

Fair Tax Process for Small Business

Issue:

Canadian courts, through an area of common law rights called Administrative law, hold most government agencies accountable to basic procedural safeguards to ensure that all Canadian citizens benefit from a fair and due process when denied or granted government benefits.

These protections do not, however, cover the activities of the Canada Revenue Agency (CRA) wherein citizens must understand the complicated details of the Income Tax Act and escalate concerns to the courts.

Although the Burlington Chamber supports rigorous enforcement of tax laws since taxes are critical for the maintenance of public services that allow for a prosperous Canadian society, the Burlington Chamber of Commerce also believes that small businesses require some form of intermediary assistance when navigating issues between small business and CRA. This assistance should be structured to enable greater effectiveness and should not require the additional expense of a tax accountant and lawyer to resolve.

Background:

The problem is quite widespread. The following comments made by Chief Justice Gerald Rip in *Pytel v. The Queen*, 2009 TCC 615 provide the best explanation for prevalence of the problem:

[42]The vast majority of informal appellants in this Court act for themselves or are represented by persons without any legal background. This, the Tax Court has in common with all other Canadian courts. Employees of the Tax Court try to assist the appellants and prospective appellants in getting their appeal to trial. The Court has produced a video describing the conduct of an appeal. Judges try to help the taxpayers subject to their limits of judicial impartiality. Nevertheless taxpayers and their lay representatives are often intimidated by the process and are unable to fully prosecute *[defend]* the appeals. This is what happened here.

[43] I am informed that the Legal Aid programs of the provinces do not provide assistance to taxpayers who cannot afford legal representation in income tax appeals. The rationale, I could only guess, is that if a person has a tax problem, the person must have money. There are appeals before the Court that are family related matters, such as Canada Child Tax benefits, and if disputed before a Family Court judge, may entitle the parties to legal aid. There are also appeals claiming medical expenses, Unemployment Income benefits, Canada Pension Plan benefits, among others, that impact upon low income persons.

[44] A need for taxpayers to be better prepared for their appeals before this Court is obvious. Legal Aid programs must consider extending their assistance to taxpayers, notwithstanding current budgeting issues. Dealing with a government bureaucracy, the CRA, for example, and then with a court is very stressful even on the most experienced persons. Unjust tax assessments may cause strain on the family relationship and ought to be challenged with public support when appropriate. Law firms and law schools also have the capacity to help.

Subsequent to the Pytel case, Chief Justice Rip wrote a letter to every law dean in Canada to see if there was anything they could do within the law schools to help address this growing problem. He also raised the issue in a meeting with the Canadian Bar Association's tax court bench and bar committee. In 2011, the downtown Toronto law firm of Fraser Milner Casgrain has started a program to provide *pro bono* assistance through its student program.

Recommendation

That the federal government:

1. Review Canada Revenue Agency's (CRA's) internal policies for small business and implement common administrative law practices into their procedures so that there is assistance for small business to resolve conflicts with CRA with the protection of due process.

SUBMITTED BY BURLINGTON CHAMBER OF COMMERCE