

No reprisals allowed in expanded rights bill

By Donalee Moulton

Eighteen new words have been added to the Taxpayer Bill of Rights, and Canada's Taxpayers' Ombudsman Paul Dubé is hoping they will convince hundreds and perhaps even thousands more individuals and businesses to step forward with complaints. The new right reassures Canadians there will not be a backlash from the Canada Revenue Agency if they step forward with a problem. Dubé recently completed public consultations following the fifth anniversary of his appointment.

One issue he explored was why the volume of complaints has remained relatively stable at roughly 5,300 a year despite greater awareness about his office and the role of the ombudsman. He heard that taxpayers were hesitant to step forward because they were afraid the CRA would retaliate. They are not alone.

"We found accountants were often reluctant to bring forward issues for fear of reprisals or fear of affecting existing relationships ... I realized something had to be done," Dubé told The Bottom Line in an interview. The expanded Taxpayer Bill of Rights now has 16 specific rights identified. The most recent of those, endorsed by former Minister of National Revenue Gail Shea, reads "You have the right to lodge a service complaint and request a formal review without fear of reprisal."

Tax experts are divided on the impact the new addition to the bill of rights will have. On the one hand, it sends an important message, said Paul Lynch, a partner with KPMG in Ottawa. "Senior people at the CRA thought this was important to do. That's a significant

indicator of its relevance. It means there will be regular follow-up." On the other hand, the ombudsman is limited in what he can do to prevent reprisal. In fact, Dubé will not even be involved in handling these issues.

"The reprisal right is another example of the ombudsman's inability, through no fault of his own, to protect taxpayers against reprisal," said Peter Aprile, a tax lawyer in Toronto. "In fact, the CRA has published on its website that the CRA itself, as opposed to the ombudsman, will oversee allegations under the reprisal right and reminds taxpayers that the ombudsman's power is limited to service-related complaints."

Reality and perception are at play in the creation of the new right. According to the ombudsman, the CRA, and the national minister of revenue, there is no need for Canadians to fear retaliation.

"We never saw any evidence of harsh treatment over five years and roughly 25,000 calls," said Dubé. Still the public often feels otherwise. "There is a lot of skepticism out there whether it is valid or not," said Karen Yull, a tax principal with Grant Thornton in Brantford, Ont. The skepticism can be traced to a lack of understanding among Canadians about what the CRA does and how it does it. "They don't understand what the CRA is asking for and are afraid the CRA will push back.

This is more of a concern for small businesses and individuals with less contact with the CRA," said Lynch, KPMG's national leader of tax-dispute resolution and controversy who previously worked for 18 years with the tax agency.



Taxpayer ombudsman Paul Dubé is hoping more people will come forward with problems given an expanded Taxpayer Bill of Rights, but others believe Dubé's initiative will change little given the fear of reprisal and what they say is his limited clout.

There are also misconceptions and cultural factors at play, said Dubé. "There are still a lot of myths out there about the CRA," he noted. "Many people still believe auditors get a bonus the more money that they recoup. Others are from other countries where you don't argue with the government." Proximity to the United States may also be a factor. Charles Ghadban, a tax accountant in Ottawa, points out that Americans' negative perceptions of the Internal Revenue Service may create some suspicion here at home.

"Many Canadians will sympathize with recent concerns and American anger over revelations this spring that the IRS flagged certain groups for additional auditing due to their political beliefs," he said.

Issues around the reprisal right apply to the Taxpayer Bill of Rights as a whole. "Practitioners feel this doesn't have a lot of substance," said Yull. "The feeling out there is that the bill of rights is just a piece of paper." David Sohmer, a founding partner with Spiegel Sohmer in Montreal who has taken legal action against the ombudsman's office for lack of action on behalf of a taxpayer, agrees. "My take on the Taxpayer Bill of Rights is that it is a PR exercise and nothing more," said Sohmer.

"It will get the odd widow a tax refund with big fanfare but not much more." One reason for the disillusionment is the lack of legislative teeth the ombudsman has to take action. "Generally speaking, the value of the standards and protection offered under the Taxpayer Bill of Rights is limited.

Moreover, the ombudsman's ability to enforce these standards or protect taxpayers is limited, too," said Aprile. The ombudsman's power is restricted to reviewing service related complaints and, in appropriate cases, recommending to the minister that the CRA correct the mistake in the future, he noted. "Parliament has not provided the ombudsman with the appropriate authority to protect tax-payers or hold the CRA accountable. He simply does not have the tools. Dubé believes he has something equally powerful and persuasive: public clout.

"The process of the ombudsman's office is very powerful. The CRA doesn't want to read about what it has done wrong," he said. Internally, the CRA is making sure its employees are aware of the bill of rights and its

attendant obligations. The bill is posted in all CRA offices and referenced in the agency's procedural manuals. As well, a special course has been developed entitled the Taxpayer Bill of Rights: an Auditor's Perspective. Many people point out that the principles enshrined in the bill of rights — the right to be treated professionally and courteously, for example — should go without saying. There is, however, significance in putting them in writing, said Aprile, principal of ATX Law in Toronto.

"The value in the Taxpayer Bill of Rights is it provides taxpayers — and more importantly, CRA employees — with a set of standards and expectations. Our experience is that since the Taxpayer Bill of Rights is a CRA construct CRA employees appear more willing to accept and abide by [it] and its code of conduct."

Accountants and their clients can also use the bill to their benefit, he added. "Although the Taxpayer Bill of Rights cannot be used to challenge the validity of tax assessments, it can be an effective tool if used in conjunction with the existing appeal routes. The trick is understanding the parameters of the [bill] and the ombudsman's power and using these avenues in appropriate circumstances." Lynch recommends accountants take an active role in getting the word out. "Give it to clients; post it on your website; refer to it. It's a good practice. It reinforces these rights exist."

Dubé also encourages accountants to take greater advantage of his office. "We can help accountants better serve their clients," he said. "The ombudsman can reach the person that has the authority to resolve an issue."