

SUBMISSION of MICHAEL SHORD.

In an article by Robert Gottleibsen in The Australian 1/11/2017 under the banner “Federal Judge Warns Tax Commissioner” Justice Logan observed that in my case the ATO had not acted as “model litigants” and as such could have incurred a 10 year gaol sentence. Under Constitutional Law, in cases of dispute the onus is on the ATO and all its officers to act as “model litigants”. The article went on to say that in this instance this probably would not happen, mainly because I do not have the resources and this is what the ATO relies upon.

In 1998 because I worked overseas as firstly a Commercial Diver and then as a Commercial Dive Supervisor/Superintendent, I was deemed to be a “non resident for taxation purposes” by Deputy Commissioner Cathy Argyll, Perth ATO. There were requirements I had to have eg a home abroad which I achieved by renting accommodation in Cornwall.

For the next 12 years I worked overseas on the various oilfields world wide. In 2010, I came back to Australia to work and as instructed, notified the ATO.

In 2012, I received a phone call from _____ from ATO Brisbane stating that “he did not agree with” DC Argyll’s decision and demanded that within four weeks I provide him with the previous 11 years tax returns “or else” he would impose a 75% interest penalty on the amount he decided that I owed the ATO. This was backed up by a letter sent to me backing up what he had told me. When I queried why it was ATO Brisbane that was involved and not Perth, he informed me that Perth wasn’t “qualified” to handle my case.

For the following 3 years my accountant/tax agent and I vigorously disputed the amount that I was supposed to have owed. We did have meetings with members of the ATO Perth, but even though they “sympathised” with me “their hands were tied” and any attempt at mediation was negated.

In 2015 I appealed to the AAT. My case was heard by (former) Senior Member Walsh. It transpires that she had written her decision before I appeared before her. In her summation though she at one stage referred to me as an “employee” and then at the end of her summation she deemed that I was an “employer”. She upheld the ATO’s position. So I lost.

I then appealed to the Supreme Court before Judge Gilmour. But he upheld the AAT’s decision. So once again justice seemed to have vanished over the horizon. I lost. The AAT’s decision was overturned by the Federal Court Judges in 2017.

In preparing for my appeal in the AAT, the ATO demanded that I provide them several pages of information they required. This was to be provided no later than 4 weeks prior to the appeal date. I returned to Australia to provide all the information was requested by the ATO by the required date. I had been told that if the information wasn’t provided by the said date then it could not be used. Yet less than a week prior to the court date, I received a demand from the ATO for “further information” from me. Bearing in mind that I was overseas at the time, I had no way of getting back on-shore back to my base in England to gather up the information and get it to the ATO. During the court case the legal representative for the ATO said I “refused” to give them the additional information.

Interestingly, had I asked for information a week prior to the court case, I would have been told that the ATO did not have to provide it to me.

In 2017 I appealed to the Federal Court and it was Justice Logan who pointed out the jurisdictional errors of the AAT and the ATO and that was when he warned the Commissioner of the need to be a “model litigant”. The judges also asked the QC representing the ATO where was the “Duty of Care towards Mr Shord?”

Over the years I have written to the Commissioner himself on no less than three occasions asking for his help to resolve my case. I asked him in his official capacity to deal with his counterparts in the various countries in which I have worked to show that tax had been paid. The ATO has international agreements with various countries to share information with regards taxation but my requests were futile.

The QC representing the ATO actually declared in court that I had never requested assistance. My own representative was quick to point out that THIS WAS NOT TRUE! There was written proof provided both to the court and to the ATO that I had indeed asked for assistance on numerous occasions. The proof was provided under the Freedom of Information. Information the ATO didn't want to disclose. She also said that it was “irrelevant” as far as the ATO was concerned as to whether I was an “employee” or an “employer”. Why were we not told that? It would have saved unnecessary stress and financial burden.

I have also written to three Prime Ministers, two Treasurers, Financial Ministers and many MPs asking for help but all have shied away with anything to do with the ATO. The ATO is a law unto itself; judge, jury and executioner. It does not adhere to its own policies and procedures; does not admit to its mistakes; and uses bullying, intimidation, threats, obfuscation and standover tactics as standard practice.

I personally do not believe that all the officers within the ATO are of the vindictive nature. I just haven't met any who aren't and those who tend to stand up and be counted as honest people seem to be pushed sideways or asked to leave the ATO.

Thank you in anticipation for taking the time in reading my Submission and may it help towards making the ATO accountable in the future.

Yours truly

Michael Shord

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