

**Date: 20071009**

**Docket: T-1620-06**

**Citation: 2007 FC 932**

**Ottawa, Ontario, October 9, 2007**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**MINISTER OF NATIONAL REVENUE**

**Applicant**

**and**

**BERNARD DROPSY,**

**as representative of CD<sup>2</sup>I COOPÉRATIVE DE SERVICES EN  
DÉVELOPPEMENT INTERNATIONAL, and as administrator of  
WARRINGTON**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**OVERVIEW**

[1] A request for information according to subsection 231.2 (1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.) (ITA) "...empowers the Minister to compel a taxpayer to provide "information"...". (*Tower v. Canada (Minister of National Revenue – M.N.R.) (F.C.A.) v. Kitsch*, [2004] 1 F.C.R. 183, [2003] F.C.J. No. 1153 (QL).)

The Minister may, however, only request additional information relevant to the taxpayer's tax liability. (*R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627.)

[2] The Federal Court of Appeal has recognized that: “A requirement is valid if the requested information may be relevant in the determination of the tax liability of the named taxpayer”. This low threshold allows the Minister to obtain information that may be relevant in determining a taxpayer’s liability under that Act. (*Kitsch*, above.)

[3] Furthermore, the person served with a request for information, that is given a reasonable amount of time for production of information or documents, will be required to comply if the Minister was acting for a purpose related with the administration or enforcement of the ITA. (*1144020 Ontario Ltd. v. Canada (Minister of National Revenue – M.N.R.)*, 2005 FC 813, [2005] F.C.J. No. 1018 (QL).)

## **BACKGROUND**

[4] Mr. Bernard Dropsy is a representative of CD<sup>2</sup>I Coopérative de services en développement international (CD<sup>2</sup>I) and administrator of Warrington Security Securities Limited (Warrington).

[5] The Canada Revenue Agency (CRA) is attempting to verify CD<sup>2</sup>I’s compliance with the ITA, for the 2003, 2004 and 2005 taxation years.

[6] As part of the Minister’s investigation of CD<sup>2</sup>I’s business affairs, it has also verified all of the Respondent’s business relations with its members and business partners, namely, Warrington.

[7] The Minister issued two Requirements for Information (RFIs) to Mr. Dropsy; one as representative of CD<sup>2</sup>I and the second as administrator of Warrington, pursuant to paragraphs 231.2(1)(a) and (b) of the ITA, on June 29, 2006.

### **Requirements for information from CD<sup>2</sup>I**

[8] CD<sup>2</sup>I was required to provide the following information and documents to the Minister within 30 days of service of the RFIs:

- Le nom de tous les membres faisant partie des personnes ayant investi un montant nominal (membres autres que ceux qui ont transféré un REER ou tout autre placement enregistré à CD<sup>2</sup>I) à un moment ou à un autre et faisant partie des membres de la coopérative pour les années 2003, 2004 et 2005. Nous aimerions obtenir à leur égard leur adresse ainsi que leur pourcentage de participation pour chacune des années 2003, 2004 et 2005.
- Tous les relevés bancaires de tous les comptes bancaires de la coopérative CD<sup>2</sup>I pour l'année 2005 ainsi que les livres comptables et pièces justificatives expliquant les dépôts et les retraits.

(Applicant's Record, Tab A, p. 4.)

### **Requirements for information from Warrington**

[9] Warrington was required to provide the following information and documents to the Minister within 30 days of service of the RFIs:

- Relevés bancaires
- Chèques retournés par la banque
- Grand livre
- Journal général
- Écritures de régularisation
- Chiffriers
- Livre des minutes
- Caisse-recettes
- Caisse-déboursés

- Nom de tous les administrateurs de la compagnie
- Description des principales activités de la société et services offerts aux clients

(Applicant's Record, Tab B, p. 8.)

[10] Copies of the above-mentioned RFIs were also served on the attorneys of CD<sup>2</sup>I.

[11] Neither CD<sup>2</sup>I nor Mr. Dropsy has provided the requested information.

[12] The Applicant specifies that the tax liabilities of CD<sup>2</sup>I are under administrative investigation, and the information and documents sought from Mr. Dropsy are considered necessary to assist in completing the audit as well as verifying the admissibility of the members' investments.

## **ISSUES**

- [13] (1) In accordance with section 231.7 of the ITA, was the Respondent required under subsection 231.2(1) of the ITA to provide the documents and information requested in the Requirement Letters?
- (2) Has the Respondent complied with the Requirement Letters?
- (3) What are the requirements which must be satisfied before this Court exercises its discretion under section 231.7 of the ITA to order a person to provide access, assistance, information or documents sought by the Minister under subsection 231.2(1) of the ITA?
- (4) Have the requirements for an order under section 231.7 of the ITA been satisfied in this case?

## ANALYSIS

### **Standard of Review**

[14] According to the Federal Court of Appeal's decision in *AGT Ltd. v. Canada (Attorney General)* (C.A.), [1997] 2 F.C. 878, [1997] F.C.J. No. 398 (QL):

[27] Subsection 231.2(1) is drafted in broad language, but its scope has been reduced through the rules of interpretation to situations where the information sought by the Minister is relevant to the tax liability of some specific person or persons, and when the tax liability of such person or persons is the subject of a genuine and serious inquiry...

Therefore, "...each notice of requirement issued under that provision must meet the test of relevancy and reasonableness". (*AGT*, above, para. 21.)

[15] This Court must give effect to the legislative intention which grants discretion to the Minister in this regard. In reviewing the Minister's decision, this Court should not re-weigh the factors or interfere merely because it would have come to a different conclusion.

### **Requirement to provide documents or information**

[16] The ITA is a regulatory statute based on the principle of self-reporting and self-assessment. The integrity of the system must therefore allow for some form of monitoring that is effective yet not intrusive.

[17] The Ministry's power to investigate and audit taxpayers is provided by s. 231.2 of the ITA which reads as follows:

**Requirement to provide documents or information**

**231.2** (1) Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act, including the collection of any amount payable under this Act by any person, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as is stipulated in the notice,

(a) any information or additional information, including a return of income or a supplementary return; or

(b) any document.

**Production de documents ou fourniture de renseignements**

**231.2** (1) Malgré les autres dispositions de la présente loi, le ministre peut, sous réserve du paragraphe (2) et, pour l'application et l'exécution de la présente loi, y compris la perception d'un montant payable par une personne en vertu de la présente loi, par avis signifié à personne ou envoyé par courrier recommandé ou certifié, exiger d'une personne, dans le délai raisonnable que précise l'avis :

a) qu'elle fournisse tout renseignement ou tout renseignement supplémentaire, y compris une déclaration de revenu ou une déclaration supplémentaire;

b) qu'elle produise des documents.

[18] A request for information according to subsection 231.2 (1) "...empowers the Minister to compel a taxpayer to provide "information"...". The Minister may, however, only request additional information relevant to the taxpayer's tax liability. (*Tower*, above; *R. v. McKinlay*, above.)

[19] The Federal Court of Appeal has recognized that: “A requirement is valid if the requested information may be relevant in the determination of the tax liability of the named taxpayer”. This low threshold allows the Minister to obtain information that may be relevant in determining a taxpayer’s liability under that Act. (*Kitsch*, above.)

[20] Furthermore, the person served with a request for information, that is given a reasonable amount of time for production of information or documents, will be required to comply if the Minister was acting for a purpose related with the administration or enforcement of the ITA. (*1144020 Ontario Ltd.*, above.)

**Requirement for information from CD<sup>2</sup>I**

[21] The Respondent submits that he provided the Applicant with complete extensive unrestricted and voluntary disclosure from CD<sup>2</sup>I including information in respect of its relationship to members and Warrington. He further submits that the documents and information had been provided prior to the requirements and with a future, continuing unrestricted and complete access to all information and documents in the possession or control of CD<sup>2</sup>I.

[22] The Minister specifies that, pursuant to paragraph 231.2(1)(a), he may request additional information in order to complete, confirm or infirm an audit.

**Requirement for information from Warrington**

[23] The Respondent submits that neither he or CD<sup>2</sup>I have any documents in their possession, or physical or legal control that belong to, or pertain to, Warrington, other than those obtained by CRA. He equally states that, despite his administrative position, he has “no control over Warrington and whatever information it may possess, and [he has] no corporate authority, nor any information about Warrington relating to the questions directed at [him].” (Affidavit of Bernard Dropsy, para. 30.)

[24] From direct reference to excerpts of cross-examination, the Minister has brought forward:

- (a) The Respondent has signed the warehousing contract on behalf of WARRINGTON and he has offered no logical justification for doing so;
- (b) The Respondent has signed a letter on behalf of WARRINGTON by which the price of an order of CD<sup>2</sup>I to WARRINGTON, was changed and by which he gave an acquittance (quittance) of any further payment;
- (c) The purchasing contract of 223 cases of nouveau wine to CD<sup>2</sup>I dated August 24, 2004, which was signed by the Respondent on behalf of Warrington;
- (d) The Respondent has given instructions in order to transfer money from a bank account of WARRINGTON; although he has given such instructions, he claims that he does not have possession or control of the bank statement.

(e) The financial statements of CD<sup>2</sup>I for the year ended on December 31, 2004, have added proof for they state that CD<sup>2</sup>I has conducted business with a foreign company that is administered by a member (« une société étrangère administrée par un des membres »).

(Applicant's Record, Tab 5.)

[25] Consequently, for the foregoing reasons, the Court agrees with the Applicant that the Respondent has sufficient access to the documents and information regarding Warrington and, by virtue of such, has sufficient corporate authority to provide the information and documents regarding Warrington which were requested by the Applicant.

[26] The Minister specifies that the additional information and documents sought from the Respondent, Mr. Dropsy, as representative of CD<sup>2</sup>I, and as administrator of Warrington, are necessary to assist in completing the audit as well as verifying the admissibility of the members' investments.

[27] The Minister explains that, although the Respondent was served with the RFIs on June 29, 2006, he has yet to provide the information and documents sought.

[28] The Respondent has, therefore, not complied with the request for information and is, therefore, not in compliance with section 231.2.

### **Requirements for a compliance order**

[29] When the Requirements for information are not complied with, the Minister may request from the Court, a compliance order, pursuant to section 231.7:

<b>Compliance order</b>	<b>Ordonnance</b>
<p><b>231.7</b> (1) On summary application by the Minister, a judge may, notwithstanding subsection 238(2), order a person to provide any access, assistance, information or document sought by the Minister under section 231.1 or 231.2 if the judge is satisfied that</p> <p style="padding-left: 40px;">(a) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document and did not do so; and</p> <p style="padding-left: 40px;">(b) in the case of information or a document, the information or document is not protected from disclosure by solicitor-client privilege (within the meaning of subsection 232(1)).</p>	<p><b>231.7</b> (1) Sur demande sommaire du ministre, un juge peut, malgré le paragraphe 238(2), ordonner à une personne de fournir l'accès, l'aide, les renseignements ou les documents que le ministre cherche à obtenir en vertu des articles 231.1 ou 231.2 s'il est convaincu de ce qui suit :</p> <p style="padding-left: 40px;">a) la personne n'a pas fourni l'accès, l'aide, les renseignements ou les documents bien qu'elle en soit tenue par les articles 231.1 ou 231.2;</p> <p style="padding-left: 40px;">b) s'agissant de renseignements ou de documents, le privilège des communications entre client et avocat, au sens du paragraphe 232(1), ne peut être invoqué à leur égard.</p>

[30] The Court must, however, be satisfied that the person served with the requirement letter, was required under subsection 231.2(1) of the ITA to provide the information, that the information was not provided and that under paragraph 231.7(1)(b) of the ITA, the information or documents

are not protected from disclosure by solicitor-client privilege. (*Canada (Minister of National Revenue – M.N.R.) v. Marshall*, 2006 FC 279, [2006] F.C.J. No. 350 (QL).)

[31] Based on the above-mentioned, it is clear that, pursuant to subsection 231.2(1), the Respondent is a person who was required to provide information or documents to the Minister. Despite the thirty days provided to comply, the Respondent did not provide any of the requested documents or information and no solicitor-client privilege has been invoked.

[32] For the foregoing reasons, it is appropriate for this Court to exercise its discretion and order that the Respondent provide the information and documents sought by the Minister under the RFIs served on June 29, 2006.

**JUDGMENT**

**THIS COURT ORDERS,**

- 1) Pursuant to section 231.7 of the *Income Tax Act*, that the Respondent comply with the notice issued by the Minister and shall forthwith, and in any event, not later than thirty days from the date of this Order, provide the Information and Documents requested by the Minister of National Revenue in the two Requirements to provide documents, dated June 29, 2006.
  
- 2) Costs to be borne by the Respondent.

\_\_\_\_\_  
"Michel M.J. Shore  
Judge

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

**DOCKET:** T-1620-06

**STYLE OF CAUSE:** MINISTER OF NATIONAL REVENUE  
v. BERNARD DROPSY,  
  
as representative of CD<sup>2</sup>I COOPÉRATIVE DE  
SERVICES EN DÉVELOPPEMENT  
INTERNATIONAL, and as  
administrator of WARRINGTON

**PLACE OF HEARING:** Montreal, Quebec

**DATE OF HEARING:** September 5, 2007

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SHORE J.

**DATED:** October 9, 2007

**APPEARANCES:**

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Me Emilio S. Binavince FOR THE RESPONDENT

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