

**Date: 20070711**

**Docket: T-1757-06  
T-1772-06**

**Citation: 2007 FC 739**

**Ottawa, Ontario, the 11th day of July 2007**

**Present: The Honourable Mr. Justice Montigny**

**BETWEEN:**

**MINISTER OF NATIONAL REVENUE**

**Applicant**

**and**

**DANIEL JOURDAIN**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The Court has before it a motion, brought under rules 466 and 467 of the *Federal Court Rules* (the Rules), for a contempt order against Daniel Jourdain. This motion is brought following a show cause order requiring Mr. Jourdain to appear before a judge of this Court to hear proof with respect to an alleged contempt of court and to be prepared to present any defence he might have. Mr. Jourdain did not appear in Court to respond to the allegation of contempt as required by the show cause order.

## **HISTORY OF THE PROCEEDINGS**

[2] The Minister of National Revenue (the Minister) issued to the respondent, by a letter dated April 19, 2006, and delivered to him by hand the same day, a requirement to provide information pursuant to paragraphs 231.2(1)(a) and (b) of the *Income Tax Act* (the Act), R.S.C., 1985

(5th Supp.), c. 1. The following documents were required:

- a. The record of wages, from January 2003 to December 2003;
- b. The record of wages, from January 2004 to December 2004;
- c. The record of wages, from January 2005 to December 2005;
- d. The record of wages, from January 2006 to the date of response to the letter of requirement;
- e. The bank statements and cancelled cheques covering the years 2003, 2004, 2005 and 2006.

[3] Despite the time given to the respondent to reply, the Minister's requirement went without response. The Minister therefore undertook legal action to obtain an order requiring the respondent to comply with the requirement, pursuant to section 231.7 of the Act.

[4] On October 23, 2006, Mr. Justice Simon Noël of this Court issued an order directing the respondent to reply to the Minister's requirement to provide information within the 10 days following the service of the order. This order was delivered to Daniel Jourdain in person at his workplace on November 6, 2006.

[5] When the respondent refused to comply with Noël J.'s order, the Minister decided to institute contempt proceedings with respect to the order in question. On April 2, 2007,

Mr. Justice Luc Martineau concluded that the evidence established a *prima facie* case that the respondent had disobeyed Noël J.'s order. Accordingly, he issued an *ex parte* order requiring the respondent to appear before this Court on April 30, 2007, at 2:30 p.m., and to be prepared to present any defence he might have with respect to the alleged contempt of court, the whole pursuant to subsection 467(2) of the *Federal Court Rules*.

[6] On April 12, 2007, the applicant applied to the Court for an extension of the deadline granted to serve the orders and motion records, as well as a postponement of the date of appearance. On April 13, 2007, Luc Martineau J. issued an amended *ex parte* order enjoining Daniel Jourdain to appear before this Court on May 28, 2007, at 2:30 p.m., and to be prepared to present any defence he might have with respect to the allegations against him of contempt of Noël J.'s order. The Court also ordered that the applicant serve a copy of this order and of the applicant's motion record to Mr. Jourdain in person, as well as a list of the witnesses the applicant intended to call in order to prove the alleged act.

[7] Given the impossibility of tracking the defendant to serve him in person the documents mentioned in Martineau J.'s order, the applicant again addressed the Court for an additional extension of the deadline and for authorization for non-personal service. In a new order issued on May 3, 2007, Luc Martineau J. granted authorization for the bailiff to serve his order dated April 13 as well as the applicant's motion record by leaving a copy of these documents [TRANSLATION] "in the mailbox, under the door or affixed to the door of his only known address" and by publishing the documents in question [TRANSLATION] "by public notice in a Montreal regional newspaper, namely

the *Journal de Montréal*, published Saturday, May 12, 2007”. Proof of service, which occurred May 10, 2007, was entered into the Court record on May 14, 2007, along with a copy of the public notice that appeared in the *Journal de Montréal* in accordance with Martineau J.’s order.

[8] On May 28, 2007, Martineau J. adjourned the hearing until the general sittings of the Court in Montreal, June 4, 2007, to allow counsel for the applicant to perform further verifications in this case regarding the bailiff’s service of Noël J.’s order dated October 23, 2006, to the respondent. Although he was satisfied with the proof of service of the amended order issued on April 13, 2007, and of the applicant’s motion record, as well as the publication of the public notice in the *Journal de Montréal* on May 12, 2007, Martineau J. found that counsel for the applicant could not simultaneously testify and submit arguments with respect to the respondent’s alleged acts and the service of Noël J.’s order.

[9] The hearing was again postponed until June 18, 2007. Given that the respondent again failed to appear, I decided to adjourn the hearing once again until June 29, 2007, instructing counsel for the applicant to make a final attempt, in cooperation with the representative of the Minister responsible for the file, to contact the respondent and inform him of the many orders enjoining him to appear before this Court to present any defence he may have with respect to the allegations against him of contempt of court. Despite all good faith efforts to reach the respondent, he could not be tracked down, so the motion hearing was held in his absence on June 29, 2007.

## ANALYSIS

[10] Paragraph 466(b) of the Rules sets out that a person is guilty of contempt of Court who “disobeys a process or order of the Court”. Clearly it is the party alleging contempt that has the burden of proof beyond a reasonable doubt (rule 469). Accordingly, a person alleged to be in contempt may not be compelled to testify nor be obliged to submit any evidence whatsoever to the Court (rule 470(2)). Moreover, the applicant’s burden of proof applies to all the essential elements of contempt; it must therefore establish the existence of the order, the fact that the accused knew of its existence, and the disobedience itself. However, it is not necessary to prove guilty intent; that can at most be considered, like the good faith of the respondent, at the moment of determining the sanction.

See: - *The Minister of National Revenue v. Kevin William Middleton*, 2006 FC 455;  
- *Canada (Minister of National Revenue) v. Wigemyr*, 2004 FC 930;  
- *The Minister of National Revenue v. Jane Becelaere*, 2007 FC 409.

[11] In this case, there is no doubt as to the existence of Noël J.’s order of October 23, 2006. The applicant’s record even contains a certified true copy of this order. It should be noted that the order is very clear and leaves no room for ambiguity.

[12] There also seems to be no doubt in this case that Mr. Jourdain knew of the existence of Noël J.’s order. Subsection 146(1) of the Rules sets out in paragraph (a) that service of a document may be proven, in Quebec, by a certificate of service of a sheriff, bailiff or other authorized person in accordance with the *Code of Civil Procedure*. As mentioned above, counsel for the applicant filed with the Court the service summary prepared by a bailiff and duly registered on

November 6, 2006, attesting that the certified true copy of Noël J.'s order had been personally handed to Mr. Jourdain. I have no choice but to conclude that the respondent was aware of the existence of Noël J.'s order.

[13] The remaining issue is whether Mr. Jourdain disobeyed this order. Counsel for the applicant called as a witness Jean-Fresnel Thélismond, a Trust Account Examiner with the Canada Revenue Agency, who presented the following facts. As mentioned in the account of the facts leading to this motion, Mr. Jourdain refused to reply to a requirement to provide information from the Minister, despite being granted multiple extensions. It appears that Mr. Jourdain frequently changes his place of residence without informing the authorities in the Department. The last time Mr. Thélismond was in contact with him, last fall, Mr. Jourdain made it clear that he had no intention of complying with the Department's requirement to provide information and told him they would [TRANSLATION] "see each other in Court".

[14] After that, Mr. Jourdain gave no more signs of life to the Department or to Mr. Thélismond. Following my instructions of June 18, several unsuccessful attempts were made to try to locate Mr. Jourdain. The Quebec Enterprise Register was searched, as were a credit assessment company (Equifax), the files of the *Société de l'assurance automobile du Québec*, the register of personal and immovable real rights, the Internet site Canada411.ca, as well as the criminal index and civil and appeals index where all court records in Quebec are filed. Mr. Jourdain's address could not be located through any of these resources.

[15] I am of the opinion that Mr. Thélismond's testimony is credible and trustworthy. In light of all his efforts to locate the respondent, the latter's cavalier attitude when he could be reached, his systematic refusal to supply the required information and the notice that appeared in the *Journal de Montréal* on May 12, 2007, I find that the evidence shows beyond a reasonable doubt that Mr. Jourdain failed to provide the information required by Noël J. in his order dated October 23, 2006 and that he is doing everything in his power to escape this Court order.

[16] I am also of the opinion that the applicant complied with the amended order of Martineau J. dated May 3, 2007, in which he authorized the non-personal service of the show cause order. All reasonable means were used to advise the respondent of this hearing and of his option to defend himself against the contempt charges against him.

[17] I therefore allow the Minister's motion and find Daniel Jourdain in contempt of court, both personally in docket T-1772-06 and as director of the company (9131-8113 QUEBEC INC.) in docket T-1757-06.

[18] Counsel for the applicant is asking this Court to order the respondent to pay a fine in the amount of \$1,500.00\$, payable within ten (10) days of service of the order to be rendered. It is also asking this Court to order the respondent to provide, by registered mail, any documents and information listed in the Minister's requirement that are still missing within ten (10) days of service of the order to be rendered, to the attention of Jean-Fresnel Thélismond. Finally, it is seeking \$2,338.43 in costs, payable to the applicant within ten (10) days of the order to be rendered.

[19] Given the circumstances of this case and the evidence before me, I consider these requests to be justified and to constitute an appropriate sanction. A period of 30 days rather than 10 days to comply, however, seems to me to be more appropriate in this case. I will also add a disposition to my order, given the difficulty in locating the respondent and the real possibility that this order will remain a dead letter because it cannot be served. In the event that Mr. Jourdain fails to comply with Noël J.'s order and this one, I order that he be brought before the Court to explain why he should not be imprisoned for a period of 30 days.



**ORDER**

**THE COURT:**

**DECLARES** Daniel Jourdain to be in contempt of court for the first time;

**SENTENCES** Daniel Jourdain to a fine of \$1,500.00, payable within ten (10) days of this order (the payment shall be made to the order of the Receiver General of Canada);

**ORDERS** Daniel Jourdain to deliver the documents and information requested in the Minister's requirement, namely the following:

- 1) The record of wages, from January 2003 to December 2003;
- 2) The record of wages, from January 2004 to December 2004;
- 3) The record of wages, from January 2005 to December 2005;
- 4) The record of wages, from January 2006 to the date of response to the letter of requirement;
- 5) The bank statements and cancelled cheques covering the years 2003, 2004, 2005 and 2006. This information is required for the same periods referred to in paragraphs 1) through 4) for all employees, by registered mail, to the attention of Jean-Fresnel Thélismond, Trust Account Examiner, Tax Services Office, Canada Revenue Agency, 305 René-Lévesque Blvd West, Montréal, Quebec, H2Z 1A6;

**SENTENCES** Daniel Jourdain to pay costs to the applicant in the amount of \$2,338.43, payable within ten (10) days of this order (the payment must be made to the order of the Receiver General of Canada);

**ORDERS** that, in the event that Daniel Jourdain fails to pay the fine and the costs and to produce the required documents and information, all within 30 days of service of this order, he be brought before a judge of this Court to explain why he should not be imprisoned for a period of up to 30 days;

**ORDERS** that this order be served as follows: 1) by authorizing a bailiff to leave a copy of this order to the attention of Daniel Jourdain in the mailbox or under the door of his only known address, 2968, rue Lapierre, in Montréal, Quebec, H8N 2W9; AND 2) by publishing this order by public notice in the July 21, 2007, editions of the *Journal de Montréal* and *La Presse*.

“Yves de Montigny”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1757-06 & T-1772-06

**STYLE OF CAUSE:** MINISTER OF NATIONAL REVENUE  
v.  
DANIEL JOURDAIN

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** June 29, 2007

**REASONS FOR ORDER AND  
ORDER BY:** The Honourable Mr. Justice Montigny

**DATED:** July 11, 2007

**APPEARANCES:**

Isabelle Pipon (Articling Student)

FOR THE APPLICANT

None

FOR THE RESPONDENT

**SOLICITORS OF RECORD**

John H. Sims, Q.C.  
Montréal, Quebec

FOR THE APPLICANT

Daniel Jourdain, not represented

FOR THE RESPONDENT