

Don't trust the CRA

Taxpayers can be accountable for misinformation

COURT REPORT

BY JAMIE GOLOMBEK



Do clients ever come to you with tax questions? If not, perhaps they should, as you may be in a better position to properly answer their questions than the government itself. To wit, take the recent Tax Court of Canada decision released this past

summer *Fletcher v. the Queen* 2007 TCC 414.

In April 2005, Roy Fletcher, who was 62, approached the CPP department and elected to receive an early CPP pension (i.e., a pension before age 65). When the agent asked him when he wanted his CPP pension payments to begin, he said September.

Under the CPP rules, once you start receiving your CPP pension, you no longer need to make con-

tributions to the plan, even if you recommence earning employment or business income. Fletcher said that the CPP official had assured him that he was exempt from any further CPP contributions and "that the start date would not impact contributions."

In July 2005, Fletcher began a consulting project with Petro-Canada that earned him nearly \$47,000 of self-employment income that year.

Fletcher obtained a document from CPP officials to demonstrate that since he was "self-employed" Petro-Canada did not have to make any employer contributions with respect to his consulting contract. As a result, neither Fletcher nor Petro-Canada contributed to the CPP during his period of self-employment from July through September 2005.

Unfortunately, Fletcher was subsequently reassessed for nearly \$2,500 by the CRA for 2005 for not remitting both the employee and employer CPP contributions on his self-employment income. (Under the provisions of the CPP, someone who is self-employed is

responsible for both the employer and employee portions of the contributions.)

The problem was that since Mr. Fletcher began working in July, before he began receiving CPP, he was technically required to pay CPP on his self-employment income for the months prior to which he received his CPP pension.

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Mr. Fletcher objected to the assessment since he relied on information given to him by government officials. As he testified, "If I had not received false information from CPP I would have received CPP benefits before returning to work and therefore would not have been assessed the CPP contributions in dispute."

Fletcher even brought the recently declared "Taxpayer Bill of Rights" into court, citing rights number 6, 11 and 12. Specifically, Right 6 states: "You have the right to complete, accurate, clear, and timely information." Right 11 reads: "You have the right to expect us to be accountable." And finally, Right 12 states: "You have the right to relief from penalties and interest under tax legislation because of extraordinary circumstances."

The judge was sympathetic but nonetheless found that Mr. Fletcher "can not succeed in his appeal simply because he relied on false information from CPP representatives... The calculations must be made in accordance with the CPP (rules) and not on the basis of the false information given by those representatives."

As to the "Taxpayer Bill of Rights," the judge commented that the Bill wasn't effective back in 2005 and even if it had been effective, "it remains to be seen how... [the Bill]... can benefit taxpayers or persons such as [Mr. Fletcher]."

The outstanding issue in this case, of course, is the fact that Fletcher's CPP pension benefits, as originally calculated in April 2005, did not change despite the fact that he was now required to contribute for the period July 2005 through September 2005. The judge left this matter open for the CPP Review Tribunal to review, should Mr. Fletcher wish to pursue it separately. **AER**

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