

'Duty of care' FIGHT OVER

Irvin Leroux's 20-year battle with the CRA comes to a (mostly) successful end



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Long-time readers of *The Taxpayer* will be familiar with Irvin Leroux, a Canadian hero who fought the Canada Revenue Agency (CRA) for 20 years. And while not completely successful, he recently battled the taxman for the last time, enshrining a precedent-setting court judgment that will make the CRA treat all taxpayers with greater respect.

Irvin Leroux's story starts 27 years ago in 1989 when he purchased a piece of land near Valemount, BC, to build an RV park.

Six years later, the federal tax department came knocking, looking to audit his business.

Knowing he paid all of his taxes on time, Irvin allowed the auditors in to go through his documents while he attended to his RV park. CRA auditors took two file cabinets' worth of original documents and left before Irv could return.

Three years later, in 1999, Irvin got a letter from the CRA informing him he owed \$630,000 in income taxes and \$98,000 in GST underpayments. He was also slapped with penalties and interest that bumped the total to nearly \$1 million.

Irvin knew this was a mistake and asked the CRA auditors to return his records so he could prove it. To his horror, he was told the agency had accidentally shredded all of his documents.

Before he could have his day in tax court, the CRA issued a writ of seizure and sale on his RV park. His creditors panicked and refused

to renew his loans, foreclosing and selling the RV park for less than half the appraised value.

In order to pay his lawyers, he had to empty his retirement savings and sell his house and other assets.

Finally in 2005, on the eve of going into tax court, the CRA changed their story and told Irvin that they were wrong, he didn't owe \$1 million and in fact, they owed Irvin a \$24,000 refund.

Irvin was not happy.

He took his case to his local MP, Dick Harris, who in turn went to the minister of national revenue, who suggested if Irv sued the government, they would settle out of court.

So, that's what Irvin did. In 2009, he scraped together a bit more money and sued the CRA, expecting a quick settlement.

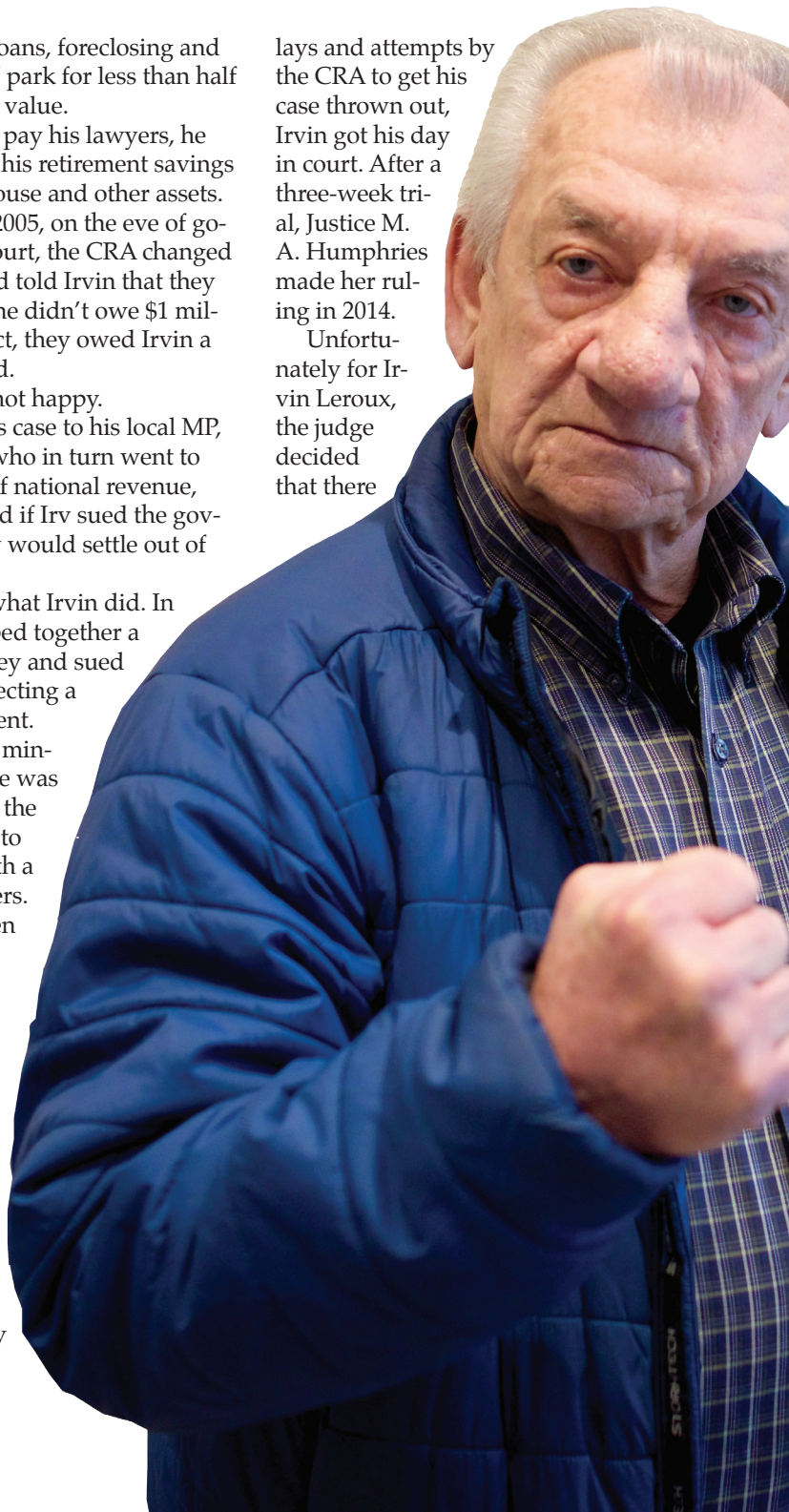
Nope. The minister's promise was forgotten and the CRA decided to fight Irvin with a team of lawyers.

That's when the Canadian Constitution Foundation, a charitable organization dedicated to defending our fundamental freedoms and rights, offered to help.

After many motions, de-

lays and attempts by the CRA to get his case thrown out, Irvin got his day in court. After a three-week trial, Justice M. A. Humphries made her ruling in 2014.

Unfortunately for Irvin Leroux, the judge decided that there



wasn't enough evidence to back his claimed loss of \$4 million. The good news was that the judge ruled that the CRA owed Irvin a "duty of care" and that the CRA had breached this duty in the way they treated him.

"Duty of care" is defined as "a legal obligation which is imposed on an individual requiring adherence to a standard of reasonable care while performing any acts that could foreseeably harm others." It also means if this duty is violated, they can be sued for damages.

When it comes to the CRA, duty

the CRA owed no duty of care to anyone other than the minister of national revenue.

Justice Humphries's ruling changed all of that.

It's too early to know the full impact of this ruling. However, we've already seen tax lawyers cite Irvin's precedent in other tax court cases. Alison Gray, a partner with Bennett Jones LLP, wrote: "for Canadian taxpayers, Leroux is a winning decision, as it reinforces the CRA's accountability in issuing assessments, auditing and imposing penalties ... the Leroux decision provides an additional check on what can and cannot be done by employees of the CRA in the course of their duties."

This was huge news for all Canadian

payers Federation joined in. We knew our friends at the Canadian Constitution Foundation had already spent hundreds of thousands on his case and it was time for someone else to step up.

With the financial support of hundreds of CTF supporters, Irvin hired two high-end tax lawyers.

After a year and a half of preparations, it became clear that there was no chance Irvin was going to be able to introduce new evidence at the appeal and was going to lose. His lawyers were able to negotiate an agreement with the CRA that dropped Irvin's appeal and ended the CRA's appeal on the duty of care.

The CRA agreed to that. However, inexplicably, they insisted that Irvin pay them \$10 towards their court costs.

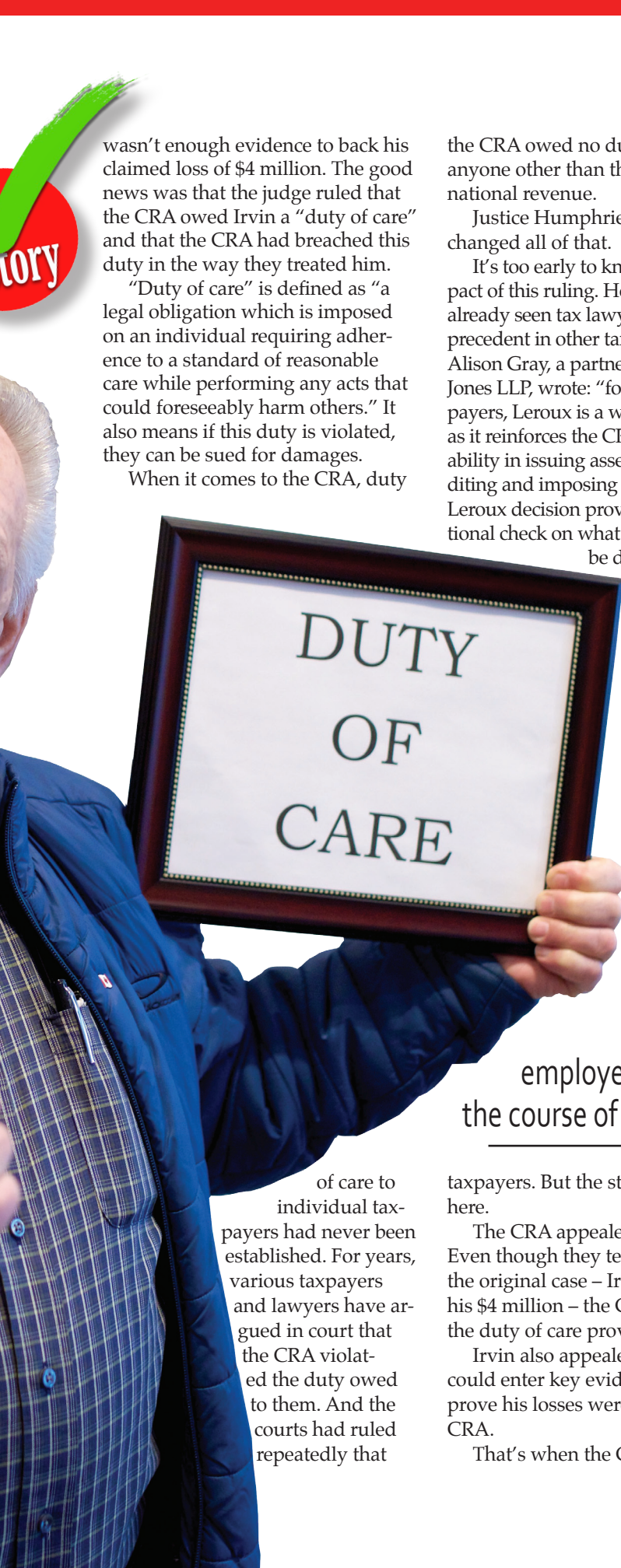
It was gratuitous and stupid and it nearly sank the deal.

But at the end of the day, it wouldn't bother the CRA to spend millions of taxpayers' dollars to keep lawyers fighting over \$10 and maybe get a judge to throw out duty of care. Neither Irvin nor the CTF could justify the risk of losing duty of care nor spend tens of thousands to save \$10 and some pride. So on Jan. 8, 2016, in the BC Court of Appeal, Irvin agreed to pay \$10, end his 20-year fight with the CRA and protect the duty of care ruling.

Make no mistake, Irvin

Leroux is a hero. Most people would have just declared bankruptcy and never fought the CRA in the first place. And when the settlement didn't come, most people wouldn't have spent their last few bucks to keep fighting.

In the end, it was that heroic fight that won all Canadians a duty of care from their government's tax department. And for that Irvin Leroux deserves our thanks. **t**



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“The Leroux decision provides an additional check on what can and cannot be done by employees of the CRA in the course of their duties.”

of care to individual taxpayers had never been established. For years, various taxpayers and lawyers have argued in court that the CRA violated the duty owed to them. And the courts had ruled repeatedly that

taxpayers. But the story didn't end here.

The CRA appealed this ruling. Even though they technically won the original case – Irvin didn't get his \$4 million – the CRA appealed the duty of care provision.

Irvin also appealed, hoping he could enter key evidence that would prove his losses were caused by the CRA.

That's when the Canadian Tax-