

## **Everything Old is New Again – Part 1**

By Charles M. Rotenberg

In 1984, Brian Mulroney formed the first Conservative majority government for the first time in 26 years. His success in that election was largely based on the Task Force Report on Revenue Canada (as it then was). The Task Force was headed by Perrin Beatty, who then went on to be the Minister of National Revenue, and it held hearings across the country listening to horror stories of Canadians' dealings with Revenue Canada (now the Canada Revenue Agency). As one who travelled with the Task Force, I can attest to the horrendous stories of abuse of individual Canadians at the hands of the tax officials. As they say, "Power corrupts, Absolute Power corrupts Absolutely".

For many years following the Task Force report things improved immeasurably. The tax department dealt honourably with people, could be counted on to honour their word, and showed a willingness to co-operate with taxpayers and their advisors in resolving tax disputes and collection issues. Unfortunately, that is no longer the case.

Every tax practitioner I speak with has horror stories of the intransigence and unreasonableness of the Canada Revenue Agency. The trustees in bankruptcy are busy with individuals who are simply unable to make suitable arrangements with collections officers. Collections officers would, apparently, rather have taxpayers go bankrupt than make arrangements that will let them make tax payments and still have enough to pay their bills. Canada Revenue Agency officials no longer seem to be willing to go out of their way in any respect to work with taxpayers. I recently spoke with a Complex Case Officer and asked for a list of companies that they show as being associated with a particular taxpayer. I was told in no uncertain terms, that even though she had the information readily available, it is not her job to provide that information and I should call the General Inquiries number. That number is always busy and one can call for hours before getting through.

But all of that being said, that isn't the disturbing part. A couple of instances recently reinforces the notion that the Canada Revenue Agency considers itself to be above the law.

### **Kiddie Tax Assessments**

A number of years ago we saw a large number of transactions designed to convert dividends, which would be subject to kiddie tax, into capital gains, which would not be subject to the tax. CRA assessed thousands of taxpayers across the country alleging sham transactions, trying to impose GAAR (the General Anti-Avoidance Rule) in an attempt to re-characterize the capital gains as dividends for the purpose of imposing Kiddie Tax. They also tried to create a new definition, that of an "accommodating party", as if someone this somehow changes the nature of the transaction. It should be noted that the Income Tax Act has since been amended to do exactly that – in non-arm's length situations, the capital gains will be deemed to be dividends, and therefore subject to the Kiddie Tax.

In 2010, the CRA in conversations and in writing, indicated that the objections for these types of transactions would be held in abeyance, pending the decision of the Tax Court of Canada in the

appeal of *The McLarty Family Trust*. The Court ruled against the CRA in March, 2012. At that point, rather than allow the pending objections, the CRA decided that they were now going to wait for the Tax Court decision in the case of *Gwartz*. *Gwartz* was heard by the Court in November, 2012 and the Court ruled, VERY CLEARLY, against the CRA's position in May, 2013. The time for the CRA to appeal *Gwartz* has long passed.

Remember, that with the change in the legislation, the pending cases have no relevance to anything in the future. I personally spoke with a CRA official in July of this year. He, apparently, has the files that are still pending. Head Office of CRA has not decided what to do with them, they have not dealt with the Objections, and have not issued refunds to the taxpayers that have paid. The official that I spoke with was unable to tell me when a decision would be made about how to handle the pending appeals.

It is disconcerting that the CRA can so easily change their position. They were going to wait for *McLarty*, until they didn't like the result. Then they were going to wait for *Gwartz*, until they didn't like that result. It shouldn't take months for them to honour their position, process the objections based upon the Tax Court decisions and issue the appropriate refund cheques. At one time, even if one disagreed with the CRA, they could be counted on to honour their word.

In the next issue of *The Canadian Taxpayer*, we will look at the CRA's flagrant disregard of the Federal Court's ruling in *Ficek*, and their outrageous assessment position regarding taxpayers who have taken part in tax shelter arrangements.

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