

# COMMENT BACKGROUND



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## GIFFORD V. CANADA

Income Tax Act references:

- paragraph 8(1)(f) – commissioned employee’s expenses
- paragraphs 18(1)(a) and (b) – general provisions on the deduction of expenses, and general limitation on capital expenses

Supreme Court of Canada decision:

- Thomas Gifford v. Her Majesty the Queen (FC) (29416)

The full text of the Supreme Court’s decision can be found at:  
<http://www.lexum.umontreal.ca/csc-scc/en/rec/index.html>.

## PRINCIPAL RESIDENCE EXEMPTION

**Note:** Where an individual owns only one principal residence at a time, and is a Canadian resident while owning that property, there will be no capital gain subject to tax. At the time of the disposition, the owner completes CRA form T2091 (IND) *Designation of a Property as a Principal Residence by an Individual (Other than a Personal Trust)*. No additional calculations or records are required. Form T2091 does not need to be filed with the income tax return for the year nor is any tax reporting of the disposition required.

Income Tax Act references:

- subsection 54 – definition of principal residence
- paragraph 40(2)(b) – calculation of gain on principal residence
- subsection 40(6) – special rule concerning principal residence

CRA material:

- Guide T4037 Capital Gains
- Interpretation Bulletin IT-120R6 *Principal Residence Deduction*
- Interpretation Bulletin IT-437R *Ownership of Property (Principal Residence)*
- Form T2091(IND) *Designation of a Property as a Principal Residence by an Individual (Other than a Personal Trust)*
- Form T2091(IND)-WS *Principal Residence Worksheet*

## WILL PLANNING

Income Tax Act references:

- Subsection 70(6) – Transfer or distribution to spouse (or common-law partner) or spouse trust
- Subsection 104(2) – Multiple trusts taxed as one individual

CRA Technical Interpretation:

- Multiple trusts created by a single person – document number 9306245 dated May 20, 1993; document number 9812985 dated January 14, 1999