

Refusing CRA Settlement Offer Not Bar to Interest Relief - Sas Ansari

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Morrison v The Minister of National Revenue, [2016 FC 1145](#)

The impact of this case is likely limited and imports a notice requirement in the practice of making offers to settle. The Court's decision rests on the failure of the Minister to properly indicate that the second settlement offer was NOT a "Without Prejudice" offer.

FACTS

The Applicant was involved in a donation scheme where art was purchased at wholesale and donated at retail. An audit denied the deductions for these charitable receipts. He filed Notices of Objection but was soon told that his objection would be held in abeyance pending the outcome of two test cases involving similar tax shelters, but that interest would continue to accrue on the tax debt until paid - *Klotz v R*, [2004 TCC 147](#), aff'd [2005 FCA 158](#), leave to appeal to SCC refused, [\[2005\] SCCA No 286](#) (SCC) and *Nash v R*, [2004 TCC 651](#), rev'd [2005 FCA 386](#), leave to appeal to SCC refused, [\[2006\] SCCA No 20](#) (SCC).

The tax shelters were found to be fraudulent, and the Notice of Objection was denied. The Applicant applied for and was partially denied relief from interest and penalties for reasons of financial hardship under *Income Tax Act*, subsection 220(3.1). The Minister granted relief for a period due to the CRA's delay from interest, and also from all penalties. However, two settlement offers were made in 2002 and 2006, while the objections were in abeyance, neither offering interest relief and the first style "Without Prejudice" (the second did not indicate that "Without Prejudice" no longer applied). He refused both offers and refused to sign a waiver.

He is now seeking judicial review of the Minister's decision.

ANALYSIS

The Court held that absent a notification that "Without Prejudice" no longer applied, the first offer's "Without Prejudice" nature continued to govern (para 7).

The Taxpayer did not provide any documents to substantiate alleged financial hardship (para 10).

The Minister's partial refusal of relief was based, in part because:

- No documents showing financial hardship were provided;
- no effort was made to make voluntary payments or a payment arrangement;

- Tax returns were late filed or not filed;
- Requests for information were not responded to in a timely manner;
- He was told that interest would accrue while the objections were held in abeyance; and
- that the applicant refused to accept CRA's offer to settle (para 13).

The Court held that given that the offers were made on a "Without Prejudice" basis, their refusal could not be a factor in denying relief. The decision to grant relief must have been made without regard to the outcome of settlement discussions (para 14).

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