

Docket: 2007-3452(IT)I

BETWEEN:

DAVID ARTHUR PAUL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on March 13, 2008 at Toronto, Ontario

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant:                   The Appellant himself  
  and Bill Statten, CMA

Counsel for the Respondent:       Hong Ky (Eric) Luu

---

**JUDGMENT**

The appeals from the reassessments made under the *Income Tax Act* for the 2002 and 2005 taxation years are dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 20th day of March, 2008.

"G. A. Sheridan"

---

Sheridan, J.

Citation: 2008TCC159  
Date: 20080320  
Docket: 2007-3452(IT)I

BETWEEN:

DAVID ARTHUR PAUL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Sheridan, J.

[1] The Appellant, David Paul, is appealing penalties assessed by the Minister of National Revenue under subsection 163(1) of the *Income Tax Act*.

[2] Subsection 163(1) imposes penalties for a taxpayer's repeated failure to report income:

(1) **Repeated failures.** Every person who

(a) fails to report an amount required to be included in computing the person's income in a return filed under section 150 for a taxation year, and

(b) had failed to report an amount required to be so included in any return filed under section 150 for any of the three preceding taxation years

is liable to a penalty equal to 10% of the amount described in paragraph (a), except where the person is liable to a penalty under subsection (2) in respect of that amount.

[3] In *Maltais v. Her Majesty the Queen*<sup>1</sup>, Bowman, J. (as he then was) held that the failure described in subsection 163(1) was one of "strict liability". To justify the

---

<sup>1</sup> 91 DTC 1385.

imposition of penalties under subsection 163(1), the Minister has only to show “... that the taxpayer had failed to report an amount of income in one year and that he or she had failed to report an amount in a return for any of the three preceding taxation years.”<sup>2</sup> Once this has been established, the onus shifts to the taxpayer to prove that he exercised sufficient “due diligence” in reporting his income to avoid liability under subsection 163(1).

[4] In the present case, the Appellant admits that in 2000, 2002 and 2005 he failed to report certain amounts received in respect of his employment and RRSP withdrawals. He also accepts that he was obliged to pay the tax and interest owing in respect of such amounts but asked the Court to relieve him from having to pay the penalties assessed. In support of this argument, he testified that in the years in question he had had a variety of employers and accordingly, had several different T-4’s to keep track of. He further acknowledged that he was not a very organized bookkeeper; his practice was to pass on whatever tax documents he had accumulated for the year to his accountant, Bill Statten, upon whom he relied to prepare his returns accurately. (I did not, however, take the Appellant to be blaming his accountant for any of his own omissions.) Such was his confidence in Mr. Statten that he assumed the returns to be correct and signed them without reviewing the details of the information reported. Another reason for his lack of concern was his (mistaken) belief that even if he did happen to omit a T-4 or an RRSP withdrawal, such information would be reported to the Canada Revenue Agency by his employers or the financial institutions concerned and his omissions would be corrected accordingly. Finally, he explained that his busy lifestyle (working, volunteering and providing for his children in university) kept him from giving his full attention to his income tax returns.

[5] I do not doubt the veracity of the Appellant’s testimony. The difficulty is that his reasons for failing to report his income accurately for 2000, 2002 and 2005 fall short of establishing the level of “due diligence” required to avoid liability under subsection 163(1).

[6] In his very able argument, counsel for the Respondent reviewed several decisions in which taxpayers had tried to avoid liability under subsection 163(1)<sup>3</sup>.

---

<sup>2</sup> Above, at page 1387.

<sup>3</sup> *Van Oene v. Her Majesty the Queen*, 2003 TCC 257, [2003] 3 C.T.C. 2723; *Saunders v. Her Majesty the Queen*, 2006 TCC 51, 2006 D.T.C. 2267; *Giguère v. Her Majesty the Queen*, 2005 D.T.C. 883; *Kirouac v. Her Majesty the Queen*, [2001] 4 C.T.C. 2563; *Samson v. Her Majesty the Queen*, 2006 TCC 15, 2006 D.T.C. 2257, *Khail v. Her Majesty the Queen*, [2003] 1 C.T.C. 2263.

Whether due diligence had been established depends on the particular facts of each case; in *DeCosta v. Canada*, Bowman, C.J. listed some relevant considerations:

...

In drawing the line between "ordinary" negligence or neglect and "gross" negligence a number of factors have to be considered. One of course is the magnitude of the omission in relation to the income declared. Another is the opportunity the taxpayer had to detect the error. Another is the taxpayer's education and apparent intelligence. No single factor predominates. Each must be assigned its proper weight in the context of the overall picture that emerges from the evidence.<sup>4</sup>

[7] In the present matter, there is no suggestion in the evidence (or from counsel for the Respondent, for that matter), that the Appellant intended to deceive the Minister in his manner of reporting. That, however, is not the issue in determining his liability under subsection 163(1). Applying the factors in *DeCosta*, the amounts omitted are significant in relation to the Appellant's total income: for example in 2005, his unreported employment income represented 44% of the total income for that year; his unreported RRSP withdrawal, 65%. There was nothing preventing the Appellant from checking the returns for errors or omissions: because he collected the data reported by his accountant in his returns, their accuracy depended on the completeness of the information he provided. Mr. Statten presented the returns to the Appellant for his review prior to signing; unfortunately, the Appellant failed to do so and accordingly, missed one last chance to spot the rather large amounts omitted from his reported income. As for his education and intelligence, the Appellant is a long-time member of the workforce who understands his general obligation to pay all the tax owing in each year. He gave me no reason to think he was not capable of seeing to the accuracy of his returns. While I accept his evidence that he was very busy, so are many other Canadian taxpayers who nonetheless, manage to file their returns accurately. The Appellant's case boils down to a lack of care, precisely the evil that subsection 163(1) is aimed at correcting. To allow these appeals would be wrong in law and unfair to the thousands of other taxpayers, who each year, faithfully comply with their obligations under the *Act*.

[8] The legislation imposes on every taxpayer a statutory duty to file a return for each taxation year regardless of whether any income had been earned<sup>5</sup>. It also obliges

---

<sup>4</sup> 2005 DTC 1436 (T.C.C.) at paragraph 11.

<sup>5</sup> Subsection 150(1).

the taxpayer to keep adequate books and records<sup>6</sup>, which in the case of an employee, means keeping track of T-4's from each of his employers in a particular taxation year. The return must be signed by the taxpayer, certifying its completeness and accuracy. The Minister's duty is to assess the tax payable<sup>7</sup> based on the taxpayer's information. Nothing in the *Act* permits the taxpayer to rely on others to provide information which he himself has omitted to report.

[9] As Woods, J. put it in *Saunders v. Her Majesty the Queen*, "Parliament has enacted subsection 163(1) to ensure the integrity of Canada's self-reporting system. In my view, a Court should not lightly vacate the penalty provided for in the legislation."<sup>8</sup> In the present case, although I am sympathetic to the Appellant's situation, he has failed to establish that he exercised the sort of due diligence required to permit me to vacate the penalty Parliament intended to impose under subsection 163(1) of the *Act*. Accordingly, the appeals are dismissed.

Signed at Ottawa, Canada, this 20th day of March, 2008.

"G. A. Sheridan"

---

Sheridan, J.

---

<sup>6</sup> Subsection 230(1).

<sup>7</sup> Subsection 152(1).

<sup>8</sup> 2006 TCC 51, 2006 DTC 2267 at paragraph 15.

CITATION: 2008TCC159

COURT FILE NO.: 2007-3452(IT)I

STYLE OF CAUSE: DAVID ARTHUR PAUL AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 13, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice G. A. Sheridan

DATE OF JUDGMENT: March 20, 2008

APPEARANCES:

For the Appellant: The Appellant himself  
and Bill Statten, CMA

Counsel for the Respondent: Hong Ky (Eric) Luu

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada