



CTF President and CEO Troy Lanigan (L) discussing recent legal developments with Irvin Leroux's CRA court case.

Irvin Leroux:

His 18-year battle with CRA and fight for "Duty of Care"



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Irvin Leroux, a 70-year-old former businessman living in Prince George, BC, recently became a hero to the taxpayers of Canada – although few of them know it yet.

Among the inner circle of tax practitioners – the lawyers and accountants who fight Canada Revenue Agency (CRA) every day – his name is quietly circulating. They are blogging about him and refer-

ring to him in submissions they make to tax court.

What did Irvin do that has the potential to benefit each and every Canadian taxpayer? He fought the CRA for 18 years – and recently, he won.

A decision handed down on April 30, 2014 by Madam Justice M.A. Humphries of the Supreme Court of BC (*Leroux v. Canada Revenue Agency* 2014 BCSC 720) contained two extraordinary rulings: first, that the CRA owed a duty of care to Irvin to deal with him in a

non-negligent manner; and second, that the CRA had breached its duty of care by slapping Irvin with huge penalties for errors in reporting his income – errors he did not actually make.

Imagine the consternation that must have prevailed in CRA offices across Canada when they read that decision. *What? We have to treat taxpayers fairly? We have to use care when we do their assessments? We have to actually know the law ourselves before we penalize some poor schmuck for allegedly not knowing it?*

Oh, no! We'll have to revamp our entire modus operandi!

But despite winning these important legal rulings for the taxpayers of Canada, Irvin Leroux is not a happy man today. The fly in his ointment? The judge found insufficient evidence that the CRA's treatment of him had led inexorably to his financial ruin. He had not "demonstrated a causal link between the negligence of CRA in imposing unjustified penalties... and the consequent loss of his [business] and home."

I spoke recently to a Toronto tax lawyer, someone who has chosen to make his career litigating against the CRA. Many of his clients have suffered financial disaster like Irvin's following an audit by the CRA. He chuckled woe-fully at the judge's error. If he had been the judge, he said, he would immediately have understood how the large penalties and liens imposed upon Irvin had led to his financial difficulties. "I deal with the CRA daily... and I see it on a daily basis," he said.

Irvin has launched an appeal against the ruling. But the CRA is also attempting to cross-appeal the decision. CRA is miffed that the court didn't order Irvin to pay its court fees when (technically) he lost the case and CRA won it. But the appeal smacks of being just another nasty, vengeful move from the CRA playbook.

The trial judge accepted Irvin's status as "indigent" and exempted him from paying hearing fees of \$7,700 because those fees would consume his entire income for seven months. So even if the appeal court were to or-

der Irvin to pay the CRA's costs – likely astronomical after all these years – he has no realistic ability to pay. He has already been crushed financially by the CRA's actions, and further attempts to extract even installment payments of \$100 per month could only be described as cruelty towards someone living on \$1,100 per month.

But the CRA may just be using costs as a backdoor route to get the appeal court to soften the trial judge's harsh language about its duty of care. Its motion for leave to appeal alleges: "The trial judge specifically erred in denying costs to the CRA on the basis of... reliance on a duty of care owed by the CRA to the plaintiff..."

My employer, the Canadian Constitution Foundation (CCF), has assisted Irvin since 2010 in retaining and paying counsel. We were proud to help establish the

gation, we'll be there to ensure that it stands.

But the case has been very expensive. The CRA is apparently willing to spend unlimited funds (yours!) on legal fees, to defend its "right" to be negligent. Taxpayers have to scrounge around among what the CRA leaves us in order to fight back.

Irvin has made a good start toward raising money for the appeal through his crowd-funding project at Indiegogo. But he'll need more – possibly as much as \$100,000. The Canadian Taxpayers Federation has agreed to come aboard and help fundraise for Irvin's defence.

If you want to help this hero – and protect your own right to be treated fairly by the CRA – please donate generously to Irvin's fund through the CTF. Meanwhile, the CCF will be seeking intervenor status in his appeal, to main-



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tain this important legal principle. We'll need donations too. To make a tax-deductible charitable donation for this purpose, please donate to the CCF via our website. **t**

Karen Selick is Litigation Director for the Canadian Constitution Foundation, as well as a board member of the Canadian Taxpayers Federation. She can be found (and you can make donations to the CCF) at www.theccf.ca.