

Taxpayers' Ombudsman

INTERIM REPORT 2008-2009



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Taxpayers' Ombudsman

Ombudsman des contribuables

February 2, 2009

The Honourable Jean-Pierre Blackburn, P.C., M.P.
Minister of National Revenue
7th Floor
555 MacKenzie Avenue
Ottawa ON K1A 0L5

Dear Minister:

In accordance with section 10(1) of the Order-in-Council by which I was appointed, I have the honour of submitting the first Interim Report of the Taxpayers' Ombudsman covering the period February 2008 to February 2009.

Respectfully submitted,

J. Paul Dubé

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PART I

FROM THE OMBUDSMAN



J. Paul Dubé
Taxpayers'
Ombudsman

It is an honour and a pleasure for me to serve as Canada's first Taxpayers' Ombudsman. I appreciate the opportunity, as the Taxpayers' Ombudsman, to devote my skills and experience to being a Special Advisor to the Minister of National Revenue and upholding the service rights contained in the Taxpayer Bill of Rights. My role is to see that Canadians receive the professional service and fair

treatment they are entitled to from the Canada Revenue Agency (CRA).

The first anniversary of my appointment seems like an appropriate time to issue an interim report on the activities of the Office of the Taxpayers' Ombudsman. It is an opportunity to report on how the development of the office is coming along and to provide examples of how our work is already making a significant difference in the lives of many Canadians.

Much of this first year was spent setting up and staffing the office as well as developing procedures and protocols for working with taxpayers and the CRA. It has been a challenge to articulate our identity as an organization at arm's length from the CRA, while depending on many of the CRA's resources to function. Yet the professionalism and dedication of the civil servants who staff our office have ensured that we are effective and have established our identity as a credible, impartial organization.

It takes an energetic and highly motivated team to carry out the vigorous development strategy we have put in place, and I am proud to say that we have become just such a team. We are dedicated to providing impartial reviews of service complaints about the CRA and to providing recommendations to the Minister of National Revenue on how the CRA can maximize fairness in the delivery of its services. We also help taxpayers access the CRA and get the services and information they need.

Despite the fact that we are still building our organization, we have already helped resolve numerous complaints from individual taxpayers. These individual case reviews, which are significant in their own right, also help us identify and analyze systemic service issues—issues that go beyond the individual and have a wide-ranging impact at a national or regional level. Work in this area is at an early stage but we have already begun research and planning.

Not surprisingly, there have been growing pains associated with the establishment of an Ombudsman who reviews CRA service complaints. CRA employees and management are not used to an outsider reviewing their work and commenting on how they serve taxpayers. There has been a reluctance to follow some of our recommendations for apologies and there does not yet appear to be universal understanding or acceptance within the CRA of the role of the Ombudsman. However, the CRA leadership has expressed a willingness to work through the issues encountered to date. This is something that I will monitor closely and report on periodically.

PART II

THE ROLE OF AN OMBUDSMAN

*“It isn’t that they can’t see the solution,
it is that they can’t see the problem.”*

G.K. Chesterton

If an organization doesn’t know about its small problems, they can grow in magnitude. If small mistakes go unaddressed, they can go on to have a considerable negative impact.

Small problems sometimes go unreported or, worse yet, get covered up, despite the fact that people know about them. Sometimes the employees of an organization are reluctant to bring problems to the attention of their superiors, either out of fear that they will be blamed or that someone will simply want to “shoot the messenger.” There is therefore a benefit in having independent and impartial officials keep an eye on an organization and report their unbiased observations to the leadership.

The role of an Ombudsman is to be a type of early-warning system so that small problems can be solved before they become big problems. By receiving and analyzing complaints about Canada Revenue Agency (CRA) service, and by conducting research, the Taxpayers’ Ombudsman has a unique outside perspective of the CRA from which to identify systemic issues and provide recommendations on how they should be addressed. In carrying out its mandate, the Office of the Taxpayers’ Ombudsman is helping the CRA provide the best service and fairest treatment possible to its clientele.

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PART III

WHY A TAXPAYERS' OMBUDSMAN?

“Problems cannot be solved at the same level of awareness that created them.”
Albert Einstein

The Canada Revenue Agency (CRA), which collects taxes and distributes benefits on behalf of the Government of Canada, has a vast responsibility. To fulfill its mandate, the CRA has been given significant powers, such as the authority to seize bank accounts, garnishee wages, and withhold benefits. Taxpayers are protected from errors in law by the Tax Court of Canada, but until now, there was no independent protection from poor service or unfair treatment.

In Canada, the vast majority of individuals and businesses pay their taxes to, and receive their benefits from, the CRA without making a service complaint. The CRA has demonstrated that it is committed to providing quality service to taxpayers and benefit recipients. But no organization is perfect.

The 45,000 employees of the CRA provide services to more Canadians than any other government department or agency through the annual processing of 26 million individual tax returns and 1.6 million corporate returns, as well as the distribution of benefits to millions of recipients. Given the sheer volume and complexity of the transactions between Canadians and the CRA, and the range of services involved, it is perhaps inevitable that certain frictions will arise. Even if the CRA had a 99.9% satisfaction rate amongst the individuals and businesses it deals with, there would still be approximately 26,000 potential service complaints.

The CRA has invested in people, programs, and technologies, and it has established policies and procedures so it can apply the law fairly in each of its millions of interactions with Canadians. However, policies, procedures, programs, and technologies cannot address every individual situation. There are situations where universally applied rules do not get the right result and bad service or unfair treatment could occur.

What do we mean by service?

The Taxpayer Bill of Rights contains eight service rights:

- the right to be treated professionally, courteously, and fairly;
- the right to complete, accurate, clear, and timely information from the CRA;
- the right to lodge a service complaint and to be provided with an explanation of the CRA findings;
- the right to have the costs of compliance taken into account when tax legislation is administered;
- the right to expect the CRA to be accountable;
- the right to expect the CRA to publish service standards and report annually;
- the right to expect the CRA to warn you about questionable tax schemes in a timely manner; and
- the right to be represented by a person of your choice.

The CRA is not a typical service organization in that taxpayers do not have a choice of service provider—they must deal with the CRA. The *Income Tax Act* does not provide recourse for poor service or unfair treatment. And regardless of how professionally CRA officials believe they are treating someone, a taxpayer may still have a complaint if they feel they were not well served or treated unfairly. In the Taxpayers' Ombudsman there is now an impartial and independent officer outside the CRA to review taxpayers' service-related complaints and to identify systemic service issues.

Given the number of people and businesses that interact with the CRA, there are bound to be complaints. Some will have merit and others will not. However, the CRA is no longer the sole arbiter of which service

complaints are valid. The Taxpayers' Ombudsman will review the merits of such cases. When the Ombudsman's review indicates that a taxpayer did not receive professional service or fair treatment, the Ombudsman will make recommendations to the CRA for corrective action. Conversely, when the Ombudsman concludes that the CRA has acted in a fair and professional manner, he will say so.

Any unfair use of its powers or any lapse of professionalism on the part of the CRA in its dealings with Canadians could have serious consequences for taxpayers and benefit recipients. That is why the Government of Canada proclaimed the Taxpayer Bill of Rights and appointed the Taxpayers' Ombudsman to uphold those rights.



PART IV

FULFILLING THE MANDATE

“A problem properly stated is half-solved.”
John Dewey

The Taxpayers’ Ombudsman was appointed as a Special Advisor to the Minister of National Revenue by an order-in-council, which describes the mandate of the Ombudsman as follows:

The mandate of the Ombudsman shall be to assist, advise, and inform the Minister about any matter relating to services provided to a taxpayer by the Canada Revenue Agency (CRA).

We fulfill that role by:

- providing an impartial, efficient, and effective system for handling service complaints;
- helping to improve the quality of, and public confidence in, CRA service by identifying and investigating service and fairness issues, whether or not complaints have been received;
- facilitating access by taxpayers to the CRA;
- developing community awareness of the Ombudsman and the services provided;
- developing within the CRA an understanding of the role of the Ombudsman;
- helping the CRA maximize the efficiency and effectiveness of its own internal complaint handling systems; and
- making recommendations directly to the Minister of National Revenue on how CRA service can be improved.

There are, of course, limitations on what the Ombudsman can do. The Ombudsman is not authorized or mandated to review matters that arose more than one year before his appointment. Nor can the Ombudsman review the administration or enforcement of CRA legislation except to the extent that the matter raises a service issue.

“...I would like to express my sincere gratitude to the office of the Taxpayers’ Ombudsman... before (it) got involved, I was at my wits’ end with all of this... I received my payment shortly thereafter...”

letter from taxpayer



Resolving service complaints

In our day-to-day operations we deal with enquiries from taxpayers. People contact our office by phone, fax, mail, or even in person. We try to provide assistance whether the people who contact us have a CRA service complaint or not.

If someone needs to be referred to another government agency, we will help them in that regard. If they need help contacting the CRA, we will help them get in touch with the right person. Since our mandate is to help taxpayers when they have exhausted all the service redress mechanisms within the CRA, we generally ask taxpayers to try resolving the issue with CRA – Service Complaints before filing a complaint with our office. If they are unable to come to a satisfactory solution with the CRA in a timely fashion, we provide an independent and impartial review of their complaint.

From February 2008, when we became operational, to February 2009, we received 3,776 enquiries from the public. We conducted reviews of nearly 900 taxpayer complaints and have reached conclusions on more than 800 so far. Our case reviews have revealed a variety of service lapses by the CRA.

The Ombudsman's involvement in such cases has resulted in:

- apologies from the CRA to taxpayers;
- releases of seized bank accounts;
- payments of benefits or refunds;
- the cessation of collection activities; and
- recommendations to change CRA policies.

In many other cases, we found that the complaints were without merit and that the CRA provided exemplary service.

Addressing systemic service issues

A systemic issue is any issue that, if not identified and appropriately addressed, has the potential to have a negative impact on taxpayers in general, to recur, and to generate complaints. It encompasses all the procedures, publications, work processes, and computer systems that the CRA uses to conduct its business. A service issue is systemic when it:

- has national or regional impact;
- affects a segment of the taxpayer population; or
- has the potential for substantial implications for Canada's self-assessment tax system or the CRA's strategy of voluntary compliance.

An important role of the Ombudsman is to identify systemic problems. This includes identifying an issue, developing a research plan, obtaining the necessary information, analyzing the issue, forming a conclusion, and making recommendations. We also share best practices with our counterpart in the Ontario government and, as a result, have set up a team dedicated to systemic investigations.

We have already identified several systemic issues for further investigation, such as the inconsistent application of policies between various CRA offices.

Outreach

Part of the Ombudsman's legal mandate is to provide information to taxpayers about what the Ombudsman can do for them. Creating awareness about the Office of the Taxpayers' Ombudsman has been a priority.

To inform Canadians of this new office, we developed communications tools such as a corporate signature, leaflets, booklets, and posters, and we ensured that our complaint form was widely available. This material identifies the office and explains the mandate of the Taxpayers' Ombudsman and how to submit a complaint. In October 2008, we sent 30,000 booklets and 700 posters to the 350 Service Canada counters for distribution. Our Web site has been providing Canadians with details, updates, and downloadable documents, and it averages 3,700 visits per month.

A national outreach tour was launched in Toronto in December 2008. The response to the tour is remarkable, with much media interest and a friendly reception from various associations. The Ombudsman will be visiting other major cities across Canada and meeting with more associations and organizations that have direct contact with different segments of the population. The objective of the tour is to inform Canadians about the services that the Office of the Taxpayers' Ombudsman provides and to hear comments, opinions, and experiences that could help the Ombudsman identify systemic service issues within the CRA.

Other outreach initiatives target specific audiences, such as the Canadian Taxpayers Federation, the *Ligue des contribuables du Québec*, the Canadian Federation of Independent Business, and numerous professional groups. To promote awareness of his mandate and to share best practices,

the Ombudsman has also met with many of his colleagues from other organizations, including the Ontario Ombudsman, the *Protectrice du citoyen du Québec*, and the Australian Inspector-General of Taxation. He also participates in the Forum of Canadian Ombudsman.

Speaking engagements at various CRA management meetings and visits to CRA offices and call centres have also allowed the Ombudsman to learn more about how the CRA operates while providing an opportunity to explain his role. In fact, part of the first outreach tour included a visit to the Toronto North Tax Services Office where we received a warm welcome from the management and staff. This visit provided a valuable opportunity for the Ombudsman to speak directly with CRA employees about his role and for employees to speak to him. Many staff members expressed their desire to provide the best possible service to taxpayers and explained some of the challenges they face in that regard.

The CRA has included information about the Office of the Taxpayers' Ombudsman in its *General Income Tax and Benefit Guide 2007*. CRA – Service Complaints publications remind taxpayers of their right to make a complaint to the Taxpayers' Ombudsman if they are not satisfied with the CRA's resolution of a problem.

The Taxpayers' Ombudsman will continue to meet with Canadians, government officials, and employees of the CRA in every region of Canada to ensure that the Ombudsman's mandate and the Taxpayer Bill of Rights are understood and that taxpayers are aware of their rights.



PART V

MAKING A DIFFERENCE

“No problem can withstand the assault of sustained thinking.” Voltaire

By upholding the Taxpayer Bill of Rights, the Taxpayers’ Ombudsman helps anyone who receives service from the Canada Revenue Agency (CRA) get the professional service and fair treatment to which they are entitled.

The Taxpayers’ Ombudsman has reviewed several hundred service complaints to date. Even without the power to impose a solution on the CRA, the intervention of the Ombudsman’s office has already made a significant difference in the lives of many taxpayers. Here are a few examples:

A single mother who relied on the Canada Child Tax Benefit (CCTB) to make ends meet had her benefits suspended by the CRA. The CRA asked this taxpayer to provide documentary proof that her children were born in Canada. Letters from the family doctor who delivered the babies, as well as from other people who knew the family, were provided but deemed insufficient proof by the CRA. The dispute went on for months and the taxpayer was facing foreclosure on her mortgage and the potential loss of her home. A complaint was made to the Taxpayers’ Ombudsman, who reviewed the matter. Following the Ombudsman’s intervention, the taxpayer was issued a \$38,000 CCTB payment and was able to keep her home.

The operator of a special care home for adults received a per diem allowance for each of her residents from the provincial government. This allowance is a form of subsidy to the residents and is not considered taxable income for the owner of the home. The CRA officials who reviewed the owner’s file were not aware that this revenue was tax-exempt and proceeded with collection action that included freezing the taxpayer’s bank account and garnisheeing \$4,700. This resulted in considerable difficulties for the taxpayer. Once the Ombudsman got involved, the CRA ceased its collection activities and released the taxpayer’s bank account.

A single father supporting a disabled daughter and caring for his elderly mother had worked out a payment arrangement for his tax debt with the CRA and provided the CRA with a series of post-dated cheques. Once the CRA had cashed all the cheques provided, there remained a balance owing on the taxpayer’s account. But rather than contact the taxpayer to request additional cheques or make alternative arrangements, CRA collection officers seized the taxpayer’s bank account. This caused hardship to the taxpayer and his household, which went without food for two days. Once the Ombudsman intervened in this matter, the taxpayer’s bank account was released and he was issued a cheque from the CRA.

A retired taxpayer's pension was garnisheed as part of the CRA's efforts to collect taxes from him. The CRA did not respond to a payment arrangement proposed by the taxpayer and issued a Requirement to Pay, which is a form of demand letter. The CRA then garnisheed the account without informing the taxpayer, contrary to CRA collection policy. As a result of the Ombudsman's intervention, the Requirement to Pay was lifted and a payment arrangement was concluded to the taxpayer's satisfaction. The taxpayer also received a verbal apology from the CRA.

A taxpayer applied to the Minister of National Revenue for a remission order, which is an order from the Minister to the CRA to erase a taxpayer's debt. The request was denied because the taxpayer did not meet the eligibility requirements for a remission order. The taxpayer was not satisfied with the result and could not understand why he did not qualify for the relief requested. He filed a complaint with the Ombudsman. While the Ombudsman did not determine any unfair treatment on the part of the CRA, as a result of the Ombudsman's intervention, the CRA saw the opportunity to improve its communications and will be modifying its standard letter regarding remission orders. It is also in the process of producing a guide for public use.

A woman living on minimum wage and relying on tax credits such as the Canada Child Tax Benefit (CCTB), the Universal Child Care Benefit (UCCB), and the goods and services tax (GST) credit to make ends meet had separated from her common-law partner in March of 2006. She advised the CRA of her change in marital status in her application for increased CCTB and other family allowance supplements. In 2008, the CRA requested proof of her marital status. She provided the CRA with a copy of her new lease without the ex-spouse's name

and utility bills in her name only, the phone number of her former spouse, as well as a letter from the mother of the former spouse stating that her son resided with her. The CRA did not accept this evidence of a change in marital status and claimed a repayment of \$4,200 in tax credits. The CRA even asked her to obtain a copy of her ex-spouse's tax return. As a result of the Ombudsman's intervention, the CRA eventually recognized the change in marital status and issued a payment of \$1,500 to the taxpayer.

A man suffering from an inoperable brain tumour had a house fire in 2005 in which many of his tax records were destroyed. As a result of not filing tax returns on time, he was subject to penalties and interest on his personal income tax account as well as his goods and services tax (GST) account. The taxpayer applied for taxpayer relief under the *Income Tax Act*, asking that he be absolved of these penalties and interest due to the exceptional circumstances and hardships that led to them. The applications for income tax and GST relief were processed in two different tax offices. One office granted relief and the other did not. The Ombudsman reviewed the case and commented on the apparent lack of fairness in the outcome of the taxpayer's request for relief. In the end the CRA granted the taxpayer's request and the penalties and interest were cancelled.

It is important to note that in the above cases, the Ombudsman was not required to make any recommendations. By getting involved in these case reviews, asking questions, and providing initial impressions on the apparent fairness or level of service received by the taxpayers, the Ombudsman caused the CRA to rethink its position on these files. The power of an Ombudsman comes not from being able to order an organization to do anything, but to cause that organization to see a problem from another perspective.

PART VI

CONCLUSION

As Canadians deal with the consequences of a tumultuous economy, financial obligations, such as tax liabilities, may become more difficult for many people to meet. Service requests and complaints tend to increase in difficult economic times, as do challenges in the collection of revenues. As it has done to date, the Taxpayers' Ombudsman will help ensure that Canadians have access to the service they deserve regardless of circumstances or financial climate.

As we continue to establish the Office of the Taxpayers' Ombudsman and further develop the talents and expertise of our team, we will help the Canada Revenue Agency (CRA) improve its service to Canadian taxpayers and benefit recipients. We will build on our success in resolving individual complaints and move forward on identifying, analyzing, and suggesting solutions to systemic problems.

I invite Canadians to contact us with information about their service experiences with the CRA. Our goal is to be as informed as possible and work with Canadians and the CRA to improve the relationship they have with each other. I look forward to reporting on our activities in greater detail in my first Annual Report to be tabled in Parliament by the Minister of National Revenue in December 2009.

We will continue our outreach initiatives and publish the results of our investigations. More and more Canadians, and the CRA, will recognize the positive contributions this office makes toward helping the CRA improve its services and ensuring fairness for taxpayers.

In conclusion, I want to express sincere thanks to my talented and dedicated team. I am grateful to be supported in the building of this historic organization by people who share my vision and see the benefit to Canadians, the Minister of National Revenue, and the CRA of having an independent and impartial Taxpayers' Ombudsman.



PART VII

CONTACT INFORMATION

Office/ mailing address:

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