

**Date: 20080912**

**Docket: T-473-06**

**Citation: 2008 FC 1031**

**Ottawa, Ontario, September 12, 2008**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**ALLAN JAY GORDON**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

**Defendant**

**Docket: T-474-06**

**BETWEEN:**

**JAMES A. DEACUR & ASSOCIATES LTD. and  
JAMES ALLAN DEACUR**

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

**Defendant**

**REASONS FOR ORDER AND ORDER**

**O'KEEFE J.**

[1] This is a submission by the defendant to clarify paragraph 1 of my original order which reads in part as follows:

Subject to the defendant giving notice to any affected taxpayer of the intended release of their taxpayer information, an order shall issue declaring any taxpayer information – as defined in subsection 241(1) of the *Income Tax Act* – in the possession of the CRA, the Department of Justice FPS and their respective agents, relevant to the within action, may be released by CRA officials, Department of Justice FPS officials and their agents, to counsel for the defendant in the within action, as may be necessary to defend the action, to permit the Crown to make full answer and defence on the merits of the action . . .

[2] The defendant submits in effect that the determining of who the affected taxpayers are in order to give notice would require the condition precedent of the order to be met, namely, that the notice would have to be given before the names of the affected taxpayers could be determined.

[3] To resolve this, the defendant proposes that the following clauses be made part of an order:

1. That the defendant's counsel be permitted to have access to the files of the Canada Revenue Agency (the "CRA"), the Public Prosecution Service of Canada (the "PPSC") and its agents, for the purposes of identifying the names of the "affected taxpayers" to be served in accordance with the order, and obtaining their addresses for service in order to provide the required notice;
2. That the plaintiffs in the actions are not "affected" taxpayers" for the purposes of giving such "notice"; and
3. That the notice to "affected taxpayers" contain a copy of the order and reasons for order, and a brief explanation that such notice is being issued in accordance with the order and reasons for order.

[4] I have reviewed my reasons for order and the submissions of the parties and I note that it was certainly intended to allow the identity of the affected taxpayers and a means to determine their address in order to serve the notice on them. This was omitted from the order and should be corrected.

[5] I am of the opinion that my order should be amended by adding as paragraph 8, the following:

- (i) That the defendant's counsel be permitted to have access to the files of the Canada Revenue Agency (the "CRA"), the Public Prosecution Service of Canada (the "PPSC") and its agents, for the purposes of identifying the names of the "affected taxpayers" to be served in accordance with the order, and obtaining their addresses for service in order to provide the required notice;
- (ii) That the plaintiffs in the actions are not "affected" taxpayers" for the purposes of giving such "notice"; and
- (iii) That the notice to "affected taxpayers" contain a copy of the order and reasons for order, and a brief explanation that such notice is being issued in accordance with the order and reasons for order.

[6] The parties should address the issue of the confidentiality of the taxpayer information and personal information when it is obtained with the case management team.

**ORDER**

[7] **IT IS ORDERED that** my original order dated March 6, 2007 in this application is amended by adding as paragraph 8, the following:

- (i) That the defendant's counsel be permitted to have access to the files of the Canada Revenue Agency (the "CRA"), the Public Prosecution Service of Canada (the "PPSC") and its agents, for the purposes of identifying the names of the "affected taxpayers" to be served in accordance with the order, and obtaining their addresses for service in order to provide the required notice;
- (ii) That the plaintiffs in the actions are not "affected" taxpayers" for the purposes of giving such "notice"; and
- (iii) That the notice to "affected taxpayers" contain a copy of the order and reasons for order, and a brief explanation that such notice is being issued in accordance with the order and reasons for order.
- (iv) The parties should address with the case management team, the issue of keeping confidential the taxpayer and personal information when it is obtained. I also retain jurisdiction with respect to this issue.

"John A. O'Keefe"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-473-06 & T-474-06

**STYLE OF CAUSE:** ALLAN JAY GORDON

- and -

HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA

JAMES A. DEACUR & ASSOCIATES LTD.  
and JAMES ALLAN DEACUR

- and -

HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA

**WRITTEN SUBMISSIONS BY THE PARTIES**

**REASONS FOR ORDER  
AND ORDER OF:**

O'KEEFE J.

**DATED:** September 12, 2008

**APPEARANCES:**

Sarah J. O'Connor

FOR THE PLAINTIFFS

Wendy J. Linden  
Edward Park

FOR THE DEFENDANT

**SOLICITORS OF RECORD:**

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FOR THE PLAINTIFFS

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FOR THE DEFENDANT