

## TAXADVISOR

# Overcontributions Hurt

## Teach your clients to understand the Notice of Assessment

## COURT REPORT

BY JAMIE GOLOMBEK



Every so often, a decision of the court reminds us of the importance of ensuring our clients understand their RRSP Contribution Statement on their annual Notice of Assessment. If our clients don't understand it, we should be there to explain it to

them or they may ultimately face severe penalty tax and interest on RRSP over-contributions, even if made innocently.

The most recent case (*Lepiarczyk v CRA, 2008 FC 1022*) to address this issue was heard last month in the Federal Court and involved Andrzej Janusz Lepiarczyk's RRSP over-contributions made over the course of a decade.

Under the *Income Tax Act*, if you

make a contribution to your RRSP beyond what you are permitted to deduct (i.e. your "RRSP deduction limit"), any excess above the permitted \$2,000 breathing room is subject to a 1% per month penalty tax.

Lepiarczyk pleaded that his excess RRSP contributions were a result of a "reasonable error" and he made efforts to correct the situation.

From 1994 through 2005

(except for 1995), Lepiarczyk contributed more to his RRSP than he was entitled to deduct. In 2007, the CRA caught up with him and demanded that he pay the overcontribution tax relating to the excess contributions made from 2003 to 2005.

Lepiarczyk requested that CRA waive the RRSP tax pursuant to the CRA's discretion under the *Act*. The CRA refused and Lepiarczyk wrote back, urging CRA to reconsider. Again, the CRA said no and as a result, Lepiarczyk applied to the Federal Court for a judicial review of the CRA's decision.

Under the *Tax Act* the CRA has

the discretion to waive the penalty tax.

The CRA felt that since Lepiarczyk had excess unused RRSP contributions since at least 2000, it was not a "reasonable error." The CRA pointed to both Lepiarczyk's 2003 to 2005 Schedule 7 Statements filed with his income tax returns and his Notices of Assessment for those years which "clearly show(ed)" his RRSP contributions carried forward from the prior year and are referred to as "unused" and "undeducted."

Lepiarczyk claimed that he misunderstood the term "unused" and took it to mean that since, in prior years, he had not contributed up to his limit, he could then extend his limit by the specified amount in the following year.

**Under the *Tax Act* the CRA has the discretion to waive the penalty tax.**

This was the case despite documents prepared by Lepiarczyk's accountant and filed with his tax returns that showed not only the calculations of his current year RRSP deductions, but also the following years' RRSP deduction limits.

The Federal Court's role in a case like this is to determine whether the CRA committed a "reviewable error" by refusing to cancel the penalty tax.

The CRA felt that its discretion not to waive the penalty was reasonable given that Lepiarczyk had consistently over contributed to his RRSP over many years and that each years' Notices of Assessment identified the unused RRSP contribution available for the next year.

The Notices also stated that if the amount of unused RRSP contributions was more than his RRSP deduction limit for the following year, he may be subject to tax on the excess contributions. The CRA felt that Lepiarczyk should have understood these warnings and withdrawn (or at least discontinued making) RRSP contributions.

The judge concluded that the CRA's decision was reasonable and its decision not to exercise discretion was "a plausible and acceptable decision in light of the evidence." The judge dismissed the appeal for judicial review thereby upholding the penalty tax. **AER**

Jamie.Golombek@cibc.com

Jamie Golombek, CA, CPA, CFP, CLU, TEP is the Managing Director, Tax & Estate Planning with CIBC Private Wealth Management in Toronto.



## IN TURBULENT TIMES, IT PAYS TO THINK CITADEL.

**The Citadel Group of Funds has the answer to market turbulence. In fact, we have a dozen answers as in our 12 closed-end income funds.**

**Each has a perfect track record of distribution payments since inception.**

**Each is professionally managed by independent advisers including Fiera Capital, Bloom Investment Counsel, Galileo Global Equity and Shaunessy Investment Counsel to extract maximum value for unitholders.**

**And each is diversified to reduce risks associated with market volatility.**

**If your clients value regular income earned with an attractive yield, it pays for you to think Citadel now more than ever.**

**To learn more, log on to [www.citadelfunds.com](http://www.citadelfunds.com). Or call us at 1 877 261 9674.**



Commissions, trailing commissions, management fees, and expenses all may be associated with exchange-traded fund investments. Exchange-traded funds are not guaranteed, their values change frequently, and past performance may not be repeated. Please review all information, including the risk factors, set out in each fund's prospectus.