Date: 20080304

Docket: T-756-07

Citation: 2008 FC 297

Ottawa, Ontario, March 4, 2008

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

HER MAJESTY THE QUEEN

Applicant

and

ALEXANDER TRAN
(also known as Quo Dong Tran, Dung Tran,
Quoc Dong Tran and Quoc Tran)

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is a notice of motion brought by Alexander Tran (respondent) for an order pursuant to subsections 225.2(8) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) as amended, (the Act or *Income Tax Act*) extending the time to review an *ex parte* order of the Honourable Madam Justice Tremblay-Lamer authorizing the Minister of National Revenue (the Minister or applicant) to take

forthwith the actions described in paragraphs 225.1(1)(a) to (g) of the Act (the *ex parte* order), an order setting aside or varying the *ex parte* order and an order granting costs on the *ex parte* motion.

[2] The respondent requested that the following relief be granted:

a) an order pursuant to subsection 225.2(8) of the Act extending the time for a review of the *ex parte* order of the Honourable Madam Justice Tremblay-Lamer dated May 7, 2007;

b) an order pursuant to subsection 225.2(11) of the Act setting aside the *ex parte* order of the Honourable Madame Justice Tremblay-Lamer dated May 7, 2007 authorizing the Minister to take forthwith the actions described in paragraphs 225.1(1)(a) to (g) of the Act;

c) an order pursuant to subsection 225.2(11) of the Act setting aside the *ex parte* order of the Honourable Madame Justice Tremblay-Lamer dated May 7, 2007 awarding costs on the *ex parte* motion to the Minister; and

d) an order for costs in this motion.

[3] The applicant requested that the following relief be granted:

a) an order dismissing the respondent's application for an extension of time within which to make a motion for a review of the *ex parte* order of Justice Tremblay-Lamer dated May 7, 2007;

b) an order dismissing the respondent's application for an order setting aside the *ex parte* order of Justice Tremblay-Lamer dated May 7, 2007 authorizing the Minister to take forthwith the actions described in paragraphs 225.1(1)(a) to (g) of the Act;

c) an order dismissing the respondent's application for an order pursuant to subsection 225.2(11) setting aside the *ex parte* order of Justice Tremblay-Lamer dated May 7, 2007, awarding costs on the *ex parte* motion to the Minister; and

d) an order for costs in this motion.

Background

[4] On April 21, 2005, the Canada Revenue Agency (CRA) placed liens on real properties belonging to the respondent in order to secure a goods and services tax arrears.

[5] On June 8, 2005, the respondent was charged with a number of offences under the *Income Tax Act* including six counts relating to allegedly false or deceptive statements, one count of tax evasion, one count of making false or deceptive statement in GST returns under the *Excise Act, 2001*, 2002, c. 22 and five firearms charges under the *Criminal Code of Canada*, R.S.C. 1985, c. C-46. The respondent was never arrested or subjected to a bail hearing. Instead, he was summoned to appear in Court. It appears the litigation of the above noted charges will be complex and lengthy.

[6] The respondent submitted that some time in March 2007, the respondent's counsel at Edelson & Associates contacted the CRA to inquire as to the amount of and payment procedure on the GST amount owing.

[7] On May 3, 2007, the Minister of National Revenue (applicant) applied for an *ex parte* order authorizing the Minister to take collection action forthwith against the respondent under subsection 225.2(2) of the Act. On May 7, 2007, Justice Tremblay-Lamer issued a jeopardy order pursuant to subsection 225.2(2) and an award of costs to the applicant.

[8] Since the issuance of the jeopardy order, the Minister has (1) sent the requirements to pay in respect of the respondent's bank accounts, (2) obtained from the Federal Court certification of a debt in the amount of $1,184,242.25, (3) filed a writ of seizure and sale with the Sheriff of the City of Ottawa, and (4) registered document generals against three properties.

[9] On August 3, 2007, the respondent filed this notice of motion to extend the 30-day statutory limitation for filing a review application, and to set aside the jeopardy order granted by Justice Tremblay-Lamer.

Issues

The issues are as follows:

1. Should this Court grant an order extending the time for a review of the *ex parte* order dated May 7, 2007 pursuant to subsection 225.2(8) of the Act?

2. Should this Court set aside the *ex parte* order dated May 7, 2007 authorizing the Minister to take forthwith the actions described in paragraphs 225.1(1)(a) to (g) of the Act?

3. Should this Court set aside the *ex parte* order dated May 7, 2007 granting the Minister costs on the motion?

4. Should this Court grant costs on this application to either party?

Respondent's Submissions

[10] The respondent submitted that the 30-day limitation period provided in subsection 225.2(9) is not absolute. The respondent further submitted that subsection 225.2(9) provides expressly for the extension of that period if satisfied that the application was made as soon as practicable. The respondent noted that this Court has an inherent power to vary an order that has ongoing effect, such as a jeopardy order, where circumstances prove to be different from those known to the Court at the time the order was made (*Hoffman-La Roche Ltd.* v. *Canada (Minister of National Health and Welfare),* [1999] F.C.J. No. 662 (T.D.)). The respondent submitted that the following circumstances warrant an extension of time. Firstly, the limitation period was missed through no fault of the respondent, but rather as a result of the failure by his civil counsel to complete the work undertaken (*Chiarelli et al.* v. *Wiens* (2000), 46 O.R. (3d) 780 (Ont. C.A.); *Smallwood* v. *Hill,* [1997] O.J. No. 20 (Ont. C.A.)). Secondly, this application relates to the respondent's ability to enjoy his constitutional right to counsel of his choice. Thirdly, the initial order was issued without full disclosure (*R.* v. *Blom* (2002), 167 C.C.C. (3d) 332 (Ont. C.A.); *R.* v. *Beacon*, [2005] O.J. No. 4664 (Ont. S.C.)). Moreover, there is a general policy in law of not relying upon matters of form that bear upon criminal cases, where the governing consideration should be the interests of justice (*R.* v. *Milic*, [2001] O.J. 4557 (S.C.J.); *R.* v. *Ubhi*, [1992] B.C.J. No. 2895 (B.C.C.A.)). And finally, the applicant will suffer no prejudice as a result of the delay in seeking this relief. The respondent

encouraged the granting of an extension so that this matter could be resolved as a matter of substance rather than form.

[11] The respondent submitted that for this application to be granted, he must show that there are reasonable grounds for concluding that the test for granting a jeopardy order was not met during the *ex parte* motion. Once this is established, the onus then shifts to the Minister to justify the jeopardy order (*Canada* v. *Laframboise*, [1986] 3 F.C. 521). The respondent submitted that a party applying for a jeopardy order must produce cogent evidence that the respondent would dissipate their assets. Producing some evidence to show that the respondent could reduce his assets is insufficient. Furthermore, in seeking a jeopardy order via an *ex parte* motion, the moving party must make full and frank disclosure of all relevant facts to the Court (*Celanese Canada Inc*. v. *Murray Demolition Corp.*, [2006] S.C.J. No. 35).

[12] The respondent submitted that during the *ex parte* motion, the Minister presented insufficient evidence to prove the foundation of the order. Specifically, the applicant's submission to the Court that the respondent was a possible flight risk was unsupported by the evidence. The only evidence before the Court as to Mr. Tran's intention was that he intended to pay his GST debt. The Minister's allegations that the respondent was going to pay the GST debt so he could then liquidate or mortgage his properties and flee the country were completely unfounded. The respondent also noted that he was not arrested on the charges he faces, and no bail hearing was held, instead he was simply summoned to Court. The respondent submitted that the evidence pertaining

to the criminal charges should not have been presented in the application for the jeopardy order as it was immaterial to the issue before the Court.

[13] The respondent submitted the Minister failed to disclose material evidence to the Court during the *ex parte* motion. Specifically, the respondent alleged that CRA was aware that efforts were being made to un-encumber the respondent's properties so that he could provide security for his legal fees. This was not disclosed to Justice Tremblay-Lamer during the application and as such, constitutes a breach of the Minister's duty to make full and frank disclosure during an *ex parte* motion. The respondent further submitted that this breach resulted in significant interference with a fundamental tenet of our system of justice: the right to retain counsel. The respondent submitted that this interference is heightened in this case as Mr. Tran stands charged with 14 serious offences, which place his liberty in significant peril. The respondent also alleged that Mr. Tran is unable to represent himself in the criminal charges proceedings as the case against him is too legally complex, and his English is poor. The respondent submitted that it is in the public's interest to ensure that the respondent is properly defended on these serious charges.

[14] With regards to the issue of setting aside the order for costs dated May 7, 2007, the respondent submitted that if the jeopardy order is set aside, the cost award would be inappropriate. Furthermore, in light of the Crown's failure to disclose material evidence, the costs order should be overturned. It was submitted that the CRA has not conducted itself appropriately with respect to the issue of security for its claims as it placed GST liens on the properties even though it had adequate security for the GST assessments in the form of cash and cash equivalents that had been previously

seized. Furthermore, the CRA acted inappropriately in either intentionally or negligently refraining from confirming the GST assessment payout amounts.

Applicant's Submissions

[15] The applicant submitted that this application was filed 87 clear days after the authorization was served on the respondent; this is well beyond the standard 30-day limitation period. The applicant submitted that in *The Queen (Minister of National Revenue)* v. *Ament* (1996), 97 D.T.C. 5033 (F.C.), the Court held that in deciding whether or not to grant an extension of time, the judge must be satisfied that the application was made as soon as practicable. In that case, practicable was held to mean "capable of being carried out in action". In *Canada* v. *Hennelly*, [1999] F.C.J. No. 846, the Federal Court of Appeal upheld the trial judge's finding that "inadvertence was an insufficient explanation for the appellant's delay" (paragraphs 6 and 7). The applicant submitted that Mr. Tran provided the document to his lawyers at Edelson & Associates on May 8, 2007 (the day he received it) and there is no evidence that he took any subsequent steps to file the review application himself, to follow-up with his counsel, or to communicate with other counsel. Furthermore, the applicant noted that the respondent's counsel at Edelson & Associates sent the order to a separate law firm by fax, instead of filing the review application themselves. It appears that a secondary fax number was used, and as a result, the other lawyer did not receive the material. The applicant noted that counsel at Edelson & Associates failed to take measures to confirm that the order had been received by the other lawyer and it was not until June 29, 2007 that Edelson & Associates commenced their research into the validity of bringing an application. Furthermore, it was not until

35 days later that this application for review was filed. The applicant submitted that the application was not filed within the 30 day limitation period, nor was if filed as soon as practicable. Therefore, the limitation period established under subsection 225.2(9) of the Act should not be extended.

[16] The applicant submitted that subsection 225.2(11) of the Act specifies that a review application under subsection 225.2(8), such as the one in this case, is to be determined in a summary way. A summary review application is not the proper forum for the determination of whether the respondent's right to counsel in his upcoming criminal trial may be infringed (*The Queen* v. *Duncan* (1991), 47 F.T.R. 220 (T.D.) at paragraph 15). In light of this, the Court ought to disregard the evidence and arguments relating to the respondent's liberty interests, criminal charges, and inability to represent himself at his upcoming trial. These matters are reserved for the criminal trial judge.

[17] The applicant submitted that the Court will issue a jeopardy order only where "on the basis of the material put before the Court, it appeared that the Minister had reasonable grounds for believing that the taxpayer would waste, liquidate, or otherwise transfer his assets so as to become less able to pay the amount assessed and thereby jeopardizing the Minister's debt" (*Canada* v. *Goldbeck* (1990), 90 D.T.C. 6575). The applicant also noted that the wording of subsection 225.2(2) stipulates that the Court shall authorize the Minister to take any of the actions listed in paragraphs 225.1(1)(a) through (g), and as such, once the evidentiary threshold has been met, there is no discretion on the Court to refuse the application. Furthermore, the applicant submitted that the appropriate standard is for the Minister to show that the taxpayer could or may waste, liquidate or otherwise transfer his property (*Minister of National Revenue* v. *514659 B.C. Ltd.*, 2003 D.T.C.

5150 (F.C.T.D.), *M.N.R.* v. *Goldland Jewelers Ltd.*, 2006 ABQB 108, *1853-9049 Quebec Inc.* v. *The Queen*, 87 D.T.C. 5093).

[18] The applicant submitted that the *ex parte* motion record disclosed ample evidence that delay would jeopardize the collection of the income tax debt. The applicant noted that the record before the Court included a detailed bank draft analysis showing that the respondent and his wife had previously transferred significant amounts of money to family members in Vietnam. For instance, between December 31, 1997 and September 30, 2003, $477,000.00 was transferred to family members in Vietnam. Previous transfers of assets out of the taxpayers' control together with evidence of other transfers of valuable assets to family members has been found in itself sufficient to justify the issuance of a jeopardy order (*Canada (Minister of National Revenue)* v. *MacIver et al.* (1999), 99 D.T.C. 5524 (F.C.T.D.)). The applicant also submitted that the record included evidence to the fact that the respondent travels once a year to Vietnam and stays for approximately three months at a time, thus establishing further significant ties to Vietnam. The applicant also submitted that the record included evidence of the applicant's past unorthodox financial practices. Unorthodox financial practices have in past cases been recognized as warranting the grant of a jeopardy order (*Canada (Minister of National Revenue)* v. *Rouleau* (1995), 101 F.T.R. 57 (T.D.)). The applicant submitted that the *ex parte* motion record provided evidence that the respondent operated a cash business with significant cash flow, but inadequate books and records. Moreover, the record also provided evidence that the respondent had previously transported $225, 000 in cash to the bank in garbage bags containing low denominations of $10 and $20 bills. The applicant submitted that there was ample evidence before the Court to grant the jeopardy order.

[19] The applicant also made submissions as to the respondent's allegation that material evidence was not disclosed to the Court during the *ex parte* motion. The applicant agreed that during an *ex parte* application, the applicant must act in the utmost good faith, and make full and frank disclosure so as not to mislead the Court (*Canada (Minister of National Revenue)* v. *Services M.L. Marengère Inc.* (1999), 2000 D.T.C. 6032). The applicant submitted that at the time of the *ex parte* motion, the CRA had no knowledge that the respondent's motivation for paying his outstanding GST was to provide security for his legal fees. The applicant noted that the affidavit of Sara Siebert states that the CRA had knowledge of Mr. Tran's intention to secure legal fees as of March 14, 2007; however, this is contradicted by the affidavit of John Moore which states that the information as to Mr. Tran's intention to provide security for his legal fees was not provided to CRA until June 21, 2007. Finally, the applicant submitted that in any event, Mr. Tran's intended use of the equity in the properties is irrelevant in the context of the application for a jeopardy order under section 225.2; the question before the Court is whether or not there are reasonable grounds to believe that the delay in collecting would jeopardize the collection of all or any part of the amount assessed. Granting a jeopardy order does not turn on the intention of the debtor to dissipate assets, the matter must be determined objectively and realistically (*Canada (Minister of National Revenue* v. *Delauniere*, 2007 FC 636). The applicant submitted that in considering the respondent's actions in an objective and realistic manner, there were reasonable grounds to believe that the delay in collection would jeopardize the payment of Mr. Tran's income tax debt.

Analysis and Decision

[20] **Issue 1**

Should this Court grant an order extending the time for a review of the *ex parte* order dated May 7, 2007 pursuant to subsection 225.2(8) of the Act?

The respondent requested an extension of time for reviewing the *ex parte* order pursuant to subsection 225.2(8). The respondent argued that the circumstances of this case warrant the exercise of this Court's inherent power to extend the limitation period. The applicant submitted that the 30-day limitation period has expired and the application for review was not brought as soon as practicable; therefore, the Court should dismiss this request.

[21] The *ex parte* order was granted on May 7, 2007 by Madame Justice Tremblay-Lamer. According to the respondent's affidavit of Sara Siebert, the respondent faxed a copy of the order to the law firm Edelson & Associates on May 8, 2007. I understand that Mr. Edelson then immediately faxed the order to Mr. Paul Dioguardi, the respondent's civil tax counsel. This fax was followed by a voicemail message from Mr. Edelson to Mr. Dioguardi. At this point, it appears that counsel at Edelson & Associates was satisfied that Mr. Dioguardi would be taking care of the matter. However, Mr. Dioguardi has subsequently explained that the order was faxed to a secondary fax number at his office and did not come to his attention. There was no submission as to why the voicemail left for Mr. Dioguardi was not followed up on. There is also nothing on the record to suggest that aside from the voicemail message left by Mr. Edelson to Mr. Dioguardi, there was any follow-up by counsel at Edelson & Associates.

[22] On June 21, 2007, Edelson & Associates learned that no timely application had been brought by Mr. Dioguardi to remove the jeopardy order. On June 29, 2007 Edelson & Associates commenced their research into the viability of bringing an application to address this issue. It was not until August 3, 2007, that Edelson & Associates filed this motion for an extension of time and application for review. Thus, as noted by the applicant, this application for review is a full 87 days after the order was served on the respondent; almost two months in excess of the expiry of the limitation period.

[23] The legislative provisions containing the limitation period read as follows:

> 225.2(1) In this section, "judge" means a judge or a local judge of a superior court of a province or a judge of the Federal Court.
>
> [. . .]
>
> (8) Where a judge of a court has granted an authorization under this section in respect of a taxpayer, the taxpayer may, on 6 clear days notice to the Deputy Attorney General of Canada, apply to a judge of the court to review the authorization.
>
> (9) An application under subsection 225.2(8) shall be made
>
> (a) within 30 days from the day on which the authorization was served on the taxpayer in accordance with this section; or
>
> (b) within such further time as a judge may allow, on being satisfied that the application was made as soon as practicable.

[24] The respondent does not deny that the limitation period has expired. A question remains however, as to whether the respondent's application was brought as soon as practicable under

paragraph 225.2(9)(b). In *Canada (Minister of National Revenue)* v. *Desgagné*, [2001] F.C.J No. 1213, this Court held at paragraph 10 that "the Act clearly specifies that in order to grant an extension of time, the Court must be satisfied that the applicant filed an application for review of the order as soon as practicable (emphasis added)." Justice Blais then went on to cite the decision in *Moreno* v. *Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 218, wherein it was held that an applicant requesting an extension of time must first prove that there was some justification for the delay throughout the whole period of the delay and secondly, that they have an arguable case. In my opinion, the respondent has failed to satisfy the first requirement. While I recognize that until June 21, 2007, the respondent's legal counsel at Edelson & Associates believed that a timely application had been brought by Mr. Dioguardi, they nonetheless waited until August 3, 2007 to bring this application. The respondent argued that this delay was needed to "assess the validity of the application". While some time may have been needed to organize the application, I do not feel that a period of over a month, which I note was the original limitation period, is justified. Consequently, the respondent has failed to provide a justification for the entire delay between June 21, 2007 and August 3, 2007. As such, I am of the opinion that the application was not brought as soon as practicable as required by paragraph 225.2(9)(b) of the Act.

[25] The only remaining means of extending the limitation period is for this Court to use its inherent discretion to extend the 30-day limitation period. The appropriate test for an extension of time was developed in *Canada (Attorney General)* v. *Hennelly* (1999), 244 N.R. 399 (F.C.A):

1. there is a continuing intention to pursue his or her application;
2. the application has some merit;

3. there would be no prejudice arising from the delay on the not moving party; and

4. there exists a reasonable explanation for the delay

Furthermore, I note that the Federal Court of Appeal in *Hennelly* above, observed that justification for an extension of time turns on the facts of each particular case.

[26] In the present case, the Mr. Tran appears to have had a continuing intention to pursue his application. In my opinion, there is some merit to the application being that the respondent alleges a breach of the Minister's requirement to disclose all material facts during the *ex parte* motion. Furthermore, there appears to be no prejudice to the Minister arising from the delay. However, with regards to a reasonable explanation for the delay, I am not satisfied that one exists.

[27] As previously discussed, an application was not filed within the 30-day limit because the respondent's counsel at Edelson & Associates faxed the order to the respondent's civil tax lawyer, thinking that they would be filing the application. When counsel at Edelson & Associates realized on June 21, 2007 that no application had been filed, they then waited over a month to file this application on August 3, 2007. While I accept that there might have been a reasonable explanation for the delay up to June 21, 2007, there is no reasonable explanation for the delay between June 21st and August 3rd. I note that despite having knowledge that the time limit had already expired, counsel at Edelson & Associates waited over a month to bring this application. The only reasons provided by the respondent for this delay is the fact that they needed time "to assess the validity of bringing the application". I find this explanation does not meet the requirement of a reasonable

explanation, especially since the time taken to assess the validity of the claim was in excess of the original 30-day limitation period. This is not reasonable.

[28] In my opinion, this Court should not exercise its inherent power to extend the limitation period. In *Chin* v. *Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 1033, this Court held at paragraph 10:

> I know that Courts are often reluctant to disadvantage individuals because their counsel miss deadlines. At the same time, in matters of this nature, counsel is acting in the shoes of her client. Counsel and client for such purposes are one. It is too easy a justification for non-compliance with the rules for counsel to say the delay was not in any way caused by my client and if an extension is not granted my client will be prejudiced. I come back again to the question of fairness. It is unfair for some counsel to be proceeding on the basis that barring unforeseen events the time limits must be met and for others to be assuming that all they need do is plead overwork, or some other controllable event, and they will be granted at least one extension of time. In the absence of an explicit rule providing for the latter I proceed on the basis that the former is what is required.
>
> [Emphasis added]

[29] The case of *Chin* above, involved counsel who had failed to meet the limitation period for filing because of pressure of work and scheduling issues. While the facts in the present case are different, the circumstances are the same in that the reason for delay was not outside the control of counsel. I am of the opinion, that in the circumstances of this case, it is reasonable for this Court to expect counsel to follow-up on the fax sent, especially when no reply was received from the voicemail message left shortly after the fax was sent. Moreover, it is equally reasonable for this Court to expect counsel, upon discovering that an application was not made in a timely fashion, to file this notice of motion as quickly as possible and not wait over a month to assess its validity

before filing. In my opinion, the principle articulated in *Chin* above, applies to the present case. The test for an extension of time in *Hennelly* above, has not been satisfied.

[30] I note that counsel for the respondent argued that this application related to the respondent's ability to enjoy his constitutional right to counsel of his choice. I agree with the applicant that these are matters for the criminal trial judge to consider.

[31] The respondent's request for an extension of time for a review of the *ex parte* order of Madame Justice Tremblay-Lamer is denied.

[32] Because of my finding on the request for the extension of time, I will not be dealing with the remaining issues.

[33] The application of the respondent to extend the time for the filing of an application to review Madame Justice Tremblay-Lamer's order having been denied, the respondent's application is dismissed.

[34] The applicant shall have the costs of the application.

JUDGMENT

[35] **IT IS ORDERED that** the application of the respondent to extend the time for the filing of an application to review Madame Justice Tremblay-Lamer's order is denied and consequently the respondent's application is dismissed with costs to the applicant.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) as amended:

225.1(1) If a taxpayer is liable for the payment of an amount assessed under this Act, other than an amount assessed under subsection 152(4.2), 169(3) or 220(3.1), the Minister shall not, until after the collection-commencement day in respect of the amount, do any of the following for the purpose of collecting the amount:	225.1(1) Si un contribuable est redevable du montant d'une cotisation établie en vertu des dispositions de la présente loi, exception faite des paragraphes 152(4.2), 169(3) et 220(3.1), le ministre, pour recouvrer le montant impayé, ne peut, avant le lendemain du jour du début du recouvrement du montant, prendre les mesures suivantes:
(a) commence legal proceedings in a court,	a) entamer une poursuite devant un tribunal;
(b) certify the amount under section 223,	b) attester le montant, conformément à l'article 223;
(c) require a person to make a payment under subsection 224(1),	c) obliger une personne à faire un paiement, conformément au paragraphe 224(1);
(d) require an institution or a person to make a payment under subsection 224(1.1),	d) obliger une institution ou une personne visée au paragraphe 224(1.1) à faire un paiement, conformément à ce paragraphe;
(e) [Repealed, 2006, c. 4, s. 166]	e) [Abrogé, 2006, ch. 4, art. 166]
(f) require a person to turn over moneys under subsection 224.3(1), or	f) obliger une personne à remettre des fonds, conformément au paragraphe 224.3(1);

(g) give a notice, issue a certificate or make a direction under subsection 225(1).

g) donner un avis, délivrer un certificat ou donner un ordre, conformément au paragraphe 225(1).

225.2(1) In this section, "judge" means a judge or a local judge of a superior court of a province or a judge of the Federal Court.

225.2(1) Au présent article, «juge » s'entend d'un juge ou d'un juge local d'une cour supérieure d'une province ou d'un juge de la Cour fédérale.

. . .

. . .

(8) Where a judge of a court has granted an authorization under this section in respect of a taxpayer, the taxpayer may, on 6 clear days notice to the Deputy Attorney General of Canada, apply to a judge of the court to review the authorization.

(8) Dans le cas où le juge saisi accorde l'autorisation visée au présent article à l'égard d'un contribuable, celui-ci peut, après avis de six jours francs au sous-procureur général du Canada, demander à un juge de la cour de réviser l'autorisation.

(9) An application under subsection 225.2(8) shall be made

(9) La requête visée au paragraphe (8) doit être présentée:

(a) within 30 days from the day on which the authorization was served on the taxpayer in accordance with this section; or

a) dans les 30 jours suivant la date où l'autorisation a été signifiée au contribuable en application du présent article;

(b) within such further time as a judge may allow, on being satisfied that the application was made as soon as practicable.

b) dans le délai supplémentaire que le juge peut accorder s'il est convaincu que le contribuable a présenté la requête dès que matériellement possible.

. . .

. . .

(11) On an application under subsection 225.2(8), the judge shall determine the question summarily and may confirm,

(11) Dans le cas d'une requête visée au paragraphe (8), le juge statue sur la question de façon sommaire et peut confirmer,

set aside or vary the authorization and make such other order as the judge considers appropriate.	annuler ou modifier l’autorisation et rendre toute autre ordonnance qu’il juge indiquée.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-756-07
STYLE OF CAUSE:	HER MAJESTY THE QUEEN - and - ALEXANDER TRAN (also known as Quo Dong Tran, Dung Tran, Quoc Dong Tran and Quoc Tran)
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	September 24, 2007
REASONS FOR JUDGMENT AND JUDGMENT OF:	O'KEEFE J.
DATED:	March 4, 2008

APPEARANCES:

Sophie Matt Andrew Gibbs	FOR THE APPLICANT
David M. Paciocco	FOR THE RESPONDENT

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