

CANADA / JUDGMENT

Kane v. The King

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Docket: 2013-2195(IT)G

BETWEEN: PAUL KANE,
Appellant,
and
HIS MAJESTY THE KING,
Respondent .
Appeal heard on August 27, 2026, at Windsor, Ontario
Before: The Honourable Justice Perry Derksen

Appearances :

For the Appellant: The Appellant himself

Counsel for the
Respondent: Daniel Powell

JUDGMENT

In accordance with the attached Reasons for Judgment.

The appeal from an assessment made under the Income Tax Act in respect of the appellant's 2009 taxation year is dismissed.

Costs are payable to the Crown in accordance with the Tariff.

Signed this 9th day of September 2026.

“Perry Derksen”

Derksen J.

Citation: 2026 TCC 168

Date: 20260909

Docket: 2013-2195(IT)G

BETWEEN:

PAUL KANE,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Derksen J.

I. Overview

[1] The appellant became involved with DSC Lifestyles Services and Fiscal Arbitrators, purveyors of unscrupulous tax schemes. The appellant's income tax return for the 2009 taxation year was filed on the basis that he had a net business loss of \$206,925.83, which was supposed to offset his employment income, result in a refund of \$13,283, and further result in a non-capital loss that would be carried back to the 2006, 2007, and 2008 taxation years to obtain more refunds. The only problem—there was no business. The business loss was a fiction.

[2] The Minister of National Revenue denied the business loss and assessed a penalty under s. 163(2) of the Income Tax Act, R.S.C., 1985 c. 1 (5th Supp.) (the Act) upon initial assessment. As such, there was no refund, just a penalty and presumably interest owing on the penalty. If the appellant had filed an accurate income tax return, he likely would have obtained a small refund.

[3] The appellant was self-represented. In appealing the assessment, he may not have fully understood this Court's role. My task is to apply s. 163(2) based on the law and the evidence. I do not have jurisdiction to cancel all or any portion of a penalty or interest otherwise payable under the Act; that discretion lies with the Minister, and a decision about that is subject to judicial review in the Federal Court.

[4] Only the imposition of the penalty is in issue. In closing argument, and after hearing the Crown's submissions, the appellant acknowledged his wilful blindness. And he sincerely regrets it. In the following paragraphs, I will set out my reasons for why the appeal must be dismissed.

II. Subsection 163(2) — wilful blindness

[5] The Crown argues that the appellant was wilfully blind and, as such, says the appellant is liable for the penalty assessed under s. 163(2). The computation of the penalty was not put in issue in the notice of appeal.

[6] In *McCutcheon v. The King*, 2026 TCC 57 [McCutcheon], I reviewed the doctrine of wilful blindness and looked to the Federal Court of Appeal's guidance in *Wynter v. Canada*, 2017 FCA 195. I intend to draw heavily on those decisions. More specifically, in *McCutcheon*, I wrote the following:

- [18] Subsection 163(2) authorizes the imposition of a penalty where a taxpayer knowingly, or under circumstances amounting to gross negligence, has made or participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer filed or made in respect of a taxation year.
- [19] The burden of establishing the facts justifying the imposition of a penalty is on the Minister: s. 163(3).
- [20] Here there is no issue about whether a false statement, i.e., a misrepresentation, was made in the filing of the appellant's income tax returns and in the amended return for 2010.
- [21] Turning to the other elements of s. 163(2), the provision allows for the imposition of a penalty where the taxpayer has knowledge or in circumstances amounting to gross negligence. The references to knowledge and circumstances amounting to gross negligence have different meanings: *Wynter v. Canada*, 2017 FCA 195 (*Wynter*) at para. 11.
- [22] Wilful blindness comes into play in considering whether the knowledge element of s. 163(2) is met. Specifically, when the doctrine of wilful blindness applies, knowledge is imputed to a taxpayer. Accordingly, wilful blindness is the doctrine by which the knowledge requirement in s. 163(2) may be satisfied.
- [23] It is useful to make a further distinction. Gross negligence is determined by an objective assessment of the comportment of the taxpayer, whereas wilful blindness is determined by reference to the taxpayer's subjective state of mind: *Wynter* at para. 12.
- [24] What then is wilful blindness?
- [25] A taxpayer is wilfully blind in circumstances where the taxpayer becomes aware of the need for inquiry but declines to make the inquiry because the taxpayer does not want to know or studiously avoids the truth. The concept is one of deliberate ignorance: *Wynter* at para. 13.
- [26] The law will impute knowledge to a taxpayer who, in circumstances that suggest inquiry should be made, chooses not to do so. The knowledge requirement is satisfied through the choice of the taxpayer not to inquire (as distinct from a positive finding of an actual intention to cheat): *Wynter* at para. 16.
- [27] In a case of wilful blindness, the essential factual element is a finding of deliberate ignorance; it connotes an actual process of suppressing a suspicion: see *Wynter* at para. 17. Thus, a penalty under s. 163(2) will be imposed where there is a making of a false statement knowing (actually or constructively through wilful blindness) that it is false.
- [28] Gross negligence is different. Gross negligence arises where a taxpayer's conduct is found to fall markedly below what would be expected of a reasonable taxpayer. As the Federal Court of Appeal stated in *Wynter*, "if the wilfully blind taxpayer knew better, the grossly negligent taxpayer ought to have known better" (at para. 18).

- [29] Gross negligence requires a higher degree of neglect than a mere failure to take reasonable care; it is a marked or significant departure from what would be expected: Wynter at para. 19. It is well established that gross negligence is determined by reference to an objective test: Wynter at para. 21.
- [30] The question then is whether the appellant, in making the misrepresentations, did so knowingly or in circumstances amounting to gross negligence. Here, the Crown argues that the appellant knew about the misrepresentations or, at a minimum, was wilfully blind.
- [31] I prefer to deal with this case based on the doctrine of wilful blindness, which leads to the same place; as stated previously, wilful blindness imputes knowledge to a taxpayer: see Wynter at para. 13.

III. Analysis

[7] There is no issue about whether a false statement, i.e., a misrepresentation, was made in the appellant's income tax return that was filed; the appellant claimed a net business loss of \$206,925.83 when, in actuality, there was no business. The question is whether the appellant, in making the misrepresentation, did so knowingly or in circumstances amounting to gross negligence. As stated, the Crown says the appellant was wilfully blind.

[8] In *Torres v. The Queen* , 2013 TCC 380 [*Torres*], this Court considered the doctrine of wilful blindness in the context of several appeals where the Minister imposed penalties on taxpayers who had claimed fictitious business losses in returns prepared by Fiscal Arbitrators. The decision was affirmed by the Federal Court of Appeal in *Strachan v. Canada* , 2015 FCA 60.

[9] In *Torres* , Justice C. Miller, at paragraph 66, set out some factors to consider regarding wilful blindness. I turn to those factors now to consider whether the appellant acted with wilful blindness. For additional context, I note that the Crown called the appellant as a witness at trial in accordance with rule 146 of the Tax Court of Canada Rules (General Procedure) . The appellant had his spouse testify as a witness and she was cross-examined briefly by counsel for the Crown.

A. The education and experience of the appellant

[10] The appellant is now retired. He completed grade 10 and started working, initially in construction and then as a delivery driver for a uniform business for the next 40 years. The appellant was articulate, although his memory was poor about some of the events that likely occurred in 2010.

[11] In the years before the filing of the appellant's 2009 income tax return, he turned to tax preparers to assist with the preparation and filing of his income tax returns, usually H&R Block.

[12] I next consider whether there were circumstances that would indicate a need for inquiry prior to the signing and filing of the appellant's 2009 income tax return.

B. Whether there were flashing red lights and warning signs crying out for a need for inquiry prior to filing

[13] Some additional context is needed.

[14] The appellant earned \$57,512 of employment income in 2009. His income tax return was prepared by DSC Lifestyles Services (“DSC”). The appellant’s signature is on the return, and it was dated May 25, 2010.

[15] The appellant testified that when he attended the DSC office to sign his return, he was told they were closing and he needed to hurry and sign the return without reviewing it. He was given copies that he could go over after with his brother-in-law who, the appellant testified, had coerced him into these matters. The appellant said he brought the return home and reviewed it with his spouse later that day. Upon looking over the return, the appellant testified that he did not accumulate losses and said he called H&R Block, possibly the following day, and was told to come in and file his taxes correctly.

[16] As for how he became involved with DSC, the appellant testified that he learned of DSC through his brother-in-law and a friend. Neither individual testified.

[17] The appellant also testified that he was told that DSC was some sort of a pyramid scheme and they—his brother-in-law and the friend—needed his sponsorship. Apparently, the appellant was supposed to put \$1,000 down, which he did not have at the time, and therefore his brother-in-law provided the \$1,000 so he could become involved with DSC. The appellant emphasized several times that he felt coerced.

[18] I am unable to accept a lot of the appellant’s evidence about the events in issue because his recollection has either failed or he has so much regret that his memory has become distorted now that more than 15 years have passed. For example, the appellant’s evidence about his efforts to correct his income tax return occurred much later, and after the Canada Revenue Agency’s Audit Division asked some questions.

[19] During the examination for discovery, the appellant was asked to produce copies of all documents that he received from DSC. Some of the documents that were produced by the appellant in response to that request were entered into evidence and support a finding that the appellant had become involved in DSC by January 2010, although the appellant only recalls attending to the DSC office one time in May 2010 to sign his return. He acknowledged some of the documents contained his signature or his initials but said he was unable to confirm the dates.

[20] It is unnecessary for me to piece together how the DSC program worked based on the appellant’s evidence alone, and the documents that were entered into evidence.

[21] A group of documents that the appellant produced to the Crown are dated January 14, 2010. They include the following:

an Application and Agreement (for alternative tax filing education information from Fiscal Arbitrators);

two cheques drawn on the appellant's bank account and signed by the appellant, one payable to DSC for \$1,000 and another to the Trem Dy Group Inc. for \$6,180;

a Financing Agreement;

a pre-authorization debit agreement;

a deposit authorization, authorizing the deposit of referral fees to the appellant's bank account and identifying his friend as a sponsor;

a "Non Circumvention & Non Disclosure Agreement" ; and

an Acknowledgement.

[22] Most of the documents appear to be signed by Bruce W. Blair as an associate or representative of DSC. Mr. Blair's name has surfaced in other reported decisions of this Court involving DSC, but he did not testify here, and the evidence is limited (see *Fransen v. The King* , 2023 TCC 107; and *Jamieson v. The King* , 2023 TCC 69).

[23] Also included in the documents produced by the appellant at discovery is a letter dated May 14, 2010, addressed to the appellant enclosing a copy of his income tax return for the 2009 taxation year, and related documents, and advising that he was entitled to a refund of \$13,283.11. That package contained a tax summary estimating the refunds that the appellant would supposedly receive for the 2009 taxation year, and for the carry-back of the non-capital losses to the 2006, 2007, and 2008 taxation years. In total, refunds of \$45,226.45 were projected, but fees would be due of \$15,225.29, leaving the appellant a net amount of \$30,001.16.

[24] The appellant received a letter from the CRA dated November 10, 2010, enclosing a questionnaire about the business loss claimed for the 2009 taxation year. The appellant signed a letter responding to the CRA's inquiry. That letter is dated November 10, 2010, although the appellant does not recall sending it. (Under the Application and Agreement referred to above, the appellant was required to forward all CRA inquiries to Fiscal Arbitrators before responding.) The letter states that the CRA's offer to review the appellant's 2009 income tax return and to delay the completion of the assessment of the "taxpayer's returns as filed is rejected in whole and in any and all sub parts." The letter also states that the "terms of the private contract of agency between the free will man commonly called Paul of the Kane family, who is the principal, the contributing beneficiary and the true party in interest for the fictional entity/person/trust called PAUL KANE... and any private dealings between the principal and agent cannot be released to the Canada Revenue Agency."

[25] That letter was pseudo-legal nonsense.

[26] The CRA followed up with a letter dated February 3, 2011, providing information about business losses in s. 9(2) and penalties under s. 163(2) and proposed to deny the business loss that was claimed and indicated that penalties were being considered.

[27] Soon after, the appellant had H&R Block prepare a revised income tax return for the 2009 taxation year and sent it to the CRA.

[28] The Minister assessed the appellant on November 24, 2011, denying the business loss and imposing the penalty under s. 163(2).

[29] The above makes clear that the appellant did not turn to H&R Block until much later. His recollection is, at best, unreliable. And the history suggests that the appellant instead continued to hope that he would get the refunds sought through the filing of the income tax return with the fictitious business loss.

[30] Important is that the key period in issue concerns the appellant's review of and the filing of his income tax return. There is no suggestion that the appellant had not authorized DSC to file the return after it was signed.

(1) The magnitude of the advantage

[31] The amount of the business loss that was claimed is substantial, and the refund that the appellant sought in the return far exceeded any refund that the appellant had obtained in the years leading up to the filing of his 2009 income tax return.

(2) The blatantness of the false statement and how readily detectable it was

[32] The statement of business or professional activities included with the appellant's 2009 income tax return reported gross business income of \$67,977.24 and a single line item for other expenses, noted as "AMT TO PRINCIPAL FR AGENT" of \$274,903.07, resulting in a net business loss of \$206,925.83. That business loss was carried over to page 2 of the return. The false statements are blatant. And the false statements were readily detectable if the appellant had taken the time to review the return before signing it or had sought advice elsewhere before becoming involved with DSC. The appellant also signed a request for a loss carry back that was included with the return.

(3) Whether there was a lack of acknowledgement by the tax preparer who prepared the return in the return itself

[33] The appellant's return did not identify the name of any tax preparer; that area was left blank. This should have raised a red flag.

(4) There were unusual requests made by the tax preparer

[34] The appellant signed the so-called "Non Circumvention & Non Disclosure Agreement." This too should have raised red flags.

(5) The tax preparer was previously unknown to the appellant

[35] The appellant had consistently used H&R Block to help him prepare his income tax returns. The appellant usually paid H&R Block about \$150 to prepare his return, while his involvement with DSC was to cost \$1,000. Moreover, H&R Block never rushed the appellant through the review process before a return was filed. Pivoting to DSC, under the circumstances, cried out for inquiry.

(6) There were incomprehensible explanations by the tax preparer

[36] The appellant was not really able to explain DSC's program. He said that he understood it was some sort of a pyramid scheme or "scam." The appellant's friend said DSC was a legitimate business and that he had made money off it and wanted the appellant to do so as well. The appellant understood that his friend had got substantial money back through an income tax return.

[37] The appellant also understood that when he became involved with DSC, he would be getting a larger refund than normal.

(7) Whether others engaged the tax preparer or warned against doing so, or did the appellant express concern about telling others

[38] The appellant's spouse was aware that the appellant had been in discussions about DSC with his brother-in-law and the friend. She felt they were trying to talk the appellant into joining DSC. She did not approve of it from the start because it was too good to be true and involved getting money back. She did not use DSC due to these same concerns and instead went to her usual tax preparer, as in previous years. She had also expressed concerns to the appellant.

[39] Later, after the appellant's spouse became aware of the correspondence from the CRA, she wanted to make things right and to redo the appellant's taxes. Unfortunately, but important, those steps do not change whether the appellant was wilfully blind in the filing of an income tax return that contained false statements. Key is that the appellant's spouse had raised concerns.

(8) Whether the appellant made no inquiry of the tax preparer to understand the return, or made no inquiry of a third party or the CRA

[40] There is no evidence that the appellant made inquiries of other tax preparers and he made no inquiry of the CRA. This too was a red flag. The appellant should have consulted with a third party before getting involved with what he understood was a pyramid scheme.

[41] As for his evidence about feeling coerced into becoming involved with DSC, I am unable to accept that the appellant did not voluntarily sign his return. He was more likely coaxed, cajoled or persuaded by the lure of a large tax refund. If something more sinister had happened, I would have expected the appellant to contact the CRA or the police to report that his return was not voluntarily signed and filed on his behalf.

IV. Conclusion on wilful blindness

[42] I am satisfied that there were enough flashing red lights, red flags, or warning signs that called for suspicion and the need for inquiry about the accuracy of the appellant's 2009 income tax return prior to the filing. Under Canada's self-assessing income tax system, the appellant had an obligation to review his return and to satisfy himself that it was accurate.

[43] The misrepresentations were blatant and the circumstances cried out for the need to review and inquire. The appellant chose to ignore the warning signs because, at the time, he was looking to get something back through DSC's program. The facts, when considered in light of the evidence and the Torres factors, point decisively to wilful blindness; the appellant suppressed his suspicions. And so, the appellant is liable for the penalty under s. 163(2).

[44] I acknowledge that the appellant deeply regrets these events. But after the fact regrets, unfortunately, cannot unwind the penalty. Likewise, the fact that the appellant did not receive the refund that was sought does not mean that the penalty was not properly assessed. If, however, the assessment of the penalty will create a financial hardship, the appellant may wish to inform himself about the Minister's guidelines respecting the taxpayer relief provisions.

[45] In the circumstances, the appeal is dismissed, with costs payable to the Crown in accordance with the Tariff.

Signed this 9th day of September 2026.

"Perry Derksen"

Derksen J.

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REASONS FOR JUDGMENT BY:

The Honourable Justice Perry Derksen

DATE OF JUDGMENT:

September 9, 2026

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The Appellant himself

Counsel for the Respondent:

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COUNSEL OF RECORD:

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Firm:

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