

Couple's tax battle ends on high note

Judge allows expense claim for music venture

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Stephen Kaegi and his wife, Elise Dallaire, learned the hard way that music, love and taxes don't always mix well.

The Ontario couple have spent two years trying to persuade federal tax officials that Ms. Dallaire's fledging folk music career, managed by Mr. Kaegi, is a legitimate business even though they piled up more than \$200,000 in losses over nine years.

The Canada Revenue Agency wouldn't back down, and disallowed business expenses Mr. Kaegi claimed on his taxes. At one point, the CRA scoffed that the music venture was just something he did to keep his wife happy.

That infuriated the couple and didn't sit well with Tax Court Judge Campbell Miller. In a ruling last month, Judge Miller said the expenses were legitimate, and he chided the CRA for mocking the couple.

"It is perhaps romantic to hold the belief, in these days of high divorce rates, that all husbands want to make their wives happy, and vice versa. But for the government to deny a business existed on this basis, where there is overwhelming evidence of commerciality, is untenable," the judge wrote.

The couple said they were relieved by the ruling but they have been so rattled by the experience they declined to comment on the case for a month, waiting to see if the CRA would appeal.

"It was one of the most stressful events of our lives," Ms. Dallaire said in an e-mail this week when no CRA appeal arrived. "It caused me to lose a little bit of my spirit."

Mr. Kaegi said he was insulted by the CRA's comment that he was only trying to make his wife happy. Ms. Dallaire was more blunt. "I thought it was cruel," she said.

Their lawyer, Peter Aprile, said the case illustrates the problems artists face trying to prove to the CRA that they run a business. A couple of weeks after the Kaegi ruling, a different Tax Court judge disallowed expenses claimed by a Winnipeg musician, ruling that he was pursuing a hobby, not a commercial activity.

"I think that when our government does not appreciate the unique nature of artistic endeavours in administering the Income Tax Act, Canadians risk losing our artists and our cultural identity," Mr. Aprile said.

Mr. Kaegi and Ms. Dallaire began their music journey in 1997. At that time, he was chief administrator for the township of Archipelago, which stretches along Georgian Bay, while Ms. Dallaire dabbled in country and western songs.

They drew up a business agreement and specified their duties, Mr. Kaegi as manager covering all expenses and Ms. Dallaire performing. They knew it could take up to 20 years for Ms. Dallaire to become established.

They put together a couple of CDs and sent songs to radio stations across North America. When that didn't work, they decided to focus on folk songs about shipwrecks in the Great Lakes. But the venture struggled financially. The couple lost money every year, sometimes as much as \$30,000.

The CRA began to take note. In 2001, the agency audited the couple and allowed the expenses, deciding that the business was a start-up. But by 2006, the CRA said enough was enough, and it disallowed \$82,000 in expenses Mr. Kaegi claimed in 2003, 2004 and 2005. The agency said the venture was no longer a business, but a personal endeavour.

In his ruling, Judge Miller acknowledged the dilemma the CRA has to face "in determining whether artists are indeed in business." But he said the court must recognize that "the musician trying to get a break in the music industry is caught in a different time frame."

The couple plan to stick with the music world. "It's been difficult," Ms. Dallaire wrote. "It feels like [CRA] shot down a dream and now it's hard to resurrect it."