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# The Right to Know

Examination of the sufficiency of information  
in Decision Letters from the Appeals Branch  
of the Canada Revenue Agency

Ombudsman report, August 2010 | J. Paul Dubé, Taxpayers' Ombudsman

Taxpayers'  
**Ombudsman**  
des contribuables

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© Minister of Public Works and Government Services Canada 2010

Cat. No.: Rv10-1/2010

ISBN: 978-1-100-52200-5

This publication is also available in electronic format at [www.taxpayersrights.gc.ca](http://www.taxpayersrights.gc.ca)

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## **TAXPAYER BILL OF RIGHTS**

1. You have the right to receive entitlements and to pay no more and no less than what is required by law.
2. You have the right to service in both official languages.
3. You have the right to privacy and confidentiality.
4. You have the right to a formal review and a subsequent appeal.
5. You have the right to be treated professionally, courteously, and fairly. \*
6. You have the right to complete, accurate, clear, and timely information. \*
7. You have the right, as an individual, not to pay income tax amounts in dispute before you have had an impartial review.
8. You have the right to have the law applied consistently.
9. You have the right to lodge a service complaint and to be provided with an explanation of our findings. \*
10. You have the right to have the costs of compliance taken into account when administering tax legislation. \*
11. You have the right to expect us to be accountable. \*
12. You have the right to relief from penalties and interest under tax legislation because of extraordinary circumstances.
13. You have the right to expect us to publish our service standards and report annually. \*
14. You have the right to expect us to warn you about questionable tax schemes in a timely manner. \*
15. You have the right to be represented by a person of your choice. \*

\* *Service rights upheld by the Taxpayers' Ombudsman*

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## REPORT SUMMARY

The Canada Revenue Agency (CRA) has made a commitment to fairness, openness, and accountability. Yet, the Office of the Taxpayers' Ombudsman has received complaints from taxpayers that the CRA has not been living up to these commitments. What we heard was that two divisions within the Appeals Branch of the CRA were not explaining decisions they made, despite the fact that these decisions can have a significant impact on the rights and interests of taxpayers. What some taxpayers have told us specifically is that they do not understand why their objections or appeals have been rejected, and that their efforts to obtain explanations about appeal decisions have been fruitless. Based on these accounts from taxpayers, we conducted a systemic investigation and found these complaints to have merit. The CRA's Appeals Branch does not always explain its decision on the objection or appeal sufficiently to fulfill its commitments to fairness, openness, and accountability. This diminishes taxpayer trust in the CRA and leaves taxpayers frustrated. We therefore recommend that once the Appeals Branch has concluded a review of a taxpayer's objection to an assessment, or appeal of a ruling or payroll assessment, it should provide the taxpayer with reasons in writing for its decision to confirm, vary, or reverse the CRA's original decision. These reasons need not refer to every factor or conclusion in the process of reaching the decision, but should be sufficient, when read in context, to show why the Appeals Branch made the decision it did.

The CRA's Appeals Branch is a body that makes important decisions. It decides whether taxpayers who feel that the CRA decisions were wrong or unfair will get a different outcome or not. The impact of these decisions on taxpayers, their businesses, and their livelihoods can be considerable. The appeal process and its outcome can, therefore, be stressful and difficult for taxpayers. For taxpayers to have trust and confidence in this process it must not only be fair, it must appear to be fair.

At the heart of this systemic enquiry were complaints about the decision letters that communicate decisions of the CRA's Appeals Branch. Our research revealed a pattern of decision letters providing only the ultimate decision and citing the relevant rule. They did not, however, provide the reasons why it was made. This is unsatisfactory as it is the explanation of **why** that lies at the heart of meaningful reasons for a decision. Without the why, information about a decision is not complete, accurate, or clear. Furthermore, the CRA is not being accountable to the taxpayer. We have concluded that the use of standard form templates or "verses" to inform taxpayers of decisions, without reference to the key factual foundation that justifies the outcome in the particular case, does not live up to the CRA's commitment to fairness, openness, and accountability.

The CRA is a public decision-maker empowered by law to make decisions that affect the rights, privileges, and interests of taxpayers. As such, administrative law concepts of procedural fairness deserve consideration when assessing the fairness of a policy or procedure. Even though it is not the role of the Office of the Taxpayers' Ombudsman to offer an opinion on whether the CRA is complying with the law, Canadian case law is a useful reference when illustrating the role that reasons play in ensuring procedural fairness and evaluating the practices of the CRA's Appeals Branch.

Canadian law has long recognized that basic principles of fairness, openness, and accountability demand that decisions made by public bodies about important issues need to be explained to those who are affected. Pursuant to administrative law rules, public decision makers have an obligation to give reasons for decisions because of the impact they can have.

Reasons are sufficiently fair and effective if they are offered in writing in a timely manner and explain why the rules or policies produce the results they do in a given case.

In addition to looking at Canadian case law, we compared the CRA's policies to the practices of other tax authorities in Canada and abroad. Revenue ministries in several Canadian provinces, as well the national revenue ministries in Australia and Great Britain, recognize the right of taxpayers to have decisions explained to them and have committed to providing written reasons for those decisions.

It is important to recognize that the CRA's Appeals Branch does tend to respond if a taxpayer seeks an explanation. Unfortunately, this practice does not correct the problem. Explanations should be provided in notification letters. Taxpayers should not have to ask for openness and transparency, nor should explanations be discretionary. They should be routine.



## THE MANDATE OF THE TAXPAYERS' OMBUDSMAN

The Office of the Taxpayers' Ombudsman was created to support the priorities of stronger democratic institutions, increased transparency, and the fair treatment of all Canadians. An ombudsman is an independent and impartial officer who deals with complaints about an organization. In reviewing a complaint impartially, an ombudsman determines whether or not the complaint has merit and advises the parties of the conclusion. Where the complaint is found to have merit or be indicative of a systemic problem that may negatively affect stakeholders, the ombudsman typically makes recommendations to correct the problem with a view to preventing reoccurrence.

The mandate of the Taxpayers' Ombudsman is discharged by reviewing service complaints from taxpayers about the CRA, informing Canadians about their rights as taxpayers, upholding the eight service rights within the Taxpayer Bill of Rights, and identifying and reviewing systemic issues and emerging trends related to service matters.

## THE ROLE OF CRA'S APPEALS BRANCH

The CRA has the mandate to administer tax, benefit, and other programs on behalf of the Government of Canada and provincial, territorial, and First Nations governments. As a result, it interacts with more Canadians than any other government organization in Canada and administers some of the most complex legislation in the country. Every year, the CRA processes about 24 million individual tax returns and 1.6 million corporate returns while also administering benefits to 11 million Canadians.

The CRA is a vast organization that is divided into several branches and regional offices. The CRA has approximately 44,000 employees who make thousands of decisions every day that affect the interests and rights of taxpayers.

Taxpayers have the right to dispute income tax assessments and many other decisions made by the CRA. The CRA's Appeals Branch deals with disputes that develop about assessments of income tax, excise tax, goods and services tax (GST), harmonized sales tax (HST), air travellers security charge and softwood lumber products export charge, as well as Canada Pension Plan (CPP) and Employment Insurance (EI) rulings and payroll assessments.

This report is the result of our systemic review into the sufficiency of information in decision letters issued by two divisions within the CRA's Appeals Branch, namely, the Canada Pension Plan/Employment Insurance (CPP/EI) Appeals Division and the Tax and Charities Appeals Directorate (TCAD).

## THE CRA'S APPEALS PROCESS

Taxpayers have a right to dispute decisions made by the CRA. Two divisions within the CRA's Appeals Branch are responsible for reviewing objections and appeals. The CPP/EI Appeals Division is responsible for reviewing rulings and payroll assessments relating to Canada Pension Plan and Employment Insurance. The TCAD is responsible for providing advice on the review of objections to assessments of income tax, excise tax, GST, HST, air travellers security charge and softwood lumber products export charges, and decisions to refuse or revoke the charitable status of an organization. A decision made by the Appeals Branch on an objection or an appeal can confirm, vary, or reverse the original assessment or ruling by the CRA. A taxpayer not satisfied with an appeal decision may then pursue the matter before the Tax Court of Canada.

### **Appeals Branch Mandate**

The mandate of the Appeals Branch is to provide a fair and impartial process to resolve disputes, service complaints, and requests for relief arising from decisions made under the legislation and programs administered, and services provided by the Canada Revenue Agency.

Both CPP/EI Appeals Division and the TCAD have different terminology that they use for the appeals processes or objections. The most significant difference is that CPP/EI appeals often involve multiple parties, including at times other government departments and agencies, whereas TCAD objections usually involve only the taxpayer (individual, partnership or corporation).

### **Explaining the decision**

Not surprisingly, taxpayers who do not understand or agree with a CRA decision on their appeal or objection often want to know why and how it was made. The decisions made by the CRA can have significant financial consequences for taxpayers. Taxpayers need to know the reasons for a decision to be able to understand it, to determine whether or not they think it was correct, and to be able to make an informed decision about appealing the decision to a higher level.

Once a decision is rendered by the Appeals Branch to reverse, vary or confirm the CRA's original ruling or assessment, a taxpayer may make a formal or informal request for a written explanation about that decision, specifically, a copy of the Report on an Appeal (CPT110), the Report on Objection (T401), or the Notice of Objection – Negotiated Settlement Report (T401A) in which the appeals officer would have recorded their research and evaluation of the facts. An informal request is addressed directly to the CRA either verbally or in writing while a formal request is made pursuant to the *Access to Information Act*, or the *Privacy Act*.

However, the Office of the Taxpayers' Ombudsman has received complaints from taxpayers alleging that their rights to fairness, information, and accountability were not respected when the CRA informed them of decisions that affected them. The complaints involved taxpayers who did not agree with decisions made by the CRA about their taxes or benefits and went on to appeal those decisions by filing Notices of Objection with the CRA's Appeals Branch. These taxpayers have complained to us that the decision letters from the Appeals Branch notified them of the decision on their objection but did



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not give reasons for that decision. A decision letter, also referred to as a ministerial notification letter, only informs the taxpayer of the outcome. It does not give reasons for decisions made by the Appeals Branch.

## TAXPAYER COMPLAINTS

Taxpayers have complained that the CRA's Appeals Branch is being unfair in failing to give reasons for its decisions. The complaints we received from taxpayers suggested to us that the failure to provide reasons for decisions was a systemic issue worth examining since it could be having a negative effect on many other taxpayers. Here are two examples (all names have been changed to maintain confidentiality):

### Jim's case

Jim requested a ruling from the CRA on his employment situation. He wanted to know whether or not he should be considered an employee and thus whether EI premiums and CPP contributions should be deducted from his pay. Jim disagreed with the ruling he received from the CRA and filed an appeal to the Minister with the Appeals Branch. When the original determination was upheld by the Appeals Branch, Jim asked to be provided with the reasons in writing. He wanted to know why the original decision was confirmed and specifically requested details of the facts and policies relied upon by Appeals Branch to reach its decision. According to Jim, he was told by the Appeals Branch that they could provide an explanation verbally, but if he wanted a written explanation, he would have to request a copy of the Report on Appeal through the Access to Information and Privacy Directorate. Jim was not at all satisfied with this response. He felt that the Appeals Branch should give him its reasons for confirming the CRA's original assessment in writing so he could understand the decision and determine whether it would be advisable for him to pursue his case with the Tax Court of Canada.

An **appeal decision** can reverse or confirm the original assessment by the CRA. It can also vary the original assessment, in which case, the taxpayer would receive a reassessment.

Since Jim wanted those reasons in writing and could not get them from the CRA directly, he did submit an Access to Information request for a copy of his file with the CRA. The CRA requested a sixty (60) day extension, claiming that actioning his file within the thirty (30) day statutory period would cause unreasonable interference to the CRA due to the volume of information in his file. The deadline for filing an appeal to the Tax Court is ninety (90) days from the date of the decision rendered by the Appeals Branch. In an attempt to speed things up, Jim submitted a second Access to Information request asking for only the draft and final versions of the Report on Appeal. In the end, Jim did not receive any information from either request for over six months.

As a result of our review of Jim's complaint, we made a recommendation that the CRA add a paragraph to decision letters providing the taxpayer with the name and phone number of the appeals officer, and inviting the taxpayer to call should they have further questions. The Ombudsman is pleased to note that this recommendation has been accepted and implemented by the CRA. However, our review has identified problems in how the CRA responds to requests for written explanations.

## Richard's case

Richard filed a tax return claiming deductions for various expenses. All eight of his expense deduction claims were initially disallowed by the CRA. Richard then filed an objection with the Appeals Branch of the CRA. The decision of the Appeals Branch only reversed one part of his eight part objection – its decision confirmed the original assessment for the other seven expense deduction claims. Richard needed to understand why the decision confirmed the original assessment for seven of the eight claims. The letter from the CRA's Appeals Branch advising him of its decision did not provide those details.

Richard requested a written explanation because he felt that the CRA was not providing him with enough information to determine whether the objection had been decided fairly and whether he should pursue a remedy at a higher level.

When he did not receive the information he needed from the CRA, Richard filed a complaint with the Office of the Taxpayers' Ombudsman. Upon the Ombudsman's intervention, the CRA provided Richard with the explanation he required. As a result, he was able to make an informed decision to appeal the CRA's decision to the Tax Court of Canada.

The complaints of Jim and Richard raised the question of whether, in the context of the Taxpayer Bill of Rights, it should be easier for taxpayers to acquire the information they need to understand the CRA's decisions and to subsequently seek a judicial remedy should they so desire. It appeared that the Appeals Branch of the CRA was not giving taxpayers reasons for its decisions, and this was causing difficulties for taxpayers whose interests were affected by those decisions. Taxpayers also felt this was unfair since under the *Income Tax Act*, a taxpayer who objects to an assessment has to file a Notice of Objection, in writing, setting out the reasons for the objection and all relevant facts, yet the CRA was not giving reasons for its decisions. These cases suggested the existence of a systemic issue regarding the sufficiency of information being provided to taxpayers in decision letters from the CRA's Appeal Branch.

Once it became apparent to us that this type of situation may be negatively affecting other taxpayers, we proceeded with an examination of the systemic issue raised by these complaints.

# THE TAXPAYER BILL OF RIGHTS

The Taxpayer Bill of Rights is a set of fifteen rights, eight of which are service-related rights that entitle taxpayers, among other things, to be served professionally and be treated fairly by the CRA. The Taxpayer Bill of Rights is intended to make it easier for taxpayers to understand what they can expect in their dealings with the CRA, and for employees of the CRA to understand what taxpayers expect of them. The Taxpayers' Ombudsman is mandated to promote and interpret the eight service rights.

According to Article 6 of the Taxpayer Bill of Rights, taxpayers are entitled to complete, accurate, clear, and timely information. A decision letter that does not inform a taxpayer which facts and rules were relied upon to reach a decision is not sufficiently complete, clear, or accurate. Having to go back to the CRA to request an explanation, or make an Access to Information request that could take months to conclude, is not timely.

## Article 6

You have the right to complete, accurate, clear, and timely information.

Article 11 states that taxpayers can expect the CRA to be accountable. The CRA has published a guide to the Taxpayer Bill of Rights in which it explains what the Rights mean. With respect to accountability, *Taxpayer Bill of Rights Guide (RC17)* states “When we make a decision about your tax or benefit

## Article 11

You have the right to expect [the CRA] to be accountable.

affairs, we will explain that decision and inform you about your rights and obligations.” We note that the guide does not say that a taxpayer has to make a special request for an explanation.

The CRA's Taxpayer Bill of Rights Guide also states “You can

expect that we will give you information that is accurate and understandable. We try to explain the laws in language that is plain and clear, to provide our services in English or French, and to explain the decisions we make. Contact us if you do not agree with or do not understand a tax assessment, a credit or benefit determination, or any other decision that we have made. We will give you a complete explanation and make any needed changes.”

## Accountability

Accountability is the state of being accountable, subject to the obligation to report, explain, or justify.

## THE SCOPE OF OUR REVIEW

Our systemic review of the sufficiency of the information in appeal decision letters considered the following questions:

- When the CRA's Appeals Branch makes a decision that affects the interests and rights of a taxpayer, should it give that taxpayer written reasons for the decision?
- Is a refusal to give written reasons for such a decision inconsistent with a taxpayer's right to complete and timely information (Taxpayer Bill of Rights; Article 6)?
- Is a refusal to give written reasons for such a decision inconsistent with a taxpayer's right to expect the CRA to be accountable (Taxpayer Bill of Rights; Article 11)?
- Is requiring taxpayers to obtain such information through an Access to Information request inconsistent with a taxpayer's right to complete and timely information (Taxpayer Bill of Rights; Article 6)?

## CRA POLICY ON PROVIDING INFORMATION ABOUT APPEAL DECISIONS

### A lack of consistency

There are discrepancies between CRA's policies on providing taxpayers with the reasons for an appeals decision and the actual practices of the CPP/EI Appeals Division and TCAD. Policies and practices are also at odds with the provisions of the Taxpayer Bill of Rights, specifically Article 5 - which ensures professional service and fair treatment, Article 6 - accurate and timely information, and Article 11 - accountability. There were also misunderstandings as to which types of information should normally be released informally and which should be subject to a formal Access to Information request.

### Providing explanations on a discretionary basis

As we reviewed Jim's complaint, the CRA told us that the decision letter would normally only inform the taxpayer of two things: the appeal decision (whether it confirmed, varied, or reversed the original assessment or ruling), and the legislative provisions upon which the decision was based.

Yet the CRA's internal procedures manual stipulates that decision letters must contain a brief explanation of the reason for the decision. We questioned this apparent contradiction and the CRA advised that, although the letters do not contain a breakdown of the facts leading up to the decision, the taxpayer can gather the facts themselves by obtaining from the CRA copies of the information that the appeals officer used to render the decision. That could include documents such as audit files and rulings or decision reports. We were also advised that it is CRA policy to provide a severed (if necessary) copy of the Report on an Appeal or Report on Objection, when requested by the taxpayer.



The CRA also told us that once decision letters have been issued, taxpayers who make a request are to be provided with copies of referrals to, and responses from, the Appeals Branch Headquarters. It is unclear to us whether many taxpayers would know to ask for these documents.

The CRA stated that it is their policy for an appeals officer to keep taxpayers informed of the status of their appeal prior to a decision being made, and to explain:

- the relevant legislation to ensure the taxpayer understands it;
- the appeals process; and
- how the information gathered by the appeals officer will be used to arrive at the final decision.

Additionally, during our review of Jim's complaint, the CRA told us that the procedure for CPP/EI Appeals Division is to not include specific facts in the Minister's decision letters because it is difficult to condense such a complex analysis and rationale into a letter.

However, there was also confusion around CRA policy on how this information is to be provided. The CRA first advised us that it is policy to release a copy of the decision report and then that there is no written policy on handling requests for additional explanations, noting that it is current practice to offer a verbal explanation.

To sum up, it is CRA's policy and practice to:

- provide the appeal decision and the relevant legislative reference and not provide the rationale;
- provide a rationale for its appeal decisions in writing, when requested;
- release information on the rationale only through a formal Access to Information request;
- release information on the rationale through an informal request for the decision report;
- not provide an explanation for CPP/EI decisions because they are complex; and
- not provide an explanation but make it possible for taxpayers to obtain, upon request, internal CRA reports, the existence of which is unknown to the taxpayer.

### **Requiring an application to get information about decisions**

Obtaining information through the Access to Information and Privacy Directorate can take several months. A taxpayer forced to rely on this method of getting information about a CRA decision could be effectively deprived of the right to appeal to the Tax Court of Canada by such a delay. This is not consistent with Article 6 of the Taxpayer Bill of Rights which confers the right to complete, accurate, clear, and timely information.

## COMMITMENTS OF OTHER TAX AUTHORITIES

Other tax administrators across Canada and around the world do recognize the right of taxpayers to have decisions explained to them. Our research has revealed that several international and provincial tax authorities have made commitments and set high standards for offering reasons for decisions.

For instance, British Columbia's Ministry of Small Business and Revenue has codified the rights of that province's taxpayers in its Taxpayer Fairness and Service Code (B.C. Code). One of the rights in the B.C. Code is "the right to complete, accurate, clear and timely information," which is exactly the same wording as Article 6 of the federal Taxpayer Bill of Rights. The B.C. Code states that taxpayers have the right to request and be provided with information they require to understand their obligations and entitlements in writing, including a full written explanation of decisions by the Ministry. The B.C. Code contains a right to fair treatment which includes the right to receive a written explanation of which factors were considered by the Ministry in making a decision.

Alberta's Tax and Revenue Administration has made a similar pledge in recognizing the right of taxpayers to obtain written information that pertains to their obligations and entitlements. Taxpayers are even encouraged to obtain written information so they can have a record.

In Ontario, Appeals Officers with the Ministry of Revenue will review an objection and make a recommendation to the Minister on how the appeal should be decided. Prior to making a recommendation to the Minister, the Appeals Officer will notify the taxpayer in writing along with reasons for the recommendation.

In the United States, taxpayers who do not agree with the findings of the Internal Revenue Service (IRS) may request an appeal to the Appeals Office. Decisions of the examiner's proposed changes are communicated to the taxpayer in writing.

The United Kingdom has Your Charter, similar to the Canadian Taxpayer Bill of Rights. In Britain, the Appeals Officer will write to the taxpayer and explain their view of the matter under appeal.

When the Australian Tax Office gives a decision about a taxpayer's tax affairs, it explains that decision. Generally, it provides an explanation of the decision in writing.

More details on the policies of these tax authorities may be found in Appendix A of this report.



## WHAT THE COURTS SAY ABOUT PROVIDING MEANINGFUL REASONS

The CRA's responsibility to administer Canada's tax system includes the authority to make decisions on every aspect of a taxpayer's tax, benefit, and employment obligations. With the authority to make decisions comes the responsibility to make good decisions fairly and transparently.

Canadian courts have identified why providing reasons about a decision are an integral part of good legislated decision making:

1. Reasons provide accountability;
2. Reasons ensure better decisions;
3. Reasons are necessary to an effective appeal process;
4. The obligation is to explain the **why** of the decision;
5. Reasons have to be given in a timely manner; and
6. The obligation to give reasons has to be workable and sensible.

Legal precedents can help illustrate to the CRA why providing complete and timely reasons would support its stated goals of ensuring fairness and transparency for taxpayers. The principles recognized in the case law can also assist taxpayers in developing realistic expectations about what kind of detail they can expect.

## 1. Reasons provide accountability

Article 11 of the Taxpayer Bill of Rights states that taxpayers have the right to expect the CRA to be accountable.

**Accountability** is the state of being accountable, subject to the obligation to report, explain, or justify.

It is not surprising then that the first reason given by courts for imposing the obligation on some decision-makers to give reasons is to provide accountability. “Those affected may be more likely to feel they were treated fairly and appropriately if reasons are given.”<sup>1</sup> This strengthens democracy by demonstrating the credibility of institutions. Courts recognize that “this helps build public confidence...decisions.”<sup>2</sup> Public confidence, in turn, promotes trust and buy-in.

Demonstrating accountability by offering explanations for important decisions produces another important benefit. It “gives proof that [the decision-maker] has heard and considered the evidence and arguments that have been presented by each side.”<sup>3</sup>

## 2. Reasons ensure better decisions

Canadian courts have also recognized that “reasons...foster better decision making by ensuring that issues and reasoning are well articulated, and therefore, more carefully thought out.” Decision-makers who spell out their reasoning are more apt to consider salient points. They will miss less and are less inclined to under-emphasize important matters.<sup>4</sup> In this way, giving meaningful reasons “reduces the risk of arbitrary or capricious decisions.”<sup>5</sup> Decision-makers that act in a disciplined way in furnishing reasons will do a better job,<sup>6</sup> improving the quality of justice and fairness.

## 3. Reasons are necessary to an effective appeal process

The main way to hold decision-makers accountable and to ensure that rights are properly respected is to allow decisions to be appealed or reviewed. That is why Canadian law recognizes that “reasons permit effective appellate review.”<sup>7</sup> How can individuals enjoy their right to appeal a decision if they do not know why that decision was made?

If convincing reasons are provided, this can also diminish frivolous appeals. Individuals who understand a correct decision are more apt to recognize that the decision is right. They are, therefore, less likely to appeal. This makes the whole system less costly and more efficient.

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<sup>1</sup> *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 S.C.R. 817 at para. 39.

<sup>2</sup> *Clifford v Ontario Municipal Employees Retirement System* [2009] O.J. No. 3900 at para. 17 (Ont. C.A.), and see *R. v. R.E.M.* [2008] 3 S.C.R. 3.

<sup>3</sup> Lord Alfred Denning, *The Road to Justice* (1955) on page 29, cited in *R. v R.E.M.* [2008] 3 S.C.R. 3 at para. 11.

<sup>4</sup> *R. v R.E.M.* [2008] 3 S.C.R. 3 at para. 12.

<sup>5</sup> *Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 S.C.R. 817 at para. 38

<sup>6</sup> *Williams v Canada (Minister of Citizenship and Immigration)* [1997] 2 F.C. 646 (Fed. C.A.).

<sup>7</sup> *R. v. R.E.M.* [2008] 3 S.C.R. 3 at para. 11.

#### 4. The obligation is to explain the “why” of the decision

It is important to appreciate that the path to a decision and the **why** of a decision will not be understood if a decision-maker simply pronounces a result. A conclusion is not an explanation. Nor will the path or the why of a decision be understood if a decision-maker merely recites a rule and a conclusion. The why is the reasoning that connects the rule to the conclusion that is reached. While the why need not and should not include an exhaustive review of the evidence or facts, no explanation has been offered unless it is clear from the decision how the rule applies to the facts to produce the result.

#### 5. Reasons have to be given in a timely manner

If the reasons are to facilitate appellate review, they must be provided in a timely manner. Those affected by decisions cannot meaningfully benefit in making appeal decisions from reasons that are offered after appeal deadlines have expired.

#### 6. The obligation to give reasons has to be workable and sensible

The courts have also recognized that the obligation to give reasons must be workable and sensible. The obligation to give reasons, whether imposed by law or as the result of sound policy commitment, cannot be impractical. It cannot require the discussion of every shred of evidence<sup>8</sup> or the recital of every rule, precedent, practice, or principle.<sup>9</sup> Nor can the obligation to give reasons be so imposing as to cause unreasonable cost or delay.<sup>10</sup> In other words, “[t]he reasons must be sufficient to fulfill their function of explaining [the result], providing public accountability, and permitting effective appellate review.”<sup>11</sup>

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<sup>8</sup> *Clifford v. Ontario Municipal Employees Retirement System* [2009] O.J. No. 3900 at para. 29 (Ont.C.A.).

<sup>9</sup> *R. v. R.E.M.* [2008] 3 S.C.R. 3 at para. 19.

<sup>10</sup> *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 S.C.R. 817 at para. 40.

<sup>11</sup> *R. v. R.E.M.* [2008] 3 S.C.R. 3 at para. 15.

## CONCLUSIONS

We defined the scope of our review by asking four questions:

- Should the CRA give taxpayers written reasons for its decision?
- Is a refusal to give written reasons inconsistent with a taxpayer's right to complete and timely information (Taxpayer Bill of Rights; Article 6)?
- Is a refusal to give written reasons inconsistent with a taxpayer's right to expect the CRA to be accountable (Taxpayer Bill of Rights; Article 11)?
- Is requiring taxpayers to obtain such information through an Access to Information request inconsistent with a taxpayer's right to complete and timely information (Taxpayer Bill of Rights; Article 6)?

The Taxpayers' Ombudsman concludes that all of the foregoing questions ought to be answered in the affirmative.

Information is not accurate and understandable when it includes little or no explanation. Taxpayers cannot know whether they should accept or agree with a decision when no explanation or rationale has been provided.

Decision letters issued by the CRA do not respect a taxpayer's right to expect the CRA to be accountable when reasons for a decision are not given. Taxpayers need to know that decisions are correct and not arbitrary, and that individual circumstances have been considered.

Putting the onus on taxpayers to request and obtain the reasons for a decision constitutes a further disregard for their rights to information and accountability.

The CRA has advised the Office of the Taxpayers' Ombudsman that when a taxpayer requests an explanation of an Appeals decision, "there is nothing preventing appeals officers from providing the facts leading up to the decision to confirm when requested by a taxpayer." Unfortunately, there is nothing requiring Appeals officers to provide those facts either.

## Findings

### Information Requests

If a taxpayer is required to submit a request for a written explanation to the Access to Information and Privacy (ATIP) Directorate, we find that the amount of time taken to provide a taxpayer with the information they require is unacceptable. The relevant legislation provides for a response within thirty (30) days; however, under the *Privacy Act*, the CRA can request an extension of an additional thirty (30) days, and under the *Access to Information Act*, the CRA can request an extension for whatever length of time they determine is necessary. The Office of the Taxpayers' Ombudsman is concerned with the length of time it takes to receive information when a taxpayer has been told to make his or her request through the ATIP Directorate. Once the decision has been rendered by Appeals, taxpayers only have ninety (90) days to file a Notice of Objection to the Tax Court of Canada if they disagree with the decision. Prior to filing an objection in the Court, many taxpayers want and need an explanation in writing to determine whether it is advisable to continue the process.

### Sufficiency and Clarity of Explanations

In the decision letters reviewed by the Office of the Taxpayers' Ombudsman, the CRA simply provided taxpayers with the relevant section(s) of an Act upon which an officer based his or her decision. The CRA has numerous verses or paragraphs that are pre-written. While the Appeals officers generally use these verses to create the decision letters, they sometimes modify the verses to fit the particular situation. We have reviewed the verses and found that they do not provide an adequate explanation. We find that this failure to provide taxpayers with the rationale for an appeal decision is not consistent with the taxpayer's right to complete, accurate, clear, and timely information (Taxpayer Bill of Rights, Article 6), nor with the taxpayer's right to expect the CRA to be accountable (Taxpayer Bill of Rights, Article 11).

We find that the taxpayer has a right to know the reasons for a decision affecting their rights and interests. Requiring the taxpayer to seek out those reasons through lengthy and complex procedures, rather than simply providing them with the decision, is in contravention of the right to complete, timely, and clear information as well as the right to expect the CRA to be accountable.

## RECOMMENDATIONS

In light of the foregoing research and analysis, the Ombudsman makes the following recommendation:

Once the Appeals Branch has reviewed a taxpayer’s objection or appeal and made a decision to confirm, vary, or reverse the CRA’s original decision, it should provide the taxpayer with the reasons for its decision in writing. These reasons need not refer to every factor or conclusion in the process of reaching the decision, but should be sufficient, when read in context, to show why the Appeals Branch made the decision it did.

Providing reasons means providing basic information about the decision, including a description of the decision, the authority under which the decision was made, a description of the main steps in the decision-making process, and reference to the main factual basis for the decision.

We recommend that CRA either provide these reasons in the body of the decision letter to the taxpayer, or institute a policy that the Report on an Appeals or Summary Report is enclosed with every decision letter.

## APPENDIX A – POLICIES OF OTHER TAX AUTHORITIES

### British Columbia

The B.C. Code contains a right to fair treatment, which includes the right to receive a written explanation of which factors were considered by the Ministry in making a decision.

You have the right to request and to be provided with information in writing to assist you in understanding your obligations and entitlements, including (but not limited to):

- advice that is clear, easy to understand, complete, accurate, consistent, and provided in a timely manner;
- information in a format that is accessible and convenient to you; and
- full written explanations for our decisions.

You have the right to expect we will apply the law fairly and impartially so you have confidence in us when we carry out activities critical to the funding of public services. Treating you fairly includes but is not limited to:

- making just, fair and timely decisions in accordance with the law by taking all relevant circumstances into account and then applying the law consistently and impartially;
- honouring written advice, in the form of tax ruling letters requested by you, that is specifically applicable to your circumstances;
- listening to you and giving you the opportunity to provide information and evidence to support your position, so we may understand all of the circumstances involved; and
- taking your circumstances into account where they are relevant to the decision we are making and, if requested, providing a written explanation to you as to what circumstances were considered so that any misunderstandings can be corrected.

### Alberta

The Fairness and Service Pledge of Alberta's Tax and Revenue Administration includes the rights to:

**Obtain help:** you have the right to obtain help from us so that you can clearly understand your obligations and entitlements. We will respond and provide support in a timely, flexible, and convenient manner and make every effort to accommodate your needs. You have the right to obtain written information that pertains to your obligations and entitlements. You are encouraged to obtain written information so that you have a record. Written opinions can be provided, such as technical interpretations or advance rulings on corporate tax transactions.

**Obtain information:** you are entitled to complete, accurate, and clear answers to your questions, as well as courteous and timely responses.



## **Ontario**

In Ontario, an appeal must be filed with both the Superior Court of Justice and the Tax Appeals Branch within 90 days. An Appeals Officer will review the file and make a recommendation to the Minister. Before making a recommendation to the Minister, the Appeals Officer will tell the taxpayer the results of their review of the objection. This notification will include the reasons for the recommendation and will be in writing.

## **The United States Internal Revenue Service (IRS)**

In the United States, if you don't agree with the Internal Revenue Service (IRS) findings, you may request an appeal to the Appeals Office.

The IRS Web site states, "Within a few weeks of your conference with the examiner, you will receive a letter notifying you of your right to appeal the proposed changes within 30 days, and a copy of the examination report explaining the examiner's proposed changes. You can go to court if you don't reach an agreement with Appeals."

## **The United Kingdom's HM Revenue and Customs (HMRC)**

**Your Charter** is an HMRC charter for taxpayers in Britain. It is the British equivalent to our Canadian Taxpayer Bill of Rights.

Information from the HMRC states, "When HMRC doesn't offer a review, the taxpayer can write to the officer who made the original decision and ask for a review. The HMRC officer will write back and explain their view of the matter under appeal."

## **Australia Taxation Office**

Information from the Australia Taxation Office states:

**Explaining our decision:** when we give you a decision about your tax affairs, we explain that decision. Generally, we give an explanation of our decision in writing. In some very limited circumstances (if another person is involved or they suspect fraud), we will not be able to explain our decisions fully but we will still provide as much information as we can. Once we have made our decision, we will generally send you a notice of decision that includes the reasons for our decision.