



CRA's Duty of Care in the context of the Bankruptcy and Insolvency Act



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No one expects the taxman to have a heart, but does the Canada Revenue Agency (the "CRA") have a duty of care

to the taxpayer teetering on the brink of bankruptcy? A recent Federal Court of Appeal decision says it does, which should come as some relief to professional advisors dealing with the CRA on a client's behalf.

A taxpayer, Stephen Edell, owed outstanding income taxes and Goods and Services Taxes. The CRA was his only creditor. He made a formal proposal under the *Bankruptcy and Insolvency Act* (the "BIA"), offering to pay a portion of the total tax he owed over a four-year period. The CRA rejected Edell's proposal, but made no counterproposal. This triggered bankruptcy for Edell under the provisions of the BIA. He subsequently sued the CRA for damages, in part, on the basis that the CRA committed the tort of negligence. His claim was dismissed in the Federal Court (Trial Division). The judge stated:

...For negligence, he must show that the CRA: owed him a duty of care; breached the standard of care by its actions; foresaw the harm its actions would lead to; and caused the Plaintiff to suffer injury or damages.

Under the Act, the CRA stands in the same position as any creditor. It is entitled

to evaluate the Proposal as any debtor would. It is not under any legal duty to accept less than the debt that it is owed. If anything, the CRA has an obligation to the Government of Canada to collect on income tax and Goods and Services Taxes owed to the government. The CRA, as a [creditor], does not owe a duty to the Plaintiff...

Edell appealed the Trial Division's decision to the Federal Court of Appeal, which disagreed with the trial judge's conclusion that the CRA, as a creditor, does not owe a duty to an insolvent person in the context of the BIA. For the Federal Court of Appeal, Justice Trudel stated:

...Unlike the [Trial] Judge, I have not been persuaded that the CRA, as a creditor, could never owe a duty of care to an insolvent person in the context of the BIA. The CRA has failed to demonstrate a valid basis to exclude its duty of care or to shelter it completely from an action in the tort of negligence...

Accordingly, Justice Trudel allowed Edell's action to continue against the CRA for damages.

Professional advisors seeking a compromise with the CRA on behalf of their clients will likely find this decision to be worth mentioning in their discussions. Should Edell be successful in his suit for damages, this may have the effect of making the CRA more willing to consider proposals like Edell's.

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Do you have a question about a tax matter, or a topic that you would like to see discussed here? Contact Marc Weisman at (416) 777 5455 or mweisman@torkinmanes.com.

Please contact members of our Tax, Business, Trusts and Estates, and Financial Services and Corporate Recovery Groups for more information.

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