CT 008				
164	MFTR	27(1)	Interjuris. Transport	reinstatement	IFTA	PA	licence may be reinstated once all returns are filed and taxes are paid	MFT-CT 008				
165	MFTR	40(2)	Interjuris. Transport	distance estimate	IFTA deposit	PA	deposit based on estimated per KM consumption and estimated KMs to travel; implied that taxpayer's estimates are accepted	MFT-CT 008				
166	MFTR	40(3)	Interjuris. Transport	distance estimate	IFTA deposit	N				S	authority is delegated to Ministry of Transportation staff, who will use maps, distance charts, internet resources or other means of estimating if the default rule cannot be used	Commercial Transport Procedures Manual p. 2.6

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
167	MFTR	51.7(1)(a)	Registration	exempt fuel retailer	issue permit	PTC	director requires applicant to enter into agreement re: terms and conditions of authorization; TIM adds that permit is available on application	MFT-CT 002	MFTR s. 51.7			
168	MFTR	51.7(1)(b)	Registration	exempt fuel retailer	conditions and limitations	PC	director requires applicant to enter into agreement re: terms and conditions of authorization	MFT-CT 002				
169	MFTR	51.71(1)	Registration	exempt fuel retailer	set security-free percentage for exempt fuel retailer	PC	after appointment as an EFR, a specified percentage will be set	MFT-CT 002				
170	MFTR	51.71(2)	Registration	exempt fuel retailer	set different percentages for different fuel types or different fuel retailers	PA	percentage may vary by type of fuel; variation across retailers is implied in public info	MFT-CT 002				
171	MFTR	51.71(3)(a)	Registration	exempt fuel retailer	change security-free percentage for exempt fuel retailer with notice	PA	may be changed if "longer-term" shift in exempt sales is noted	MFT-CT 002				
172	MFTR	51.71(3)(b)	Registration	exempt fuel retailer	set or change security-free percentage for exempt fuel retailer without notice	N				S	director proposes and confirms changes in writing and in advance of the effective date of the changes	Review of EFR accounts on TACS

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
173	MFTR	51.71(4)	Registration	exempt fuel retailer	change security-free percentage for exempt fuel retailer without notice	PTC	changed if "longer-term" shift in exempt sales is noted; no notice provided if change is requested by EFR	MFT-CT 002	MFTR s. 51.71			
174	MFTR	51.81(2)	Returns	filing frequency	exempt fuel retailer	N				S	all EFR accounts are on the standard filing frequency	Review of EFR accounts on TACS
175	MFTR	51.9(1)	Registration	suspension or cancellation	suspension	PA	an authorization may be suspended "where applicable"; for non-compliance; automatic cancellation under CTA	MFT-CT 002; MFT-CT 006; Notice 2008-040				
176	MFTR	51.9(3)	Registration	suspension or cancellation	cancellation	PA	an authorization may be cancelled "where applicable"; for non-compliance; automatic cancellation under CTA	MFT-CT 002; MFT-CT 006; Notice 2008-040				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
177	PSTA	4(1)	Taxation	deeming	transfer of possession	PA	public info pertaining to related party asset transfers describes statutory sales that may only exist as a result of this provision, but the description is not explicit and the exercise could be broader than described	PST 210				
178	PSTA	27(1)	Taxation	deeming	purchase price at fair market value	PA	director may deem on non-exempt related party transfers; FMV substituted if reported vehicle price does not reflect FMV; ministry-determined FMV may be substituted for taxpayer-determined FMV in bundled sale	PST 210; PST 308; PST 316				
179	PSTA	27(3)	Taxation	deeming	nominal value	PC	public info gives examples such as ribbons, key chains, pins, and "similar items"	PST 312				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
180	PSTA	32(1)	Registration	special agreement	tax payment agreement	PTC	agreement is advertised as available to qualifying taxpayers	PST 317	PSTA s. 32			
181	PSTA	32(4)(c)	Registration	special agreement	contents of tax payment agreement	N				S	one of two standardized agreements is used as appropriate (general TPA or railway TPA)	Review of TPAs on TACS
182	PSTA	32(7)	Registration	suspension or cancellation	cancellation	N				S	TPA agreements contain clauses that result in automatic termination by the director; some ambiguity in policy remains (i.e., director could cancel for reasons other than those specified)	Review of TPAs on TACS
183	PSTA	46	Refunds	motor vehicle	leased outside BC	PC	refund advertised as available upon application	PST 116; PST 306; Notice 2013-005				
184	PSTA	74(3)	Interjuris. Transport	IRP fleet transfer refund	licensed outside BC	PC	refund advertised as available upon application with required evidence	PST 135				
185	PSTA	76(3)	Interjuris. Transport	IRP trade-in refund	licensed outside BC	PC	refund advertised as available upon application with required evidence	PST 135				
186	PSTA	125(3)	Administration	MRDT transfers	authority to deduct	N				S	\$20 fee per hotel/accommodation provider in region is deducted from each disbursement	Review of disbursements on TACS, documents on LAN

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
187	PSTA	125(4)	Refunds	MRDT tax refund	authority to deduct	N				S	refunds paid by ministry are deducted from disbursements to municipalities and regional districts	Review of disbursements on TACS
188	PSTA	132(3)	Taxation	deeming	portion of purchase price for dedicated telecommunication	TC	TIM provides example of a partially dedicated system and sets out a distance-based method for determining purchase price			PSTA s. 132		
189	PSTA	162(a)	Refunds	prescribed refunds	null	TC	technical bridge to various PSTERR refunds; PSTA s. 162 discretion is exercised if director exercises corresponding discretion in regulations			PSTA s. 162		
190	PSTA	162(c)	Refunds	prescribed refunds	charity or PAC	PTC	detailed criteria set out for charity-funded medical equipment and PAC-raised funds refunds	PST 401; PST 402		PSTA s. 162; PSTERR s. 121; PSTERR s. 122		
191	PSTA	168(4)	Registration	collector (PST)	restrict use of registration number to business location	N				nil	(no historical use)	Jan 15/15 email from Jo-Anne DiGeorgio
192	PSTA	168(6)	Registration	bond	require bond before registration	N				nil	(no historical use)	Jan 15/15 email from Jo-Anne DiGeorgio

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
193	PSTA	168(7)	Registration	collector (PST)	refuse to register	N				nil	(no policy)	Jan 15/15 email from Jo-Anne DiGeorgio
194	PSTA	173(1)	Registration	suspension or cancellation	suspension	N				nil	(no historical use)	Jan 7/15 email from Rob Kovacs
195	PSTA	173(3)	Registration	suspension or cancellation	cancellation	N				S	used extremely rarely by Collections, generally in relation to liquor accounts, and only if all viable collection remedies have been exhausted while business continues to collect but not remit tax; requires director approval after memo with recommendation	Jan 7/15 email from Rob Kovacs
196	PSTA	175(2)	Registration	suspension or cancellation	cancellation if small seller	PC	a registrant who meets all small seller criteria and other conditions may cancel their registration	PST 003				
197	PSTA	178(4)	Registration	collector (PST)	sales on vessels with scheduled interjuris. sailings	N				nil	(no historical use)	Jan 15/15 email from Jo-Anne DiGeorgio
198	PSTA	187(3)	Collections	sale in bulk	authority to issue certificate	PC	certificate issued if all amounts owing have been paid	Small Business Guide to PST				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
199	PSTA	194(2)	Inspection and Audit	enter premises	null	PC	auditor contacts business in advance, minimizes disruption, enters during normal business hours	CTB 003				
200	PSTA	196(1)	Administration	demand notice	null	N				S	used very rarely by CTAB and Collections; use requires approval by executive	Review of demand letters on TACS
201	PSTA	197(2)	Inspection and Audit	notice of assessment	notice for assessment of interest	PC	notice of assessment for audit will show interest	CTB 003				
202	PSTA	197(3)	Inspection and Audit	notice of assessment	to custodian or trustee in bankruptcy	N				nil	(no historical use)	Jan 9/15 conversation with Sean O'Melinn
203	PSTA	198	Inspection and Audit	estimate	return not filed or substantiated	N				S	complex - ultimately TACS will automate the process of estimating and assessing if business rules permit; when business rules do not permit automation, delinquent returns are reviewed manually and assessments are made on a case-by-case basis	Dec 23/14 email from Sandra Crowe
205	PSTA	199(1)	Inspection and Audit	assessment	failure to pay	PA	a person may be assessed	PST 308; PST 314; CTB 003				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
206	PSTA	200(2)	Inspection and Audit	waiver	assessments under 198 or 199	PC	agreement advertised as available at the option of the taxpayer	CTB 003				
207	PSTA	200(3)	Inspection and Audit	limitation period	wilful default or fraud	PC	no limitation period for wilful default or fraud	CTB 003				
208	PSTA	201(3)	Taxation	general anti-avoidance rule	determine tax consequences	N				nil	(no historical use)	Personal knowledge
209	PSTA	201(4)	Taxation	general anti-avoidance rule	recharacterize payment and/or ignore tax effects	N				nil	(no historical use)	Personal knowledge
210	PSTA	202	Registration	penalty	wilful failure to register	N				S	rulings advise that the penalty may be applied but are ambiguous as to rules regarding "wilful" failures	Rulings emails, Joel Fairbairn memo of Oct 24/14
211	PSTA	203(1.01)	Inspection and Audit	reduction of penalty	person liable to pay has paid	TA	exercisable for "flexibility" when payment by person with tax liability is noted		PSTA s. 203			
212	PSTA	203(1.1)	Inspection and Audit	penalty	collector (PST) had reason to believe tax should have been levied	PA	may issue assessment	PST 200; 10 other topical bulletins				
213	PSTA	203(4)	Inspection and Audit	waiver	assessments under 203	PC	agreement advertised as available at the option of the taxpayer	CTB 003				
214	PSTA	203(5)	Inspection and Audit	limitation period	wilful default or fraud	PC	no limitation period for wilful default or fraud	CTB 003				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
215	PSTA	204(4)	Inspection and Audit	waiver	assessments under 204	PC	agreement advertised as available at the option of the taxpayer	CTB 003				
216	PSTA	204(5)	Inspection and Audit	limitation period	wilful default or fraud	PC	no limitation period for wilful default or fraud	CTB 003				
217	PSTA	205(a)	Inspection and Audit	penalty	100% wilful	TA	imposition of penalty depends on circumstances		PSTA s. 205			
218	PSTA	205(b)	Inspection and Audit	penalty	25% evasion	TA	imposition of penalty depends on circumstances		PSTA s. 205			
219	PSTA	205(c)	Inspection and Audit	penalty	10% other	TA	imposition of penalty depends on circumstances; one example provided is a failure by certain collectors to remit electronically		PSTA s. 205			
220	PSTA	206(2)	Inspection and Audit	interest	up to date of notice of assessment	PA	interest may apply to various assessments	7 topical bulletins				
221	PSTA	206(5)	Inspection and Audit	interest	netting - net assessment	PA	may net if refund amount is confirmed before completion of audit	CTB 003				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
222	PSTA	206(10)	Inspection and Audit	interest	time amount became owing to government	N				S	when assessment is made for an isolated error, interest calculated from the month following the end of the month in which the tax event occurred; for assessments pertaining to a number of errors over a period of time, a mid-point is used	Audit manual s. 4.11.3
223	PSTA	206(11)	Inspection and Audit	interest	time amount became owing by government	TC	"category 1": interest paid from the date of the overpayment or from an "average date" if overpayments spread over time; "category 2": no interest unless delay > 60 days from date claim is perfected		PSTA s. 165			
224	PSTA	206.1	Inspection and Audit	interest	after date of notice of assessment	PC	interest charged from the issue date of the notice of assessment on any amount still owing	CTB 003				
225	PSTA	209(1)	Inspection and Audit	deemed board member	provide records and information	PC	will request information if ministry believes a person acted as a board member	CTB 006				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
226	PSTA	209(2)	Inspection and Audit	deemed board member	power to deem	PC	will exercise and notify person	CTB 006				
227	PSTA	210(1)	Inspection and Audit	assessment against board member	null	PA	only after reasonable efforts to collect from corporation have failed	CTB 006				
228	PSTA	216(1)	Collections	bond	requirement	N				nil	(no historical use)	Jan 7/15 email from Rob Kovacs
229	PSTA	216(3)	Collections	bond	application of bond to debt	N				nil	(no historical use)	Jan 7/15 email from Rob Kovacs
230	PSTA	216(4)	Collections	bond	return of bond	N				nil	(no historical use)	Jan 7/15 email from Rob Kovacs
231	PSTA	218(1)	Collections	summary proceedings	issuance of certificate	PA	certificate may be filed in BC Supreme Court	GEN 001				
232	PSTA	218(2)	Collections	summary proceedings	filing of certificate	PA	certificate may be filed in BC Supreme Court	GEN 001				
233	PSTA	218(4)	Collections	summary proceedings	revision of certificate	N				nil	(no historical use)	Jan 7/15 email from Rob Kovacs
234	PSTA	218(5)	Collections	summary proceedings	filing of revised certificate	N				nil	(no historical use)	Jan 7/15 email from Rob Kovacs
235	PSTA	220(2)	Collections	attachment of funds	general	PA	may garnish wages, bank funds, or accounts receivable	GEN 001				
236	PSTA	220(3)	Collections	attachment of funds	specific	PA	may garnish wages, bank funds, or accounts receivable	GEN 001				
237	PSTA	221(2)	Collections	lien	registration of lien	PA	lien may be placed on real or personal property	GEN 001				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
238	PSTA	221(8)	Collections	lien	revision of lien, real property	N				nil	(no historical use)	Jan 7/15 email from Rob Kovacs
239	PSTA	221(8.1)	Collections	lien	revision of lien, personal property	N				nil	(no historical use)	Jan 7/15 email from Rob Kovacs
240	PSTA	221(11)	Collections	lien	discovery of associated corporation	N				S	used as required by Collections; requires initial approval within the Collections branch, then memo outlining reasons for belief is sent by Collections to the director, then information is requested	Jan 7/15 email from Rob Kovacs
241	PSTA	221(12)	Collections	lien	determination regarding associated corporation	N				S	used with 221(11), Collections staff issue memos to the director with a recommendation as to how the provision should be exercised	Jan 7/15 email from Rob Kovacs
242	PSTA	221(13)(b)	Collections	lien	registration of lien against associated corporation	N				S	exercised concurrent to 221(12); liens are registered only against property used in conjunction with the business	Jan 7/15 email from Rob Kovacs
243	PSTA	221(14)	Collections	lien	seizure of personal property	PA	may seize and sell assets	GEN 001				
244	PSTA	225	Collections	cease operations	null	N				nil	(no historical use)	Jan 7/15 email from Rob Kovacs

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
245	PSTA	227(1)	Administration	delegation	director's powers or duties	PTC	clear from scheme of public info and TIM that delegation is practiced in order to administer the Act	overall scheme	overall scheme			
246	PSTA	228(2)	Administration	confidentiality	publish names and addresses of registrants	N				nil	(no historical use)	document review (web)
247	PSTERR	144(3)	Refunds	direct seller	require person to seek refund from direct seller	N				nil	(no historical use)	Jan 9/15 conversation with Kari Costello
248	PSTR	12(1)	Registration	special agreement	criteria for entering into tax payment agreement	PTC	agreement is advertised as available to qualifying taxpayers	PST 317	PSTR s. 12			
249	PSTR	12(2)	Registration	special agreement	criteria for entering into tax payment agreement	PTC	agreement is advertised as available to qualifying taxpayers	PST 317	PSTR s. 12			
250	PSTR	93(2)	Administration	records	early destruction	PA	written authorization is required in order to proceed with early destruction	CTB 003				
251	PSTA	1("reporting period")	Returns	filing frequency	collector (PST), tax payment agreement holder	PA	established according to amount of tax to be remitted annually, with some uncertainty for amounts \$3000-\$12000	PST 002				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
252	PSTA	98(3)	Returns	special occasion licence	time, manner, and form for remitting extra tax	PTC	FIN 400 / FIN 405 as appropriate; time depends on whether licence holder is a collector or not	PST 300	PSTA s. 98			
253	PSTA	159(4)	Refunds	bad debts	form of deduction	PTC	PST registrant may use FIN 400 (box H)	PST 400; CTB 001	PSTA s. 159			
254	PSTA	160(3)	Refunds	collector (PST) refunds	form of deduction	PTC	PST collector may use FIN 400 (box I)	PST 400	PSTA s. 160			
255	PSTA	168(2)	Registration	collector (PST)	form of application, power to require any information	PC	required to use online form or FIN 418; required to provide information requested on the forms	PST 001				
256	PSTA	174(2)	Registration	collector (PST)	manner for reporting changes	PA	required to notify ministry; manner is left open	PST 001				
257	PSTA	174(3)(a)	Registration	suspension or cancellation	cancellation, form and manner for notification by collector (PST)	PA	request account closure using eTaxBC; no explicit form and manner for non-users of eTaxBC	eTaxBC FAQs web page				
258	PSTA	174(4)(a)	Registration	suspension or cancellation	cancellation, form and manner for notification by collector (PST)	PA	request account closure using eTaxBC; no explicit form and manner for non-users of eTaxBC	eTaxBC FAQs web page				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
259	PSTA	174(5)(a)	Registration	suspension or cancellation	cancellation, form and manner for notification by collector (PST)	PA	request account closure using eTaxBC; no explicit form and manner for non-users of eTaxBC	eTaxBC FAQs web page				
260	PSTA	175(1)	Registration	suspension or cancellation	cancellation by small seller, form, power to require any information	PC	small seller must complete application form to cancel PST registration	PST 003				
261	PSTA	186(1)	Returns	collector (PST)	form of return	PC	FIN 400 / FIN 401 as appropriate	Guide to Completing the PST Return				
262	PSTA	193(1)	Returns	taxpayer	form of return	PTC	FIN 402 / FIN 405 as appropriate	54 topical bulletins	PSTA s. 192; PSTA s. 193			
263	TTA	2(1.3)	Taxation	deeming	wholesale price of cigar	N				nil	(no policy)	Jan 12/15 email from Michelle Lee
264	TTA	3(7)(b)	Administration	seized tobacco	disposal	N				nil	(no historical use)	Jan 13/15 conversation with Alison Hemmings-Cook
265	TTA	6(1)	Registration	dealer	issue permit	N				S	applications vetted according to a policy/procedure document and checklist created by the Tobacco Tax Section	Jan 12/15 email from Michelle Lee
266	TTA	6(4)	Registration	bond	require bond before registration	PTC	all new wholesale dealers must post a bond	TTA 004	TTA s. 6			
267	TTA	6(6)	Registration	dealer	refuse to register	N				S	exercised if conditions are met, but this happens very rarely	Jan 12/15 email from Michelle Lee

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
268	TTA	7(2)	Registration	suspension or cancellation	suspension	PTA	an authorization may be suspended for non-compliance; suspension aimed at resolving non-compliance	TTA 006	TTA s. 7			
269	TTA	7(3)	Registration	suspension or cancellation	cancellation	PA	an authorization may be cancelled for non-compliance	TTA 006				
270	TTA	7(4.2)	Registration	suspension or cancellation	cancellation without advance notice	N				nil	(no historical use, no circumstances prescribed)	Jan 12/15 email from Michelle Lee
271	TTA	7(4.3)	Registration	suspension or cancellation	cancellation	TC	exercised when discretion in regulation is exercised; see TTR s. 11.1(2)		TTA s. 7; TTR s. 11.1			
272	TTA	8(1)	Registration	limitation	quantity of tobacco for resale	PTC	allocations set according to population, demand, proximity to other ESRDs	TTA 001	TTA s. 8			
273	TTA	8(2)	Registration	limitation	specific	TA	limitations set to match legitimate market demand		TTA s. 8			
274	TTA	9(2)	Registration	suspension or cancellation	suspension without advance notice	N				S	no advance notice provided for Ministry of Health suspensions	Jan 12/15 email from Michelle Lee

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
275	TTA	11(2)	Security	exemption	wholesale dealer	PTA	wholesale dealers must apply in writing to the director; approval may be given to suppliers of ESRDs and OOP retailers	TTA 006	TTA s. 11			
276	TTA	12.1(1)	Administration	demand notice	null	TA	examples of when authority is helpful are provided in TIM, but no general guidelines for when authority should be exercised		TTA s. 12.1			
277	TTA	16(1)	Refunds	bad debts	null	PTC	refunds allowed when claimed on return or on application with evidence	CTB 001	TTA s. 16			
278	TTA	16(2)	Refunds	bad debts	null	PTC	refunds allowed when claimed on return or on application with evidence	CTB 001	TTA s. 16			
279	TTA	21(1)	Inspection and Audit	appointment of inspector or auditor	null	TC	TIM entries make it obvious that the ministry audits and conducts other compliance activity by using officials appointed under this provision		TTA s. 21; TTA s. 51			

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
280	TTA	22(2)	Inspection and Audit	assessment	failure to pay	PC	a person who imports tobacco without paying TT will be assessed	TTA 006				
281	TTA	22(2.01)	Inspection and Audit	assessment	purchase from unauthorized retail dealer	N				S	unless there is evidence of a wilful attempt by the consumer to avoid taxes, assessment will be made against the retail dealer	Jan 13/15 email from Ricky Wu
282	TTA	22(2.2)	Inspection and Audit	penalty	sale by wholesale dealer without permit	N				S	penalty is imposed unless the wholesale dealer has paid security	Jan 13/15 email from Ricky Wu
283	TTA	22(4)	Inspection and Audit	limitation period	wilful default or fraud	PC	no limitation period for wilful default or fraud	CTB 003				
284	TTA	22(6.1)	Inspection and Audit	waiver	assessment or penalty	PC	agreement advertised as available at the option of the taxpayer	CTB 003				
285	TTA	22.1(1)	Inspection and Audit	assessment against board member	null	PA	only after reasonable efforts to collect from corporation have failed	CTB 006				
286	TTA	28.2(1)	Inspection and Audit	deemed board member	provide records and information	PC	will request information if ministry believes a person acted as a board member	CTB 006				
287	TTA	28.2(2)	Inspection and Audit	deemed board member	power to deem	PC	will exercise and notify person	CTB 006				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
288	TTA	31(1)	Collections	summary proceedings	issuance of certificate	PA	certificate may be filed in BC Supreme Court	GEN 001				
289	TTA	31(2)	Collections	summary proceedings	filing of certificate	PA	certificate may be filed in BC Supreme Court	GEN 001				
290	TTA	32(2)	Collections	attachment of funds	general	PA	may garnish wages, bank funds, or accounts receivable	GEN 001				
291	TTA	32(3)	Collections	attachment of funds	specific	PA	may garnish wages, bank funds, or accounts receivable	GEN 001				
292	TTA	35(1)(a)	Inspection and Audit	penalty	100% wilful	PC	penalty applies if taxpayer wilfully failed to remit; examples provided	CTB 005				
293	TTA	35(1)(b)	Inspection and Audit	penalty	25% evasion	PC	penalty applies if taxpayer evaded through false or deceptive statement, or through fraud; examples provided	CTB 005				
294	TTA	35(1)(c)	Inspection and Audit	penalty	10% other	PC	penalty applies if taxpayer had knowledge of liability or in cases of repeat non-compliance; examples provided	CTB 005				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
295	TTA	35(2)	Inspection and Audit	interest	null	PA	interest on assessments against ESRDs deemed to have collected TT; interest if tax not remitted when wholesale purchase made from unregistered supplier; interest may apply if TT not paid on imported tobacco	TTA 001; TTA 003; TTA 006				
296	TTA	37(1)	Collections	bond	requirement	PTC	all wholesale dealers are required to post a bond	TTA 004	TTA s. 6; TTA s. 37			
297	TTA	37(3)	Collections	bond	application of bond to debt	TA	implied in TIM that bond would be applied against debt because of significant risk to provincial revenue posed by all wholesale dealers		TTA s. 37			
298	TTA	37(4)	Collections	bond	vary amount	TC	increased bond required when risk to revenue rises; examples provided		TTA s. 37			
299	TTA	51(6)(b)	Administration	seized tobacco	disposal	TA	clarification as to what constitutes a proceeding is provided in TIM		TTA s. 51			

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
300	TTA	53(3)	Administration	evidence	copy detained records	N				nil	(no policy)	Jan 13/15 conversation with Alison Hemmings-Cook
301	TTA	54(1)(b)	Administration	seized tobacco	authorize release upon receipt of security	TA	TIM addresses the question of how much must be paid as security		TTA s. 54			
302	TTA	54(2)	Administration	seized tobacco	disposal or sale	N				S	seized tobacco is catalogued, stored, and burned after 7 years	Jan 13/15 conversation with Alison Hemmings-Cook
303	TTR	4(5)	Registration	suspension or cancellation	null	PA	an authorization may be suspended or cancelled for non-compliance	TTA 006				
304	TTR	6(1)	Registration	retail dealer	null	N				S	retail authorization always issued if statutory requirements are met	Jan 12/15 email from Michelle Lee
305	TTR	6.2(1)	Registration	retail dealer	written authorization	N				nil	(no policy)	Jan 12/15 email from Michelle Lee
306	TTR	6.2(2)(a)	Registration	retail dealer	require evidence of compliance plan	N				nil	(no policy)	Jan 12/15 email from Michelle Lee
307	TTR	6.2(2)(b)	Registration	retail dealer	require evidence of arm's length	N				nil	(no policy)	Jan 12/15 email from Michelle Lee
308	TTR	6.2(2)(c)	Registration	retail dealer	require written undertaking	N				nil	(no policy)	Jan 12/15 email from Michelle Lee
309	TTR	6.2(2)(d)	Registration	bond	require bond before registration	N				nil	(no historical use)	Jan 12/15 email from Michelle Lee

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
310	TTR	7(2)	First Nations Tobacco	special retail dealer	issue permit	N				S	all ESRDs in affected area are converted to SRDs, but this happens very rarely	Jan 12/15 email from Michelle Lee
311	TTR	8(2)	First Nations Tobacco	exempt sale retail dealer	authorize certain types of tobacco to be sold to exempt consumers	PC	black stock tobacco may be sold by ESRDs; other types (cigar, chewing, raw leaf, etc.) may also be sold within an ESRD's allocation	TTA 006				
312	TTR	8(5)	First Nations Tobacco	exempt sale retail dealer	approve sale of tobacco bearing the indicium	N				nil	(no policy)	Jan 12/15 email from Michelle Lee
313	TTR	8(6)	First Nations Tobacco	exempt sale retail dealer	refuse to issue permit	PA	exercised when relevant factors enumerated in public information are noted	TTA 001				
314	TTR	8(7)(a)	First Nations Tobacco	exempt sale retail dealer	restrict function of permit	PC	permit will specify the location from which an ESRD may operate, and an ESRD must not operate elsewhere unless authorized	TTA 001				
315	TTR	8(8)	First Nations Tobacco	exempt sale retail dealer	specify information to obtain regarding exempt consumers	PC	ESRD must record date, status registry number, description of sale, and name/signature of purchaser	TTA 001				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
316	TTR	10(2)	First Nations Tobacco	exempt sale retail dealer	prevent sale in excess of daily limit	N				nil	(no historical use)	Jan 12/15 email from Michelle Lee
317	TTR	10(3)	First Nations Tobacco	exempt sale retail dealer	prevent sale in excess of monthly limit	N				nil	(no historical use)	Jan 12/15 email from Michelle Lee
318	TTR	10(4)	First Nations Tobacco	exempt sale retail dealer	permit sale in excess of ordinary limit	PA	provided if customer legitimately requires more than the established limit	TTA 001				
319	TTR	11(2)	First Nations Tobacco	suspension or cancellation	null	PA	ESRD permit may be suspended or cancelled for non-compliance exercised to rectify errors or changes; examples provided in the TIM	TTA 001				
320	TTR	11.1(2)	Registration	suspension or cancellation	cancellation	TC			TTR s. 11.1			
321	TTR	13(1)	Returns	collector (TTA)	manner, form for filing return	PC	FIN 125	TTA 006				
322	TTR	13(2)	Returns	exempt sale retail dealer	authorize late ESRD return	N				nil	(no policy)	Jan 12/15 email from Michelle Lee
323	TTR	13(3)	Returns	collector (TTA)	authorize different collector return deadline	N				S	unlikely to deny a request to align filing periods with accounting periods	Jan 12/15 email from Michelle Lee
324	TTR	13(4)	Returns	collector or exempt sale retail dealer	require a return for any period	N				nil	(no policy)	Jan 12/15 email from Michelle Lee
325	TTR	18(3)	Administration	records	early destruction	PA	written authorization is required in order to proceed with early destruction	CTB 003				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
326	TTR	21	Administration	collector (TTA)	agreement to facilitate collection and payment	N				nil	(no policy)	Jan 12/15 email from Michelle Lee
327	TTR	25(a)	Administration	marking and stamping	authorize manufacturer	PA	may authorize manufacturer who imports tobacco for retail sale	TTA 006				
328	TTR	25(b)	Administration	marking and stamping	authorize dealer	PA	may authorize retailer who imports tobacco or purchases tobacco from an importer for retail sale	TTA 006				
329	TTR	25(c)	Administration	black stock and unmarked tobacco	authorize purchase, possession, sale	PC	detailed rules for wholesalers, retailers, and consumers	TTA 006				
330	TTR	25(d)	Administration	marking and stamping	impose conditions and restrictions	PC	authorized person must account for all stamps used and surrender stamps on demand	TTA 006				
331	TTR	25(e)	Administration	marking and stamping	control number and location of mark-points	PA	retailer can only stamp at locations authorized by the director, usually a federal customs facility	TTA 006				
332	TTR	25(f)	Administration	marking and stamping	suspend or cancel authorization	PA	may suspend authorization if dealer contravenes Act or regulations	TTA 006				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
334	PSTR	73(1)(a)	Returns	electronic remittance	method for large businesses (collector return)	PC	electronic remittance may be made using eTaxBC, online banking / electronic funds transfer, or through bank's payment / filing service	PST 002				
335	PSTR	73(1)(b)(i)	Returns	electronic remittance	method for optional electronic remitters (collector return)	PC	electronic remittance may be made using eTaxBC, online banking / electronic funds transfer, or through bank's payment / filing service	PST 002				
336	PSTR	73(1)(b)(ii)	Returns	money order or cheque	government office for in-person delivery (collector return)	PC	1802 Douglas St, Victoria	PST 002				
337	PSTR	73(1)(b)(iii)	Returns	money order or cheque	address for mail delivery (collector return)	PC	PO Box 9443	PST 002				
338	PSTR	73(1)(b)(iv)	Returns	cash	government office for in-person delivery (collector return)	PC	none	PST 002				
339	PSTR	73(1)(b)(v)	Returns	debit card	government office for in-person use (collector return)	PC	none	PST 002				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
340	PSTR	78(1)(a)	Returns	electronic filing	method for large businesses (collector return)	PC	electronic remittance may be made using eTaxBC, online banking / electronic funds transfer, or through bank's payment / filing service	PST 002				
341	PSTR	78(1)(b)(i)	Returns	electronic filing	method for optional electronic filers (collector return)	PC	electronic remittance may be made using eTaxBC, online banking / electronic funds transfer, or through bank's payment / filing service	PST 002				
342	PSTR	78(1)(b)(ii)	Returns	in-person delivery	government office for in-person delivery (collector return)	PC	1802 Douglas St, Victoria	PST 002				
343	PSTR	78(1)(b)(iii)	Returns	mail delivery	address for mail delivery (collector return)	PC	PO Box 9443	PST 002				
344	PSTR	79(1)(a)	Returns	money order or cheque	government office for in-person delivery (taxpayer return)	N				S	1802 Douglas St, Victoria	Various ruling emails (TRIM)
345	PSTR	79(1)(b)	Returns	money order or cheque	address for mail delivery (taxpayer return)	PC	PO Box 9442	FIN 405				
346	PSTR	79(1)(c)	Returns	cash	government office for in-person delivery (taxpayer return)	N				S	cash not accepted	Various ruling emails (TRIM)

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
347	PSTR	79(1)(d)	Returns	debit card	government office for in-person use (taxpayer return)	N				S	debit cards not accepted	Various ruling emails (TRIM)
348	PSTR	79(2)(a)	Returns	electronic remittance	method for optional electronic remitters (taxpayer return from registrant)	PC	electronic remittance may be made using eTaxBC, online banking / electronic funds transfer, or through bank's payment / filing service	Web guide: Reporting and Paying Tax				
349	PSTR	79(2)(b)	Returns	money order or cheque	government office for in-person delivery (taxpayer return from registrant)	PC	1802 Douglas St, Victoria	Web guide: Reporting and Paying Tax				
350	PSTR	79(2)(c)	Returns	money order or cheque	address for mail delivery (taxpayer return from registrant)	PC	PO Box 9443	Web guide: Reporting and Paying Tax				
351	PSTR	79(2)(d)	Returns	cash	government office for in-person delivery (taxpayer return from registrant)	PC	none	Web guide: Reporting and Paying Tax				
352	PSTR	79(2)(e)	Returns	debit card	government office for in-person use (taxpayer return from registrant)	PC	none	Web guide: Reporting and Paying Tax				
353	PSTR	79(3)(a)	Returns	electronic filing	method for optional electronic remitters (taxpayer return from registrant)	PC	electronic remittance may be made using eTaxBC, online banking / electronic funds transfer, or through bank's payment / filing service	Web guide: Reporting and Paying Tax				

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
354	PSTR	79(3)(b)	Returns	money order or cheque	government office for in-person delivery (taxpayer return from registrant)	PC	1802 Douglas St, Victoria	Web guide: Reporting and Paying Tax				
355	PSTR	79(3)(c)	Returns	money order or cheque	address for mail delivery (taxpayer return from registrant)	PC	PO Box 9443	Web guide: Reporting and Paying Tax				
356	PSTR	79(3)(d)	Returns	cash	government office for in-person delivery (taxpayer return from registrant)	PC	none	Web guide: Reporting and Paying Tax				
357	PSTR	79(3)(e)	Returns	debit card	government office for in-person use (taxpayer return from registrant)	PC	none	Web guide: Reporting and Paying Tax				
358	PSTR	79(4)(a)	Returns	money order or cheque	government office for in-person delivery (taxpayer return)	N				S	1802 Douglas St, Victoria	Various ruling emails (TRIM)
359	PSTR	79(4)(b)	Returns	money order or cheque	address for mail delivery (taxpayer return)	PC	PO Box 9442	FIN 405				
360	PSTR	79(4)(c)	Returns	cash	government office for in-person delivery (taxpayer return)	N				S	cash not accepted	Various ruling emails (TRIM)
361	PSTR	79(4)(d)	Returns	debit card	government office for in-person use (taxpayer return)	N				S	debit cards not accepted	Various ruling emails (TRIM)
362	PSTR	81(a)	Returns	in-person delivery	government office for delivery of taxpayer return	N				S	1802 Douglas St, Victoria	Various ruling emails (TRIM)

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Code	Stage 2 Policy	PI	TIM	Stage 3 Code	Stage 3 policy	Stage 3 source
363	PSTR	81(b)	Returns	mail delivery	address for delivery of taxpayer return	PC	PO Box 9442	FIN 405				

Note: ID numbers were assigned by MS Access software. Deletion of three records due to data entry errors resulted in the final ID number being 363, as opposed to 360 (the total number of in-scope provisions).

APPENDIX B: CLIENT STUDY DATA, STAGE 4

Note: Stage 4 groupings are indicated by bands of colour. Provisions with white backgrounds were not included in a grouping. A “0” in the “Stage 4 Code” column denotes consistency within a grouping, whereas a “1” denotes some degree of inconsistency.

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
329	TTR	25(c)	Administration	black stock and unmarked tobacco	authorize purchase, possession, sale	detailed rules for wholesalers, retailers, and consumers		
326	TTR	21	Administration	collector (TTA)	agreement to facilitate collection and payment		(no policy)	
246	PSTA	228(2)	Administration	confidentiality	publish names and addresses of registrants		(no historical use)	
60	CTA	74	Administration	conversion formula	null	various conversion factors are published		
158	MFTA	63.2	Administration	conversion formula	null	various conversion factors are published		0
57	CTA	70(1)	Administration	delegation	director's powers or duties	clear from scheme of public info and TIM that delegation is practiced in order to administer the Act		
155	MFTA	61(1)	Administration	delegation	director's powers or duties	clear from scheme of public info and TIM that delegation is practiced in order to administer the Act		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
245	PSTA	227(1)	Administration	delegation	director's powers or duties	clear from scheme of public info and TIM that delegation is practiced in order to administer the Act		0
58	CTA	70(3)	Administration	delegation	director's powers or duties to external persons	duties regarding motive fuel user permits and collection of deposits delegated to Ministry of Transportation		0
156	MFTA	61(3)	Administration	delegation	director's powers or duties to external persons	duties regarding motive fuel user permits and collection of deposits delegated to Ministry of Transportation		
59	CTA	72(1)	Administration	demand notice	null		used very rarely by CTAB and Collections; use requires approval by executive	0
157	MFTA	63.1(1)	Administration	demand notice	null	examples of when authority is helpful are provided in TIM, but no general guidelines for when authority should be exercised		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
200	PSTA	196(1)	Administration	demand notice	null		used very rarely by CTAB and Collections; use requires approval by executive	0
276	TTA	12.1(1)	Administration	demand notice	null	examples of when authority is helpful are provided in TIM, but no general guidelines for when authority should be exercised		
61	CTA	77(2)	Administration	designation of analyst	null	analyst may be designated and asked to verify the type or mixture of a fuel		0
159	MFTA	66(1)	Administration	designation of analyst	null	analyst may be designated and asked to verify the type or mixture of a fuel		
300	TTA	53(3)	Administration	evidence	copy detained records		(no policy)	
328	TTR	25(b)	Administration	marking and stamping	authorize dealer	may authorize retailer who imports tobacco or purchases tobacco from an importer for retail sale		
327	TTR	25(a)	Administration	marking and stamping	authorize manufacturer	may authorize manufacturer who imports tobacco for retail sale		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
331	TTR	25(e)	Administration	marking and stamping	control number and location of mark-points	retailer can only stamp at locations authorized by the director, usually a federal customs facility		
330	TTR	25(d)	Administration	marking and stamping	impose conditions and restrictions	authorized person must account for all stamps used and surrender stamps on demand		
332	TTR	25(f)	Administration	marking and stamping	suspend or cancel authorization	may suspend authorization if dealer contravenes Act or regulations		
186	PSTA	125(3)	Administration	MRDT transfers	authority to deduct		\$20 fee per hotel/accommodation provider in region is deducted from each disbursement	
72	CTR	32(2)	Administration	records	early destruction	written authorization is required in order to proceed with early destruction		
162	MFTR	5.02(2)	Administration	records	early destruction	written authorization is required in order to proceed with early destruction		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
250	PSTR	93(2)	Administration	records	early destruction	written authorization is required in order to proceed with early destruction		0
325	TTR	18(3)	Administration	records	early destruction	written authorization is required in order to proceed with early destruction		
73	CTR	33	Administration	records	outside BC	offshore companies may be authorized to keep and retain records outside BC		
104	MFTA	29(2)	Administration	relabelling	authorization to relabel	authorization to relabel non-motor fuel oil into heating oil is given to persons described in public info		
87	MFTA	12(2)	Administration	SCBCTA fee	authority to charge and deduct		\$20000 fee assessed annually; fee reduces amount disbursed to SCBCTA	
301	TTA	54(1)(b)	Administration	seized tobacco	authorize release upon receipt of security	TIM addresses the question of how much must be paid as security		
264	TTA	3(7)(b)	Administration	seized tobacco	disposal		(no historical use)	
299	TTA	51(6)(b)	Administration	seized tobacco	disposal	clarification as to what constitutes a proceeding is provided in TIM		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
302	TTA	54(2)	Administration	seized tobacco	disposal or sale		seized tobacco is catalogued, stored, and burned after 7 years	
48	CTA	63(2)	Collections	attachment of funds	general	may garnish wages, bank funds, or accounts receivable		0
147	MFTA	57(2)	Collections	attachment of funds	general	may garnish wages, bank funds, or accounts receivable; generally served in respect of bank accounts and only once repeated requests for payment have not proved fruitful		
235	PSTA	220(2)	Collections	attachment of funds	general	may garnish wages, bank funds, or accounts receivable		
290	TTA	32(2)	Collections	attachment of funds	general	may garnish wages, bank funds, or accounts receivable		
49	CTA	63(3)	Collections	attachment of funds	specific	may garnish wages, bank funds, or accounts receivable		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
148	MFTA	57(3)	Collections	attachment of funds	specific	may garnish wages, bank funds, or accounts receivable; generally served in respect of bank accounts and only once repeated requests for payment have not proved fruitful		0
236	PSTA	220(3)	Collections	attachment of funds	specific	may garnish wages, bank funds, or accounts receivable		
291	TTA	32(3)	Collections	attachment of funds	specific	may garnish wages, bank funds, or accounts receivable		
45	CTA	59(4)	Collections	bond	application of bond to debt		used as required by Collections; notice of intent to exercise provision is sent to debtor by registered mail	
144	MFTA	53(3)	Collections	bond	application of bond to debt		used as required by Collections; notice of intent to exercise provision is sent to debtor by registered mail	
229	PSTA	216(3)	Collections	bond	application of bond to debt		(no historical use)	

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
297	TTA	37(3)	Collections	bond	application of bond to debt	implied in TIM that bond would be applied against debt because of significant risk to provincial revenue posed by all wholesale dealers		1
44	CTA	59(1)	Collections	bond	requirement	collector may be required to provide a bond		1
143	MFTA	53(1)	Collections	bond	requirement	collector may be required to provide a bond; IFTA carrier generally only required to provide bond if bad compliance history		
228	PSTA	216(1)	Collections	bond	requirement		(no historical use)	
296	TTA	37(1)	Collections	bond	requirement	all wholesale dealers are required to post a bond		
230	PSTA	216(4)	Collections	bond	return of bond		(no historical use)	
298	TTA	37(4)	Collections	bond	vary amount	increased bond required when risk to revenue rises; examples provided		
56	CTA	68	Collections	cease operations	null		(no historical use)	0
244	PSTA	225	Collections	cease operations	null		(no historical use)	

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
53	CTA	64(11)	Collections	lien	determination regarding associated corporation		used with 64(10), Collections staff issue memos to the director with a recommendation as to how the provision should be exercised	0
152	MFTA	57.1(11)	Collections	lien	determination regarding associated corporation		used with 57.1(10), Collections staff issue memos to the director with a recommendation as to how the provision should be exercised	
241	PSTA	221(12)	Collections	lien	determination regarding associated corporation		used with 221(11), Collections staff issue memos to the director with a recommendation as to how the provision should be exercised	

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
52	CTA	64(10)	Collections	lien	discovery of associated corporation		used as required by Collections; requires initial approval within the Collections branch, then memo outlining reasons for belief is sent by Collections to the director, then information is requested	
151	MFTA	57.1(10)	Collections	lien	discovery of associated corporation		used as required by Collections; requires initial approval within the Collections branch, then memo outlining reasons for belief is sent by Collections to the director, then information is requested	

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
240	PSTA	221(11)	Collections	lien	discovery of associated corporation		used as required by Collections; requires initial approval within the Collections branch, then memo outlining reasons for belief is sent by Collections to the director, then information is requested	0
50	CTA	64(2)	Collections	lien	registration of lien	lien may be placed on real or personal property		0
149	MFTA	57.1(2)	Collections	lien	registration of lien	lien may be placed on real or personal property		
237	PSTA	221(2)	Collections	lien	registration of lien	lien may be placed on real or personal property		
54	CTA	64(12)(b)	Collections	lien	registration of lien against associated corporation		exercised concurrent to 64(11); liens are registered only against property used in conjunction with the business	0

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
153	MFTA	57.1(12)(b)	Collections	lien	registration of lien against associated corporation		exercised concurrent to 57.1(11); liens are registered only against property used in conjunction with the business	0
242	PSTA	221(13)(b)	Collections	lien	registration of lien against associated corporation		exercised concurrent to 221(12); liens are registered only against property used in conjunction with the business	
51	CTA	64(8)	Collections	lien	revision of lien		(no historical use)	0
150	MFTA	57.1(8)	Collections	lien	revision of lien		(no historical use)	
239	PSTA	221(8.1)	Collections	lien	revision of lien, personal property		(no historical use)	
238	PSTA	221(8)	Collections	lien	revision of lien, real property		(no historical use)	
55	CTA	64(13)	Collections	lien	seizure of personal property	may seize and sell assets		0
154	MFTA	57.1(13)	Collections	lien	seizure of personal property	may seize and sell assets		
243	PSTA	221(14)	Collections	lien	seizure of personal property	may seize and sell assets		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
198	PSTA	187(3)	Collections	sale in bulk	authority to issue certificate	certificate issued if all amounts owing have been paid		
47	CTA	61(2)	Collections	summary proceedings	filing of certificate	certificate may be filed in BC Supreme Court		0
146	MFTA	55(2)	Collections	summary proceedings	filing of certificate	certificate may be filed in BC Supreme Court		
232	PSTA	218(2)	Collections	summary proceedings	filing of certificate	certificate may be filed in BC Supreme Court		
289	TTA	31(2)	Collections	summary proceedings	filing of certificate	certificate may be filed in BC Supreme Court		
234	PSTA	218(5)	Collections	summary proceedings	filing of revised certificate		(no historical use)	
46	CTA	61(1)	Collections	summary proceedings	issuance of certificate	certificate may be filed in BC Supreme Court		0
145	MFTA	55(1)	Collections	summary proceedings	issuance of certificate	certificate may be filed in BC Supreme Court		
231	PSTA	218(1)	Collections	summary proceedings	issuance of certificate	certificate may be filed in BC Supreme Court		
288	TTA	31(1)	Collections	summary proceedings	issuance of certificate	certificate may be filed in BC Supreme Court		
233	PSTA	218(4)	Collections	summary proceedings	revision of certificate		(no historical use)	

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
312	TTR	8(5)	First Nations Tobacco	exempt sale retail dealer	approve sale of tobacco bearing the indicium		(no policy)	
311	TTR	8(2)	First Nations Tobacco	exempt sale retail dealer	authorize certain types of tobacco to be sold to exempt consumers	black stock tobacco may be sold by ESRDs; other types (cigar, chewing, raw leaf, etc.) may also be sold within an ESRD's allocation		
318	TTR	10(4)	First Nations Tobacco	exempt sale retail dealer	permit sale in excess of ordinary limit	provided if customer legitimately requires more than the established limit		
316	TTR	10(2)	First Nations Tobacco	exempt sale retail dealer	prevent sale in excess of daily limit		(no historical use)	
317	TTR	10(3)	First Nations Tobacco	exempt sale retail dealer	prevent sale in excess of monthly limit		(no historical use)	
313	TTR	8(6)	First Nations Tobacco	exempt sale retail dealer	refuse to issue permit	exercised when relevant factors enumerated in public information are noted		
314	TTR	8(7)(a)	First Nations Tobacco	exempt sale retail dealer	restrict function of permit	permit will specify the location from which an ESRD may operate, and an ESRD must not operate elsewhere unless authorized		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
315	TTR	8(8)	First Nations Tobacco	exempt sale retail dealer	specify information to obtain regarding exempt consumers	ESRD must record date, status registry number, description of sale, and name/signature of purchaser		
310	TTR	7(2)	First Nations Tobacco	special retail dealer	issue permit		all ESRDs in affected area are converted to SRDs, but this happens very rarely	
319	TTR	11(2)	First Nations Tobacco	suspension or cancellation	null	ESRD permit may be suspended or cancelled for non-compliance		
279	TTA	21(1)	Inspection and Audit	appointment of inspector or auditor	null	TIM entries make it obvious that the ministry audits and conducts other compliance activity by using officials appointed under this provision		
205	PSTA	199(1)	Inspection and Audit	assessment	failure to pay	a person may be assessed		1
280	TTA	22(2)	Inspection and Audit	assessment	failure to pay	a person who imports tobacco without paying TT will be assessed		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
281	TTA	22(2.01)	Inspection and Audit	assessment	purchase from unauthorized retail dealer		unless there is evidence of a wilful attempt by the consumer to avoid taxes, assessment will be made against the retail dealer	
37	CTA	52(1)	Inspection and Audit	assessment against board member	null	only after reasonable efforts to collect from corporation have failed		0
136	MFTA	46.1(1)	Inspection and Audit	assessment against board member	null	only after reasonable efforts to collect from corporation have failed		
227	PSTA	210(1)	Inspection and Audit	assessment against board member	null	only after reasonable efforts to collect from corporation have failed		
285	TTA	22.1(1)	Inspection and Audit	assessment against board member	null	only after reasonable efforts to collect from corporation have failed		
35	CTA	50(2)	Inspection and Audit	deemed board member	power to deem	will exercise and notify person		0
131	MFTA	45.2(2)	Inspection and Audit	deemed board member	power to deem	will exercise and notify person		
226	PSTA	209(2)	Inspection and Audit	deemed board member	power to deem	will exercise and notify person		
287	TTA	28.2(2)	Inspection and Audit	deemed board member	power to deem	will exercise and notify person		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
34	CTA	50(1)	Inspection and Audit	deemed board member	provide records and information	will request information if ministry believes a person acted as a board member		0
130	MFTA	45.2(1)	Inspection and Audit	deemed board member	provide records and information	will request information if ministry believes a person acted as a board member		
225	PSTA	209(1)	Inspection and Audit	deemed board member	provide records and information	will request information if ministry believes a person acted as a board member		
286	TTA	28.2(1)	Inspection and Audit	deemed board member	provide records and information	will request information if ministry believes a person acted as a board member		
19	CTA	43(2)	Inspection and Audit	enter premises	combustibles	auditor contacts business in advance, minimizes disruption, enters during normal business hours		
18	CTA	43(1)	Inspection and Audit	enter premises	null	auditor contacts business in advance, minimizes disruption, enters during normal business hours		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
115	MFTA	41(1)	Inspection and Audit	enter premises	null	auditor contacts business in advance, minimizes disruption, enters during normal business hours		0
199	PSTA	194(2)	Inspection and Audit	enter premises	null	auditor contacts business in advance, minimizes disruption, enters during normal business hours		
20	CTA	44(1)	Inspection and Audit	estimate	return not filed or substantiated		All delinquency cases are manually reviewed and the decision to assess is made on a case-by-case basis	
116	MFTA	42(1)	Inspection and Audit	estimate	return not filed or substantiated	may be used for any type of return, but overdue IFTA returns are highlighted in the TIM		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
203	PSTA	198	Inspection and Audit	estimate	return not filed or substantiated		complex - ultimately TACS will automate the process of estimating and assessing if business rules permit; when business rules do not permit automation, delinquent returns are reviewed manually and assessments are made on a case-by-case basis	1
43	CTA	55.1	Inspection and Audit	interest	after date of notice of assessment	interest charged from the issue date of the notice of assessment on any amount still owing		0
142	MFTA	48.1	Inspection and Audit	interest	after date of notice of assessment	interest charged from the issue date of the notice of assessment on any amount still owing		
224	PSTA	206.1	Inspection and Audit	interest	after date of notice of assessment	interest charged from the issue date of the notice of assessment on any amount still owing		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
39	CTA	55(3)	Inspection and Audit	interest	interest on security	interest on all audit assessments of tax; references to "tax" in the bulletin include security		0
138	MFTA	48(3)	Inspection and Audit	interest	interest on security	interest on all audit assessments of tax; references to "tax" in the bulletin include security		
40	CTA	55(5)	Inspection and Audit	interest	netting - net assessment	may net if refund amount is confirmed before completion of audit; TIM is written such that netting is standard practice, but uses a net refund example - also note TIM entry technically refers to an obsolete provision rewritten in Budget 2014		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
139	MFTA	48(5)	Inspection and Audit	interest	netting - net assessment	may net if refund amount is confirmed before completion of audit; TIM is written such that netting is standard practice, but uses a net refund example - also note TIM entry technically refers to an obsolete provision rewritten in Budget 2014		0
221	PSTA	206(5)	Inspection and Audit	interest	netting - net assessment	may net if refund amount is confirmed before completion of audit		
295	TTA	35(2)	Inspection and Audit	interest	null	interest on assessments against ESRDs deemed to have collected TT; interest if tax not remitted when wholesale purchase made from unregistered supplier; interest may apply if TT not paid on imported tobacco		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
42	CTA	55(11)	Inspection and Audit	interest	time amount became owing by government		refund claims entered as "category 2" interest, so no interest paid unless delay > 60 days from date claim is perfected	
141	MFTA	48(11)	Inspection and Audit	interest	time amount became owing by government		refund claims generally entered as "category 2" interest, so no interest paid unless delay > 60 days from date claim is perfected; claims coded "tax paid in error" are entered as "category 1" interest and midpoints have been used	

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
223	PSTA	206(11)	Inspection and Audit	interest	time amount became owing by government	"category 1": interest paid from the date of the overpayment or from an "average date" if overpayments spread over time; "category 2": no interest unless delay > 60 days from date claim is perfected		1
41	CTA	55(10)	Inspection and Audit	interest	time amount became owing to government		when assessment is made for an isolated error, interest calculated from the month following the end of the month in which the tax event occurred; for assessments pertaining to a number of errors over a period of time, a mid-point is used	

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
140	MFTA	48(10)	Inspection and Audit	interest	time amount became owing to government		when assessment is made for an isolated error, interest calculated from the month following the end of the month in which the tax event occurred; for assessments pertaining to a number of errors over a period of time, a mid-point is used	0
222	PSTA	206(10)	Inspection and Audit	interest	time amount became owing to government		when assessment is made for an isolated error, interest calculated from the month following the end of the month in which the tax event occurred; for assessments pertaining to a number of errors over a period of time, a mid-point is used	

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
38	CTA	55(2)	Inspection and Audit	interest	up to date of notice of assessment	interest on all audit assessments of tax; no interest on penalty if paid within 30 days; grace for first late return/payment		1
137	MFTA	48(2)	Inspection and Audit	interest	up to date of notice of assessment	interest on all audit assessments of tax; no interest on penalty if paid within 30 days; grace for first late return/payment		
220	PSTA	206(2)	Inspection and Audit	interest	up to date of notice of assessment	interest may apply to various assessments		
22	CTA	45(4)	Inspection and Audit	limitation period	wilful default or fraud	no limitation period for wilful default or fraud		
26	CTA	46(5)	Inspection and Audit	limitation period	wilful default or fraud	no limitation period for wilful default or fraud		
118	MFTA	43(4)	Inspection and Audit	limitation period	wilful default or fraud	no limitation period for wilful default or fraud		
122	MFTA	44(5.1)	Inspection and Audit	limitation period	wilful default or fraud	no limitation period for wilful default or fraud		
207	PSTA	200(3)	Inspection and Audit	limitation period	wilful default or fraud	no limitation period for wilful default or fraud		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
214	PSTA	203(5)	Inspection and Audit	limitation period	wilful default or fraud	no limitation period for wilful default or fraud		0
216	PSTA	204(5)	Inspection and Audit	limitation period	wilful default or fraud	no limitation period for wilful default or fraud		
283	TTA	22(4)	Inspection and Audit	limitation period	wilful default or fraud	no limitation period for wilful default or fraud		
36	CTA	51(1.1)	Inspection and Audit	notice of assessment	notice for assessment of interest	notice of assessment for audit will show interest		0
135	MFTA	46(1.1)	Inspection and Audit	notice of assessment	notice for assessment of interest	notice of assessment for audit will show interest		
201	PSTA	197(2)	Inspection and Audit	notice of assessment	notice for assessment of interest	notice of assessment for audit will show interest		
202	PSTA	197(3)	Inspection and Audit	notice of assessment	to custodian or trustee in bankruptcy		(no historical use)	
30	CTA	47(1)(c)	Inspection and Audit	penalty	10% other	penalty applies if taxpayer had knowledge of liability or in cases of repeat non-compliance; examples provided		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
126	MFTA	45(1)(c)	Inspection and Audit	penalty	10% other	penalty applies if taxpayer had knowledge of liability or in cases of repeat non-compliance; examples provided		1
219	PSTA	205(c)	Inspection and Audit	penalty	10% other	imposition of penalty depends on circumstances; one example provided is a failure by certain collectors to remit electronically		
294	TTA	35(1)(c)	Inspection and Audit	penalty	10% other	penalty applies if taxpayer had knowledge of liability or in cases of repeat non-compliance; examples provided		
28	CTA	47(1)(a)	Inspection and Audit	penalty	100% wilful	penalty applies if taxpayer wilfully failed to remit; examples provided		
124	MFTA	45(1)(a)	Inspection and Audit	penalty	100% wilful	penalty applies if taxpayer wilfully failed to remit; examples provided		
217	PSTA	205(a)	Inspection and Audit	penalty	100% wilful	imposition of penalty depends on circumstances		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
292	TTA	35(1)(a)	Inspection and Audit	penalty	100% wilful	penalty applies if taxpayer wilfully failed to remit; examples provided		1
29	CTA	47(1)(b)	Inspection and Audit	penalty	25% evasion	penalty applies if taxpayer evaded through false or deceptive statement, or through fraud; examples provided		1
125	MFTA	45(1)(b)	Inspection and Audit	penalty	25% evasion	penalty applies if taxpayer evaded through false or deceptive statement, or through fraud; examples provided		
218	PSTA	205(b)	Inspection and Audit	penalty	25% evasion	imposition of penalty depends on circumstances		
293	TTA	35(1)(b)	Inspection and Audit	penalty	25% evasion	penalty applies if taxpayer evaded through false or deceptive statement, or through fraud; examples provided		
212	PSTA	203(1.1)	Inspection and Audit	penalty	collector (PST) had reason to believe tax should have been levied	may issue assessment		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
132	MFTA	45.3(1)	Inspection and Audit	penalty	coloured fuel	penalty may be imposed; TIM implies penalty will be imposed as a deterrent		
133	MFTA	45.4(1)	Inspection and Audit	penalty	heating oil or non-motor fuel oil used contrary to 16.7(2)	penalty may be imposed; TIM implies penalty will be imposed		
134	MFTA	45.4(2)	Inspection and Audit	penalty	heating oil or non-motor fuel oil used contrary to 16.7(3) or (4)	penalty may be imposed; TIM implies penalty will be imposed		
31	CTA	47(2)	Inspection and Audit	penalty	sale before collector appointment	penalty equal to the amount of security that should have been paid		
127	MFTA	45(2)	Inspection and Audit	penalty	sale before collector appointment	penalty equal to the amount of security that should have been paid		0
282	TTA	22(2.2)	Inspection and Audit	penalty	sale by wholesale dealer without permit		penalty is imposed unless the wholesale dealer has paid security	
32	CTA	47(3)	Inspection and Audit	penalty	security from retroactive collector		Would "generally" be applied in all cases where a retroactive appointment was made	

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
128	MFTA	45(3)	Inspection and Audit	penalty	security from retroactive collector		(no historical use)	1
33	CTA	47(5)	Inspection and Audit	penalty	wilful sale before collector appointment	penalty applies if person continues to wilfully sell (i.e., after ss. 3 penalty)		0
129	MFTA	45(5)	Inspection and Audit	penalty	wilful sale before collector appointment	penalty applies if person continues to wilfully sell (i.e., after ss. 3 penalty)		
24	CTA	46(1.1)(a)	Inspection and Audit	reduction of penalty	person liable to pay has paid		would always exercise if auditor is in possession of information demonstrating that person liable to pay has paid	0
120	MFTA	44(1.1)(a)	Inspection and Audit	reduction of penalty	person liable to pay has paid		would always exercise if auditor is in possession of information demonstrating that person liable to pay has paid	
211	PSTA	203(1.01)	Inspection and Audit	reduction of penalty	person liable to pay has paid	exercisable for "flexibility" when payment by person with tax liability is noted		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
25	CTA	46(1.1)(b)	Inspection and Audit	reduction of penalty	person liable to pay would get refund		would always exercise if auditor is in possession of information demonstrating that person liable to pay would get refund	0
121	MFTA	44(1.1)(b)	Inspection and Audit	reduction of penalty	person liable to pay would get refund		would always exercise if auditor is in possession of information demonstrating that person liable to pay would get refund	
284	TTA	22(6.1)	Inspection and Audit	waiver	assessment or penalty	agreement advertised as available at the option of the taxpayer		
206	PSTA	200(2)	Inspection and Audit	waiver	assessments under 198 or 199	agreement advertised as available at the option of the taxpayer		
213	PSTA	203(4)	Inspection and Audit	waiver	assessments under 203	agreement advertised as available at the option of the taxpayer		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
215	PSTA	204(4)	Inspection and Audit	waiver	assessments under 204	agreement advertised as available at the option of the taxpayer		
21	CTA	44(4)	Inspection and Audit	waiver	estimate	agreement advertised as available at the option of the taxpayer		
117	MFTA	42(3)	Inspection and Audit	waiver	estimate	agreement advertised as available at the option of the taxpayer		
23	CTA	45(5)	Inspection and Audit	waiver	failure to pay or remit	agreement advertised as available at the option of the taxpayer; waiver permits unclaimed deductions from earlier periods to be considered		
119	MFTA	43(5)	Inspection and Audit	waiver	failure to pay or remit	agreement advertised as available at the option of the taxpayer		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
27	CTA	46(6)	Inspection and Audit	waiver	penalty	agreement advertised as available at the option of the taxpayer		1
123	MFTA	44(6)	Inspection and Audit	waiver	penalty	agreement advertised as available at the option of the taxpayer; waiver permits unclaimed deductions from earlier periods to be considered		
74	CTR	39(4)	Interjurisdictional Transport	distance estimate	IFTA deposit	deposit based on estimated per KM consumption and estimated KMs to travel; implied that taxpayer's estimates are accepted		0
165	MFTR	40(2)	Interjurisdictional Transport	distance estimate	IFTA deposit	deposit based on estimated per KM consumption and estimated KMs to travel; implied that taxpayer's estimates are accepted		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
75	CTR	39(5)	Interjurisdictional Transport	distance estimate	IFTA deposit		authority is delegated to Ministry of Transportation staff, who will use maps, distance charts, internet resources or other means of estimating if the default rule cannot be used	0
166	MFTR	40(3)	Interjurisdictional Transport	distance estimate	IFTA deposit		authority is delegated to Ministry of Transportation staff, who will use maps, distance charts, internet resources or other means of estimating if the default rule cannot be used	
184	PSTA	74(3)	Interjurisdictional Transport	IRP fleet transfer refund	licensed outside BC	refund advertised as available upon application with required evidence		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
185	PSTA	76(3)	Interjurisdictional Transport	IRP trade-in refund	licensed outside BC	refund advertised as available upon application with required evidence		
95	MFTA	19(1)	Interjurisdictional Transport	licensing	IFTA	licence will be issued or renewed with completed application and fee payment; may refuse to license if history of non-compliance or if person doesn't meet definition of a "carrier"		
164	MFTR	27(1)	Interjurisdictional Transport	reinstatement	IFTA	licence may be reinstated once all returns are filed and taxes are paid		
96	MFTA	19(4)	Interjurisdictional Transport	suspension or cancellation	IFTA	a licence can be suspended or revoked for a failure to file or pay returns		
163	MFTR	26(2)	Interjurisdictional Transport	suspension or cancellation	IFTA	a licence can be suspended or revoked for a failure to file or pay returns		
253	PSTA	159(4)	Refunds	bad debts	form of deduction	PST registrant may use FIN 400 (box H)		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
15	CTA	38(1)	Refunds	bad debts	null	refunds allowed when claimed on return or on application with evidence		0
16	CTA	38(2)	Refunds	bad debts	null	refunds allowed when claimed on return or on application with evidence		
97	MFTA	21(1)	Refunds	bad debts	null	refunds allowed when claimed on return or on application with evidence		
98	MFTA	21(2)	Refunds	bad debts	null	refunds allowed when claimed on return or on application with evidence		
277	TTA	16(1)	Refunds	bad debts	null	refunds allowed when claimed on return or on application with evidence		
278	TTA	16(2)	Refunds	bad debts	null	refunds allowed when claimed on return or on application with evidence		
254	PSTA	160(3)	Refunds	collector (PST) refunds	form of deduction	PST collector may use FIN 400 (box I)		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
247	PSTERR	144(3)	Refunds	direct seller	require person to seek refund from direct seller		(no historical use)	
183	PSTA	46	Refunds	motor vehicle	leased outside BC	refund advertised as available upon application		
187	PSTA	125(4)	Refunds	MRDT tax refund	authority to deduct		refunds paid by ministry are deducted from disbursements to municipalities and regional districts	
190	PSTA	162(c)	Refunds	prescribed refunds	charity or PAC	detailed criteria set out for charity-funded medical equipment and PAC-raised funds refunds		
17	CTA	40(a)	Refunds	prescribed refunds	null	technical bridge to CTR s. 24-29 and s. 40-40.1; CTA s. 40 discretion is exercised if director exercises corresponding discretion in regulations		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
99	MFTA	24.1(a)	Refunds	prescribed refunds	null		technical bridge to various MFTR refunds; MFTA s. 24.1(a) discretion is exercised if director exercises corresponding discretion in regulations	0
189	PSTA	162(a)	Refunds	prescribed refunds	null	technical bridge to various PSTERR refunds; PSTA s. 162 discretion is exercised if director exercises corresponding discretion in regulations		
88	MFTA	12(3)	Refunds	SCBCTA tax refund	authority to deduct		refunds paid by ministry are deducted from disbursements to SCBCTA	
1	CTA	16(1)	Registration	collector	null	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
100	MFTA	28(1)	Registration	collector	null	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable		1
265	TTA	6(1)	Registration	dealer	issue permit		applications vetted according to a policy/procedure document and checklist created by the Tobacco Tax Section	
193	PSTA	168(7)	Registration	collector (PST)	refuse to register		(no policy)	1
267	TTA	6(6)	Registration	dealer	refuse to register		exercised if conditions are met, but this happens very rarely	
101	MFTA	28(2)	Registration	limitation	collector		appointment is limited to a subcategory (e.g., marine diesel) as appropriate - limitation reflects business model of collector	

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
8	CTA	22	Registration	limitation	collector, registered consumer, registered air or marine service	limitation exercised to result in appropriate use (e.g., rail carrier limited to light fuel oil used as locomotive fuel)		0
108	MFTA	37(2)	Registration	limitation	registered consumer	appointments are tailored to appropriate subcategories to match the business model of the registered consumer		
4	CTA	19(1)	Registration	retail dealer	null	director may establish suitability using a 19(2) agreement re: duties and conditions, must be financially viable		1
304	TTR	6(1)	Registration	retail dealer	null		retail authorization always issued if statutory requirements are met	
7	CTA	21(1)	Registration	special agreement	registered air or marine service	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
63	CTR	5(1)	Registration	special agreement	registered air service	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable		
6	CTA	20(1)	Registration	special agreement	registered consumer	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable; director may appoint, but "not required to"		
62	CTR	4(2)	Registration	special agreement	registered consumer	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable; director may require proof that OOP usage is for an exempt purpose		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
107	MFTA	37(1)	Registration	special agreement	registered consumer	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable; if doubts about financial viability, a bond may be required		1
160	MFTR	1.1(2)	Registration	special agreement	registered consumer	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable		
64	CTR	6(1)	Registration	special agreement	registered marine service	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable		
65	CTR	6(2)	Registration	special agreement	registered marine service	director requires applicant to enter into an agreement re: duties and conditions, must be financially viable		
180	PSTA	32(1)	Registration	special agreement	tax payment agreement	agreement is advertised as available to qualifying taxpayers		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
10	CTA	23(4)	Registration	suspension or cancellation	cancellation	an authorization may be cancelled "where applicable"; for non-compliance; automatic cancellation under MFTA		
85	CTR	41.6(3)	Registration	suspension or cancellation	cancellation	an authorization may be cancelled "where applicable"; for non-compliance; automatic cancellation under MFTA		
106	MFTA	30(2)	Registration	suspension or cancellation	cancellation	an authorization may be cancelled for non-compliance; automatic cancellation under CTA		
110	MFTA	37.1(3)	Registration	suspension or cancellation	cancellation	an authorization may be cancelled for non-compliance; automatic cancellation under CTA		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
176	MFTR	51.9(3)	Registration	suspension or cancellation	cancellation	an authorization may be cancelled "where applicable"; for non-compliance; automatic cancellation under CTA		
182	PSTA	32(7)	Registration	suspension or cancellation	cancellation		TPA agreements contain clauses that result in automatic termination by the director; some ambiguity in policy remains (i.e., director could cancel for reasons other than those specified)	

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
195	PSTA	173(3)	Registration	suspension or cancellation	cancellation		used extremely rarely by Collections, generally in relation to liquor accounts, and only if all viable collection remedies have been exhausted while business continues to collect but not remit tax; requires director approval after memo with recommendation	1
269	TTA	7(3)	Registration	suspension or cancellation	cancellation	an authorization may be cancelled for non-compliance		
270	TTA	7(4.2)	Registration	suspension or cancellation	cancellation without advance notice		(no historical use, no circumstances prescribed)	
303	TTR	4(5)	Registration	suspension or cancellation	null	an authorization may be suspended or cancelled for non-compliance		
192	PSTA	168(6)	Registration	bond	require bond before registration		(no historical use)	

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
266	TTA	6(4)	Registration	bond	require bond before registration	all new wholesale dealers must post a bond		1
309	TTR	6.2(2)(d)	Registration	bond	require bond before registration		(no historical use)	
2	CTA	16(2.1)	Registration	collector	refiner collector	director requires applicant to comply with statutory obligations and to own/operate a refinery in Canada		0
102	MFTA	28(2.1)	Registration	collector	refiner collector		appointments are made for all eligible collectors	
3	CTA	16(2.3)	Registration	collector	retroactive appointment		Would be exercised in all conceivable situations - all vendors operating within BC should be encouraged to apply for retroactive appointment	0
103	MFTA	28(2.3)	Registration	collector	retroactive appointment		Would be exercised in all conceivable situations	

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
255	PSTA	168(2)	Registration	collector (PST)	form of application, power to require any information	required to use online form or FIN 418; required to provide information requested on the forms		
256	PSTA	174(2)	Registration	collector (PST)	manner for reporting changes	required to notify ministry; manner is left open		
191	PSTA	168(4)	Registration	collector (PST)	restrict use of registration number to business location		(no historical use)	
197	PSTA	178(4)	Registration	collector (PST)	sales on vessels with scheduled interjurisdictional sailings		(no historical use)	
89	MFTA	14(1)	Registration	coloured fuel	authorization to colour	director may authorize colouring at any of four locations enumerated		
93	MFTA	14.1(1)	Registration	coloured fuel	authorization to sell	director requires applicant to enter into agreement re: terms and conditions of authorization		
94	MFTA	16.3(3)	Registration	coloured heating oil/non-motor fuel oil	authorization to sell	director requires applicant to enter into agreement re: terms and conditions of authorization		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
80	CTR	41.3(3)(a)	Registration	exempt fuel retailer	change security-free percentage for exempt fuel retailer with notice	may be changed if "longer-term" shift in exempt sales is noted		0
171	MFTR	51.71(3)(a)	Registration	exempt fuel retailer	change security-free percentage for exempt fuel retailer with notice	may be changed if "longer-term" shift in exempt sales is noted		
82	CTR	41.3(4)	Registration	exempt fuel retailer	change security-free percentage for exempt fuel retailer without notice	may be changed if "longer-term" shift in exempt sales is noted; may be exercised if change is appropriate and requested by the EFR		1
173	MFTR	51.71(4)	Registration	exempt fuel retailer	change security-free percentage for exempt fuel retailer without notice	changed if "longer-term" shift in exempt sales is noted; no notice provided if change is requested by EFR		
77	CTR	41.2(1)(b)	Registration	exempt fuel retailer	conditions and limitations	director requires applicant to enter into agreement re: terms and conditions of authorization		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
168	MFTR	51.7(1)(b)	Registration	exempt fuel retailer	conditions and limitations	director requires applicant to enter into agreement re: terms and conditions of authorization		0
76	CTR	41.2(1)(a)	Registration	exempt fuel retailer	issue permit	director requires applicant to enter into agreement re: terms and conditions of authorization		0
167	MFTR	51.7(1)(a)	Registration	exempt fuel retailer	issue permit	director requires applicant to enter into agreement re: terms and conditions of authorization; TIM adds that permit is available on application		
79	CTR	41.3(2)	Registration	exempt fuel retailer	set different percentages for different fuel types or different fuel retailers	percentage may vary by type of fuel; variation across retailers is implied in public info		0
170	MFTR	51.71(2)	Registration	exempt fuel retailer	set different percentages for different fuel types or different fuel retailers	percentage may vary by type of fuel; variation across retailers is implied in public info		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
81	CTR	41.3(3)(b)	Registration	exempt fuel retailer	set or change security-free percentage for exempt fuel retailer without notice		director proposes and confirms changes in writing and in advance of the effective date of the changes	0
172	MFTR	51.71(3)(b)	Registration	exempt fuel retailer	set or change security-free percentage for exempt fuel retailer without notice		director proposes and confirms changes in writing and in advance of the effective date of the changes	
78	CTR	41.3(1)	Registration	exempt fuel retailer	set security-free percentage for exempt fuel retailer	after appointment as an EFR, a specified percentage will be set		0
169	MFTR	51.71(1)	Registration	exempt fuel retailer	set security-free percentage for exempt fuel retailer	after appointment as an EFR, a specified percentage will be set		
272	TTA	8(1)	Registration	limitation	quantity of tobacco for resale	allocations set according to population, demand, proximity to other ESRDs		
273	TTA	8(2)	Registration	limitation	specific	limitations set to match legitimate market demand		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
210	PSTA	202	Registration	penalty	wilful failure to register		rulings advise that the penalty may be applied but are ambiguous as to rules regarding "wilful" failures	
5	CTA	19(2)	Registration	retail dealer	agreement	agreement may include providing a letter of credit		
307	TTR	6.2(2)(b)	Registration	retail dealer	require evidence of arm's length		(no policy)	
306	TTR	6.2(2)(a)	Registration	retail dealer	require evidence of compliance plan		(no policy)	
308	TTR	6.2(2)(c)	Registration	retail dealer	require written undertaking		(no policy)	
305	TTR	6.2(1)	Registration	retail dealer	written authorization		(no policy)	
181	PSTA	32(4)(c)	Registration	special agreement	contents of tax payment agreement		one of two standardized agreements is used as appropriate (general TPA or railway TPA)	
248	PSTR	12(1)	Registration	special agreement	criteria for entering into tax payment agreement	agreement is advertised as available to qualifying taxpayers		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
249	PSTR	12(2)	Registration	special agreement	criteria for entering into tax payment agreement	agreement is advertised as available to qualifying taxpayers		
271	TTA	7(4.3)	Registration	suspension or cancellation	cancellation	exercised when discretion in regulation is exercised; see TTR s. 11.1(2)		
320	TTR	11.1(2)	Registration	suspension or cancellation	cancellation	exercised to rectify errors or changes; examples provided in the TIM		
260	PSTA	175(1)	Registration	suspension or cancellation	cancellation by small seller, form, power to require any information	small seller must complete application form to cancel PST registration		
196	PSTA	175(2)	Registration	suspension or cancellation	cancellation if small seller	a registrant who meets all small seller criteria and other conditions may cancel their registration		
257	PSTA	174(3)(a)	Registration	suspension or cancellation	cancellation, form and manner for notification by collector (PST)	request account closure using eTaxBC; no explicit form and manner for non-users of eTaxBC		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
258	PSTA	174(4)(a)	Registration	suspension or cancellation	cancellation, form and manner for notification by collector (PST)	request account closure using eTaxBC; no explicit form and manner for non-users of eTaxBC		
259	PSTA	174(5)(a)	Registration	suspension or cancellation	cancellation, form and manner for notification by collector (PST)	request account closure using eTaxBC; no explicit form and manner for non-users of eTaxBC		
92	MFTA	14(9)	Registration	suspension or cancellation	reinstatement		(no historical use)	
9	CTA	23(2)	Registration	suspension or cancellation	suspension	an authorization may be suspended "where applicable"; for non-compliance; automatic suspension under MFTA		
84	CTR	41.6(1)	Registration	suspension or cancellation	suspension	an authorization may be suspended "where applicable"; for non-compliance; automatic suspension under MFTA		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
90	MFTA	14(4)	Registration	suspension or cancellation	suspension	an authorization may be suspended for non-compliance; TIM implies policy is to escalate consequences as permitted by regulation		
105	MFTA	30(1)	Registration	suspension or cancellation	suspension	an authorization may be suspended for non-compliance; automatic suspension under CTA; impetus to suspend without notice is to immediately stop non-compliance and protect revenue		
109	MFTA	37.1(1)	Registration	suspension or cancellation	suspension	an authorization may be suspended for non-compliance; automatic suspension under CTA		
175	MFTR	51.9(1)	Registration	suspension or cancellation	suspension	an authorization may be suspended "where applicable"; for non-compliance; automatic cancellation under CTA		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
194	PSTA	173(1)	Registration	suspension or cancellation	suspension		(no historical use)	1
268	TTA	7(2)	Registration	suspension or cancellation	suspension	an authorization may be suspended for non-compliance; suspension aimed at resolving non-compliance		
274	TTA	9(2)	Registration	suspension or cancellation	suspension without advance notice		no advance notice provided for Ministry of Health suspensions	
91	MFTA	14(6)	Registration	suspension or cancellation	suspension without notice	an authorization may be suspended for non-compliance; no notice provided when there is an immediate risk to revenue		
66	CTR	8(2)	Returns	filing frequency	collector	established according to amount of security payable annually; cash flow may also be considered		
161	MFTR	2(2)	Returns	filing frequency	collector	established according to amount of security payable annually		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
251	PSTA	1("reporting period")	Returns	filing frequency	collector (PST), tax payment agreement holder	established according to amount of tax to be remitted annually, with some uncertainty for amounts \$3000-\$12000		1
83	CTR	41.5(2)	Returns	filing frequency	exempt fuel retailer	established according to amount of fuel sold and/or cash flow		
174	MFTR	51.81(2)	Returns	filing frequency	exempt fuel retailer		all EFR accounts are on the standard filing frequency	
69	CTR	12(3)	Returns	filing frequency	registered air or marine service	established according to amount of tax payable annually; cash flow may also be considered		
68	CTR	11(2)	Returns	filing frequency	registered consumer	established according to amount of tax payable annually; cash flow may also be considered		
67	CTR	10(2)	Returns	filing frequency	retail dealer of natural gas	established according to amount of tax to be remitted annually; cash flow may also be considered		
70	CTR	13(4)	Returns	filing frequency	self-assessment	established according to amount of tax payable annually		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
261	PSTA	186(1)	Returns	collector (PST)	form of return	FIN 400 / FIN 401 as appropriate		0
321	TTR	13(1)	Returns	collector (TTA)	manner, form for filing return	FIN 125		
262	PSTA	193(1)	Returns	taxpayer	form of return	FIN 402 / FIN 405 as appropriate		
338	PSTR	73(1)(b)(iv)	Returns	cash	government office for in-person delivery (collector return)	none		
351	PSTR	79(2)(d)	Returns	cash	government office for in-person delivery (taxpayer return from registrant)	none		
356	PSTR	79(3)(d)	Returns	cash	government office for in-person delivery (taxpayer return from registrant)	none		
346	PSTR	79(1)(c)	Returns	cash	government office for in-person delivery (taxpayer return)		cash not accepted	
360	PSTR	79(4)(c)	Returns	cash	government office for in-person delivery (taxpayer return)		cash not accepted	

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
323	TTR	13(3)	Returns	collector (TTA)	authorize different collector return deadline		unlikely to deny a request to align filing periods with accounting periods	
324	TTR	13(4)	Returns	collector or exempt sale retail dealer	require a return for any period		(no policy)	
339	PSTR	73(1)(b)(v)	Returns	debit card	government office for in-person use (collector return)	none		
352	PSTR	79(2)(e)	Returns	debit card	government office for in-person use (taxpayer return from registrant)	none		
357	PSTR	79(3)(e)	Returns	debit card	government office for in-person use (taxpayer return from registrant)	none		
347	PSTR	79(1)(d)	Returns	debit card	government office for in-person use (taxpayer return)		debit cards not accepted	
361	PSTR	79(4)(d)	Returns	debit card	government office for in-person use (taxpayer return)		debit cards not accepted	

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
340	PSTR	78(1)(a)	Returns	electronic filing	method for large businesses (collector return)	electronic remittance may be made using eTaxBC, online banking / electronic funds transfer, or through bank's payment / filing service		
341	PSTR	78(1)(b)(i)	Returns	electronic filing	method for optional electronic filers (collector return)	electronic remittance may be made using eTaxBC, online banking / electronic funds transfer, or through bank's payment / filing service		
353	PSTR	79(3)(a)	Returns	electronic filing	method for optional electronic remitters (taxpayer return from registrant)	electronic remittance may be made using eTaxBC, online banking / electronic funds transfer, or through bank's payment / filing service		
334	PSTR	73(1)(a)	Returns	electronic remittance	method for large businesses (collector return)	electronic remittance may be made using eTaxBC, online banking / electronic funds transfer, or through bank's payment / filing service		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
335	PSTR	73(1)(b)(i)	Returns	electronic remittance	method for optional electronic remitters (collector return)	electronic remittance may be made using eTaxBC, online banking / electronic funds transfer, or through bank's payment / filing service		
348	PSTR	79(2)(a)	Returns	electronic remittance	method for optional electronic remitters (taxpayer return from registrant)	electronic remittance may be made using eTaxBC, online banking / electronic funds transfer, or through bank's payment / filing service		
322	TTR	13(2)	Returns	exempt sale retail dealer	authorize late ESRD return		(no policy)	
362	PSTR	81(a)	Returns	in-person delivery	government office for delivery of taxpayer return		1802 Douglas St, Victoria	
342	PSTR	78(1)(b)(ii)	Returns	in-person delivery	government office for in-person delivery (collector return)	1802 Douglas St, Victoria		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
14	CTA	35(5)	Returns	inventory allowance	null	director allows inventory allowance to be deducted if tax return and payment are filed on time; business entitled to full allowance provided they have capacity to store at least 1,000 litres of fuel		
86	CTR	42(1)	Returns	inventory allowance	null	director allows inventory allowance to be deducted if tax return and payment are filed on time; business entitled to full allowance provided they have capacity to store at least 1,000 litres of fuel		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
114	MFTA	40.1(3)	Returns	inventory allowance	null	public info indicates no inventory allowance provided; TIM indicates \$250 inventory allowance provided; no amount prescribed in MFTR - appears TIM incorrectly copied from corresponding CTA entry		1
363	PSTR	81(b)	Returns	mail delivery	address for delivery of taxpayer return	PO Box 9442		
343	PSTR	78(1)(b)(iii)	Returns	mail delivery	address for mail delivery (collector return)	PO Box 9443		
337	PSTR	73(1)(b)(iii)	Returns	money order or cheque	address for mail delivery (collector return)	PO Box 9443		
350	PSTR	79(2)(c)	Returns	money order or cheque	address for mail delivery (taxpayer return from registrant)	PO Box 9443		
355	PSTR	79(3)(c)	Returns	money order or cheque	address for mail delivery (taxpayer return from registrant)	PO Box 9443		
345	PSTR	79(1)(b)	Returns	money order or cheque	address for mail delivery (taxpayer return)	PO Box 9442		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
359	PSTR	79(4)(b)	Returns	money order or cheque	address for mail delivery (taxpayer return)	PO Box 9442		
336	PSTR	73(1)(b)(ii)	Returns	money order or cheque	government office for in-person delivery (collector return)	1802 Douglas St, Victoria		
349	PSTR	79(2)(b)	Returns	money order or cheque	government office for in-person delivery (taxpayer return from registrant)	1802 Douglas St, Victoria		
354	PSTR	79(3)(b)	Returns	money order or cheque	government office for in-person delivery (taxpayer return from registrant)	1802 Douglas St, Victoria		
344	PSTR	79(1)(a)	Returns	money order or cheque	government office for in-person delivery (taxpayer return)		1802 Douglas St, Victoria	
358	PSTR	79(4)(a)	Returns	money order or cheque	government office for in-person delivery (taxpayer return)		1802 Douglas St, Victoria	
252	PSTA	98(3)	Returns	special occasion licence	time, manner, and form for remitting extra tax	FIN 400 / FIN 405 as appropriate; time depends on whether licence holder is a collector or not		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
11	CTA	30(6)	Security	exemption	collector	exemption provided "in writing" from the ministry is available; exemption may be provided if customer is a registered consumer or OOP		0
111	MFTA	38(6)	Security	exemption	collector	exemption provided "in writing" from the ministry is available		
12	CTA	31(2)	Security	exemption	deputy collector	exemption provided "in writing" from the ministry is available; exemption may be provided if customer is Status Indian on reserve, registered air/marine service, or OOP		
112	MFTA	39(2)	Security	exemption	deputy collector	exemption provided "in writing" from the ministry is available; exemption provided if fuel purchased for resale OOP or to EFR customers		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
13	CTA	32(2)	Security	exemption	retail dealer	director requires EFR applicant to enter into an agreement re: duties and conditions; exemption may be provided if customer is Status Indian on reserve, registered air/marine service, or OOP		1
113	MFTA	40(2)	Security	exemption	retail dealer	director requires applicant to enter into an agreement re: duties and conditions; exemption provided if fuel purchased for resale OOP or to EFR customers		
275	TTA	11(2)	Security	exemption	wholesale dealer	wholesale dealers must apply in writing to the director; approval may be given to suppliers of ESRDs and OOP retailers		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
188	PSTA	132(3)	Taxation	deeming	portion of purchase price for dedicated telecommunication	TIM provides example of a partially dedicated system and sets out a distance-based method for determining purchase price		1
178	PSTA	27(1)	Taxation	deeming	purchase price at fair market value	director may deem on non-exempt related party transfers; FMV substituted if reported vehicle price does not reflect FMV; ministry-determined FMV may be substituted for taxpayer-determined FMV in bundled sale		
263	TTA	2(1.3)	Taxation	deeming	wholesale price of cigar		(no policy)	
179	PSTA	27(3)	Taxation	deeming	nominal value	public info gives examples such as ribbons, key chains, pins, and "similar items"		

ID	Statute	Reference	Category	Specific 1	Specific 2	Stage 2 Policy	Stage 3 policy	Stage 4 Code
177	PSTA	4(1)	Taxation	deeming	transfer of possession	public info pertaining to related party asset transfers describes statutory sales that may only exist as a result of this provision, but the description is not explicit and the exercise could be broader than described		
208	PSTA	201(3)	Taxation	general anti-avoidance rule	determine tax consequences		(no historical use)	
209	PSTA	201(4)	Taxation	general anti-avoidance rule	recharacterize payment and/or ignore tax effects		(no historical use)	

