Federal Court Cour fédérale

**Date: 20131011**

**Docket: T-1668-12**
**T-1879-12**

**Citation: 2013 FC 1032**

**Ottawa, Ontario, October 11, 2013**

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

**BETWEEN:**

**PAUL MATTHEW JOHNSON**

**Applicant**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**
**(THE MINISTER OF NATIONAL REVENUE)**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a series of decisions by the Minister of National Revenue through officials at the Canada Revenue Agency [the CRA or the Minister]. This application is made pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. The Applicant disputes a number of assessment and collection decisions made by the Minister pursuant to part IX of the *Excise Tax Act*, RSC 1985, c E-15 [the Act].

## I. Issues

[2] The issues raised in the present application are as follows:

A. i) Did the Minister make an assessment of the net tax of the Partnership I or the Applicant prior to taking collection action?

ii) If the Minister made a legitimate assessment of net tax of Partnership I or the Applicant, or both, was the Requirement to Pay Reasonable Monies [RTP] authorized by the Act and, if not, what is the appropriate remedy?

B. Did the Minister issue the First Assessments for an improper purpose such that they should be quashed?

C. i) Did the Minister issue the Second Assessments for an improper purpose such that they should be quashed?

ii) Do the Second Assessments give rise to a reasonable apprehension of bias such that they should be quashed?

D. Was the Minister *functus officio* when he issued the Second Assessments such that those assessments are nullities?

E. If the Court declines to quash the First Assessments, should a stay be granted in respect of the CRA's collection action pending the outcome of the appeal of the Personal NOA I in the Tax Court of Canada?

[3] Notwithstanding able arguments made by counsel for Mr. Johnson, I dismiss his application for the reasons that follow.

## II. Background

[4] On April 17, 2012, Sergeant Jay Bentham of the Royal Canadian Mounted Police [RCMP] telephoned Terence Finlay, a CRA auditor in the Special Enforcement Program [SEP]. The SEP is a section within the Enforcement Division of the CRA. Its mandate is to conduct audits and undertake other civil enforcement actions of persons known or suspected of deriving income from illegal activities. Subsequent to this call, Sergeant Bentham emailed Mr. Finlay a four-page document [the Synopsis] summarizing searches and surveillance undertaken by the RCMP in relation to the Applicant and eight other individuals. The Applicant, Danny Le and others, were alleged to be engaging in activities related to the acquisition of cocaine and the production and the distribution of "crack" cocaine and methamphetamine. It did not identify any activities undertaken by Rachel Laing, Mr. Le's spouse.

### A. *Partnership I*

[5] On April 18, 2012, Mr. Finlay made a written request to open an internal account for a goods and services tax/harmonized sales tax [GST/HST] audit of a partnership consisting of the Applicant, Mr. Le and Ms. Laing [Partnership I]. Partnership I was subsequently registered by the CRA. The business activity of Partnership I was described as "cocaine distribution" and the estimated annual revenue was $3 million. The effective date of the registration for Partnership I was January 1, 2011.

[6] On April 19, 2012, the Applicant was arrested by RCMP officers. His residence was searched and approximately $13,000 in cash seized. At that time, the Applicant was not charged

with an offence. RCMP officers also arrested Mr. Le and searched the residence of Ms. Laing. The officers seized approximately $71,000 in cash and five kilograms of cocaine.

[7] On April 19, 2012, Mr. Finlay and other CRA officials communicated regarding collection action in relation to the property of Partnership I. Collections Officer Mandeep Gill took steps the same day to create an assessment in the name of Partnership I for the two three-month reporting periods ending September 30, 2011, and December 31, 2011, in the amount of $292,699.63.

[8] On April 20, 2012, Mr. Gill prepared a RTP in respect of the Applicant, Mr. Le and Ms. Laing. He served the RTP on the RCMP by fax. At that time, no Notice of Assessment had been issued or mailed to Partnership I or the Applicant.

B. *Issuance of Notice of Assessments*

[9] On April 24, 2012, the Minister mailed a Notice of Assessment for Partnership I [Partnership I NOA] to Mr. Finlay and mailed a personal Notice of Assessment [Personal NOA I] to the Applicant, pursuant to s. 272.1(5) of the Act, in respect of the Applicant's purported liability in Partnership I [the First Assessments].

C. *Collection Action*

[10] On April 26, 2012, the Personal NOA I was registered in Federal Court and a Writ of Seizure and Sale was obtained by the Minister.

[11] On May 3, 2012, CRA officers attended the RCMP's offices and hand-delivered the RTP prepared on April 20, 2012. They then took the Applicant's cash that was seized by the RCMP.

[12] On May 9, 2012, the CRA's bailiffs seized vehicles belonging to Mr. Le and Ms. Laing. On May 15, 2012, the CRA's bailiffs seized personal property and vehicles of Applicant. On May 24, 2012, the CRA registered a certificate of title on the Applicant's property with the BC Land Title Office. On May 28, 2012, a Requirement to Pay was sent to the Applicant's bank. To date, the assets of Mr. Le and the Applicant have not been sold by the Minister.

D. *Requests for the Report to Crown Counsel*

[13] On October 12, 2012, and December 27, 2012, Mr. Finlay contacted the RCMP to ask if a Report to Crown Counsel [RCC] on their investigation into the Applicant and others was available.

E. *Partnership II*

[14] On January 23, 2013, the RCMP delivered documentation to Mr. Finlay concerning alleged drug trafficking activities of Partnership I during the period of October 1, 2011 to March 31, 2012. This documentation included a RCC. After reviewing the documentation, Mr. Finlay determined that Partnership I did not include Ms. Liang.

[15] On February 22, 2013, Mr. Finlay sent a proposal letter regarding a partnership between the Applicant and Mr. Le [Partnership II], copied to the Applicant, respecting a proposed adjustment to the GST/HST liability of the Partnership for the three-month periods ending December 31, 2011, and March 31, 2012 [the Relevant Period].

[16] On April 17, 2013, Mr. Finlay advised Partnership II that the audit for the Relevant Period was complete.

F. *Vacating Assessment*

[17] On April 19, 2013, Mr. Finlay indicated that he vacated the assessment for Partnership I's three-month period ending September 30, 2011.

G. *Second Assessments*

[18] On April 24, 2013, a Notice of (Re)assessment for Partnership II was issued for the Relevant Period. Partnership II was assessed for the amount of $238,262.56 for the reporting period ending December 31, 2011, and $105,035.61 for the period ending March 31, 2012 [the Partnership NOA II].

[19] On May 3, 2013, a Notice of (Re)assessment was issued to the Applicant pursuant to subsection 272.1(5) of the Act in the amount of $253,177.91, concerning his joint and several liability with respect to the April 24, 2013, Assessment [the Personal NOA II], collectively with Partnership NOA II [the Second Assessments].

[20] Relevant provisions of the *Excise Tax Act*, RSC, 1985, c E-15 and the *Federal Courts Act*, RSC, 1985, c F-4 are attached as Appendix "A".

## III. Analysis

[21] As a preliminary question that is at the root of this application, I must decide if the issues raised are within the jurisdiction of the Federal Court, or are within the exclusive jurisdiction of the Tax Court of Canada.

[22] The separate jurisdiction of the Federal Court and the Tax Court has been carefully analyzed by the Supreme Court of Canada in *Canada v Addison & Leyen Ltd*, 2007 SCC 33 at paras 8 and 11. While the Court recognized that judicial review is available to control abuses of power and wrongful conduct by tax officials, provided the matter was not otherwise appealable, it also cautioned about the use of judicial review:

> 11 Reviewing courts should be very cautious in authorizing judicial review in such circumstances. The integrity and efficacy of the system of tax assessments and appeals should be preserved. Parliament has set up a complex structure to deal with a multitude of tax-related claims and this structure relies on an independent and specialized court, the Tax Court of Canada. Judicial review should not be used to develop a new form of incidental litigation designed to circumvent the system of tax appeals established by Parliament and the jurisdiction of the Tax Court. Judicial review should remain a remedy of last resort in this context.

[23] Equally applicable are the Supreme Court of Canada's comments in *Canada (Attorney General) v Telezone Inc*, 2010 SCC 62 at paras 24-26. In that case, the Court reminded us that judicial review is directed at the "…legality, reasonableness and fairness of the procedures employed and actions taken by the government decision maters."

[24] Accordingly, pursuant to section 12 of the *Tax Court of Canada Act,* RSC, 1985, c T-2 and section 18.5 of the *Federal Courts Act*, the Tax Court has exclusive jurisdiction where a question of the validity or correctness of an assessment of GST/HST liability by the CRA is at issue. This

jurisdiction does not extend to situations where such an assessment is made pursuant to the unlawful, tortious or unreasonable conduct of tax officials (*Ereiser v Canada*, 2013 FCA 20 at para 32, citing *Main Rehabilitation Co v Canada*, 2004 FCA 403 at paras 6-8; and *Ereiser*, at para 35).

[25] However, if a challenge to the CRA assessment process represents a collateral attack on the validity or correctness of the assessment through allegations of improper conduct of an official, then that is a matter within the exclusive jurisdiction of the Tax Court (*Roitman v Canada*, 2006 FCA 266 at para 20, *Smith v Canada (Attorney General)*, 2006 BCCA 237).

[26] Moreover, the Tax Court's jurisdiction is not merely constrained to questions of quantum and liability for taxes to be assessed and paid, but includes questions of the Minister's legal authority to make such assessments and the legal efficacy of the assessments (*The Minister of National Revenue (Appellant) v A W C Parsons and Hugh J Flemming Jr, for themselves and as Executors of the Estate of Hugh John Flemming Sr (Respondents)*, [1984] 84 DTC 6345 (FCA) at p 6346, *Walker v Canada*, 2005 FCA 393 at paras 11,13).

[27] I must therefore decide whether the conduct of the Minister, in assessing the Applicant and the Partnerships, and issuing the RTP, is reviewable by the Federal Court, or is properly within the exclusive jurisdiction of the Tax Court.

[28] Given the above, judicial review of the conduct of tax officials should be sparingly authorized, and only when said conduct is clearly beyond the ordinary exercise of discretion granted to them by the statutory framework at issue. A determination of whether conduct meets this

threshold should be made with attention paid to all the allegations of the Applicant. This attention should seek to go beyond the face value of the claims, in order to ensure that the Federal Court is not used as a means of collateral attack on issues that are properly before the Tax Court.

[29] With that legal and legislative background in mind, I turn to answer each of the issues before me.

A. i) *Did the Minister Make an Assessment of the Net Tax of the Partnership I or the Applicant Prior to Taking Collection Action?*

[30] The Applicant's position is that instead of making a proper assessment before collection, Mr. Finlay considered the Synopsis and aimed to obtain the Applicant's money quickly and in advance of any provincial action pursuant to legislation pertaining to the proceeds of crime. To accomplish this, Mr. Finlay concocted Partnership I to collect the money before any assessment was made, and creating a baseless assessment of prior periods in 2011, when no information concerning the activities of Partnership I were before him, as the Synopsis related to activities in 2012. Accordingly, the Applicant claims that there was no factual basis on which the Minister made his assessment, pointing mainly to the scarcity of information in the Synopsis, the seeming arbitrariness of information used in the calculation of the assessment and the minimal steps taken to verify this information. In short, the Applicant alleges wrongful action on the part of Minister in creating the assessments under review, necessarily asking this Court to conclude that the assessments were wrong in law and thus not valid and binding.

[31] In my opinion, such a conclusion would constitute a collateral attack on the validity of the assessments, a matter not within the jurisdiction of this Court.

[32] The Applicant also argues that even if the Minister did have a factual basis for the First Assessments, he did not complete the assessment process as set out in section 300 of the Act. This argument puts at issue the "legal efficacy' of the notice of assessment relating to the Johnson Assessment, which is also an improper collateral attack against the correctness of the assessment.

A. ii) *If The Minister Made A Legitimate Assessment Of Net Tax Of Partnership I Or The Applicant, Or Both, Was The RTP Authorized By The Act And, If Not, What Is The Appropriate Remedy?*

[33] The Applicant's argument on this issue is that the RTP was issued prior to the issuance of Partnership NOA I and Personal NOA I, in contravention of subsection 315(1) of the Act.

[34] I disagree. Firstly, this issue is also within the exclusive jurisdiction of the Tax Court. However, even if I am wrong in this point, I find that the RTP was authorized.

[35] The Act requires the Minister to first assess the tax payable by the person and then to send to the person a notice of assessment; the assessment and notice of assessment being two separate processes.

[36] Subsection 315(1) of the Act provides that before collection action can ensue, an assessment must be made. Accordingly, if a taxpayer has been assessed, any collection action taken subsequent to that assessment is authorized by the Act. Contrary to the Applicant's submissions, there is no requirement that a notice of assessment be issued before collection action can occur.

[37] Moreover, section 315(2) of the Act provides that if the Minister sends a notice of assessment to a person, any amount assessed and remaining unpaid is payable forthwith by the person. I agree with the Respondent that this suggests that the Minister may immediately pursue collection action upon assessment and prior to the notice of assessment having been issued, and that the individual subject to assessment is obligated to pay forthwith the amount remaining unpaid subsequent to the notice of assessment being issued.

[38] I also agree with the Respondent that the garnishment provisions of the Act, coupled with a reading of subsections 299(3) and 313(1), suggest that the Minister was authorized to proceed with the RTP, notwithstanding that the notice of assessment had not yet been sent to the Applicant. Section 320 provides for the garnishment of "moneys seized by a police office in the course of administering or enforcing the criminal law of Canada from another person who is liable to make a payment" under the Act. Subsection 313(1) defines "tax debts" to mean "any amount payable or remittable by a person" under the Act. Subsection 299(3) provides that liability under the Act is not affected by the fact that no assessment has been made.

[39] Accordingly, the RTP was authorized by the Act.

B. *Did The Minister Issue The First Assessments For An Improper Purpose Such That They Should Be Quashed?*

[40] The Applicant claims that the Minister abused his power and acted contrary to the rule of law because the First Assessments were made for the improper purpose of allowing the Minister to collect GST/HST under the Act without first ascertaining the GST/HST liability of the Applicant.

[41] Noting that the Minister must act in good faith and accordance with principles of natural justice (*Maple Lodge Farms Ltd v Canada*, [1982] 2 SCR 2 at pages 7-8; *Roncarelli v Duplessis*, [1959] SCR 121 at page 143), the Applicant argues that he did not do so with regard to the First Assessments. The Applicant notes that there is a statutory scheme pursuant to section 322.1 of the Act for situations where the Minister is concerned that a subject of tax collection will put their assets out of reach of the CRA. By failing to use this statutory scheme, the Minister intended to circumvent the provisions of the Act.

[42] Again, I find that the Minister acted prudently given the circumstances. The Minister was concerned that the Applicant would take steps to put his assets out of reach if it did not act in a timely manner. The Minister has a statutory duty to assess GST/HST payable by law and the court cannot stop the Minister from carrying out that statutory duty even if doing so might "impose unfair and onerous obligations and financial hardships upon the taxpayer" (*Tele-Mobile Co Partnership v Canada Revenue Agency*, 2011 FCA 89 at para 5). Furthermore, collections officials are under no obligation to assess the merits of any perspective appeal to the Tax Court (*893134 Ontario Inc v Minister of National Revenue*, 2008 FC 715 at paras 15, 20-21, 27, 34).

[43] As well, Section 322.1 of the Act was not available on the facts of this case, as it is only applicable to a reporting period not yet completed, not a past reporting period. The Minister could not have used that section, as the definition for "assessed period" pertaining to that section refers to a current reporting period, not a past one. I find that to the extent this Court may consider this allegation as part of a judicial review, it is not justified on the facts here.

D. i) *Did The Minister Issue The Second Assessments For An Improper Purpose, Such That They Should Be Quashed?*

[44] The Applicant argues again on the basis of *Roncarelli*, above, that the Minister exercised his authority in bad faith. In support he cites *Finney v Barreau du Quebec*, 2004 SCC 36 at para 39, for the proposition that bad faith need not be restricted to intentional conduct as in *Roncarelli*. It includes recklessness, and circumstantial evidence of bad faith where a victim is unable to present direct evidence (*Enterprises Sibeca Inc v Frelighsburg (Municipality)*, 2004 SCC 61 at paras 25-26).

[45] The Applicant states that the Second Assessments were issued for an improper purpose: permitting the Minister to preserve his unlawful collection activity without his conduct being subject to judicial review in the Federal Court and appeal in the Tax Court. They were not issued for the *bona fide* purpose of fixing the Applicant's tax liability.

[46] The Applicant bases this claim on several points:

a) The explanation by the Minister as to why he removed Ms. Laing from the partnership is irrational and plainly false;

b) Special steps taken by the Minister to alter the existing GST account and manually issue Personal NOA II shows the Minister was trying to preserve collection action previously taken against the Applicant;

c) The Minister controlled the timing of the issuance of the Second Assessments;

d) Despite claiming that Ms. Laing had been "removed" as a partner, the Minister failed to undo the collection action taken against her;

e) The Minister admits to creating notional assessments which act as placeholders to collect tax without making a *bona fide* assessment

[47] Contrary to the Applicant's assertions in (a) to (e) above, I find that the Minister acted pursuant to the powers granted to it in the Act. In particular, subsection 288(1) grants broad power to the Minister to conduct audits related to the enforcement or administration of the Act. Further, subsection 299(3) makes the validity of an assessment subject to, among other things, reassessments.

[48] While the First Assessments were conducted on the basis of preliminary information which was subsequently updated, it is fair for the Minister to conduct such a preliminary assessment, given that the Minister will often not have more fulsome information until a more comprehensive audit takes place (*Ramey v Her Majesty the Queen*, [1993] TCJ No 142 at para 4).

[49] In this case, following the issuance of the First Assessments, the Minister conducted an audit of the partnership to verify the GST liability that was assessed. As a result of this audit, the Second Assessments were issued. This was done in accordance with the Minister's mandate under the Act.

[50] There is no real evidentiary basis to infer that the Minister acted improperly. The Applicant's arguments are speculative and would require a good deal of conjecture in order to be accepted. The Minister's decision to remove Ms. Laing from the partnership, when considered with the Respondent's version of events that the Minister subsequently determined, following an audit,

that there was insufficient evidence to include Ms. Laing in the partnership, is reasonable and accords with the mandate of the Minister to determine tax liability pursuant to the Act.

[51] Similarly, the Applicant's concerns regarding the manual assessment and timing of the assessments have been explained as to why they were done in the manner by the Minister and these explanations are reasonable.

[52] The Applicant's assertion that the collection actions against Ms. Laing were not reversed is not relevant to this proceeding, as she is not a party to the present application.

[53] Finally, the Applicant's argument that the concept of a "notional assessment" is evidence of an improper purpose is also rebutted by the process described by the Minister. Preliminary assessments were prepared based on available evidence and reassessments were subsequently issued. Any dispute about the validity or correctness of the assessment itself is a matter for the Tax Court.

C. ii) *Do The Second Assessments Give Rise To A Reasonable Apprehension Of Bias Such That They Should Be Quashed?*

[54] The Applicant argues that Mr. Finlay had a reasonable apprehension of bias in issuing the Second Assessments, owing to his role in the issuance of the First Assessments and as a witness in the first proceedings (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817).

[55] The Applicant argues that one can assume that animosity exists between Mr. Finlay and the Applicant in view of the serious allegations raised in the judicial review proceedings, including allegations pertaining to Mr. Finlay's credibility. As well, the Applicant argues that Mr. Finlay has shown bias towards the result of the judicial review proceedings, as he admitted in cross examination to being interested in the outcome.

[56] I do not agree that the alleged bias is shown here. Turning to the test for bias, as re-stated in *Patry v Canada (Attorney General)*, 2011 FC 1032 at para 21, there is no evidence by which a reasonable person would conclude that it is more likely than not that Mr. Finlay, either consciously or unconsciously, decided the matter unfairly. Instead, the Applicant's arguments are based on suspicion and conjecture.

[57] While it is possible for animosity to build up during the course of litigation, such that an individual would be biased, there is no reasonable evidence that this occurred in the case of Mr. Finlay. The Applicant's argument is based on conjecture and would require inferences based on suspicion and insinuation in order to be accepted. This is insufficient to meet the reasonable apprehension of bias test as described in *Patry*, above.

D. *Was The Minister Functus Officio When He Issued The Second Assessments Such That Those Assessments Are Nullities?*

[58] The Applicant submits the Second Assessments must be quashed because after exercising his discretion in issuing the First Assessments, the Minister was prohibited from changing his mind and again exercising his discretion in respect of the same matter, differently (*Chandler v Alberta Association of Architects*, [1989] 2 SCR 848).

[59] In the tax context, the doctrine of *functus officio* has been held to mean that in the absence of new arguments or facts, the Minister cannot re-exercise his discretion in issuing an assessment (*Quintette Coal Ltd v British Columbia (Commissioner of Social Service Tax)*, [1993] 26 BCAC 314 (CA)).

[60] The Applicant argues that the Minister was aware of the existence of the information that would subsequently underpin the RCC, but chose not to compel that information from the RCMP. As such, the Minister exhausted its discretion.

[61] The Minister is not *functus officio* in reassessing a taxpayer. The Minister can reassess a taxpayer under the Act more than once, so long as various statutory conditions are met (*Agazarian v Canada*, 2004 FCA 32 at paras 27-29, 33 and 47). Any allegation as to whether various statutory conditions are not met is a matter for the Tax Court.

E. *If The Court Declines To Quash The First Assessments, Should A Stay Be Granted In Respect Of The CRA's Collection Action Pending The Outcome Of The Appeal Of The Personal NOA I In The Tax Court Of Canada?*

[62] The Applicant argues that based on the tri-partite test in *RJR MacDonald v Canada (Attorney General)*, [1994] 1 SCR 311, a stay should be granted pending the outcome of his appeal to the Tax Court. The Applicant argues that the issues raised in this proceeding clearly demonstrate that there is a serious issue to be tried with respect to whether the First Assessments are valid under the Act. With respect to irreparable harm, the Applicant argues that if the Minister's actions are found to be unlawful then his Charter rights will have likely been infringed for which an award of monetary damages could not compensate him. Finally, given that an injunction would prevent

further collection action against the Applicant and there is no evidence that there is any risk of loss to the Minister if a stay were granted, the balance of convenience favours the Applicant.

[63] The Applicant has not established irreparable harm. In particular, the Applicant's allegation that his Charter rights will be violated is vague and speculative (*Burkes v Canada Revenue Agency and Sheppard*, 2010 ONSC 3485). As a result, the Applicant has not established that he could not be compensated in damages for any harm suffered.

# JUDGMENT

**THIS COURT'S JUDGMENT is that**:

1. This Application is dismissed;

2. Costs to the Respondent.

"Michael D. Manson"

Judge

## APPENDIX “A”

**Excise Tax Act (R.S.C., 1985, c. E-15)**

272.1(5) A partnership and each member or former member (each of which is referred to in this subsection as the “member”) of the partnership (other than a member who is a limited partner and is not a general partner) are jointly and severally liable for

(a) the payment or remittance of all amounts that become payable or remittable by the partnership under this Part before or during the period during which the member is a member of the partnership or, where the member was a member of the partnership at the time the partnership was dissolved, after the dissolution of the partnership, except that

(i) the member is liable for the payment or remittance of amounts that become payable or remittable before the period only to the extent of the property and money that is regarded as property or money of the partnership under the relevant laws of general application in force in a province relating to partnerships, and
(ii) the payment or remittance by the partnership or by any member thereof of an amount in respect of the liability discharges the joint liability to the extent of that amount; and

(b) all other obligations under this Part that arose before or during that period for which the partnership is liable or, where the member was a member of the partnership at the time the partnership was dissolved, the obligations that arose upon or as a consequence of the dissolution.

288. (1) An authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Part, inspect, audit or examine the documents, property or processes of a person that may be relevant in determining the obligations of that or

272.1 (5) Une société de personnes et chacun de ses associés ou anciens associés (chacun étant appelé « associé » au présent paragraphe), à l’exception d’un associé qui en est un commanditaire et non un commandité, sont solidairement responsables de ce qui suit :

a) le paiement ou le versement des montants devenus à payer ou à verser par la société en vertu de la présente partie avant ou pendant la période au cours de laquelle l’associé en est un associé ou, si l’associé était un associé de la société au moment de la dissolution de celle-ci, après cette dissolution; toutefois :

(i) l’associé n’est tenu au paiement ou au versement des montants devenus à payer ou à verser avant la période que jusqu’à concurrence des biens et de l’argent qui sont considérés comme étant ceux de la société selon les lois pertinentes d’application générale concernant les sociétés de personnes qui sont en vigueur dans une province,

b) les autres obligations de la société aux termes de la présente partie survenues avant ou pendant la période visée à l’alinéa a) ou, si l’associé est un associé de la société au moment de la dissolution de celle-ci, les obligations qui découlent de cette dissolution.

288. (1) Une personne autorisée peut, en tout temps raisonnable, pour l’application ou l’exécution de la présente partie, inspecter, vérifier ou examiner les documents, les biens ou les procédés d’une personne, dont l’examen peut aider à déterminer les obligations de celle-ci ou

any other person under this Part or the amount of any rebate or refund to which that or any other person is entitled and, for those purposes, the authorized person may

d'une autre personne selon la présente partie ou son droit à un remboursement. À ces fins, la personne autorisée peut :

296. (1) The Minister may assess

296. (1) Le ministre peut établir une cotisation, une nouvelle cotisation ou une cotisation supplémentaire pour déterminer :

(e) any amount which a person is liable to pay or remit under subsection 177(1.1) or Subdivision a or b.1 of Division VII,

e) un montant qu'une personne est tenue de payer ou de verser en vertu du paragraphe 177(1.1) ou des sous-sections a ou b.1 de la section VII.

299. (2) Liability under this Part to pay or remit any tax, penalty, interest or other amount is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

299. (2) L'inexactitude, l'insuffisance ou l'absence d'une cotisation ne change rien aux taxes, pénalités, intérêts ou autres montants dont une personne est redevable aux termes de la présente partie.

(3) An assessment shall, subject to being reassessed or vacated as a result of an objection or appeal under this Part, be deemed to be valid and binding, notwithstanding any error, defect or omission therein or in any proceeding under this Part relating thereto.

(3) Sous réserve d'une nouvelle cotisation et d'une annulation prononcée par suite d'une opposition ou d'un appel fait selon la présente partie, une cotisation est réputée valide et exécutoire.

315. (1) The Minister may not take any collection action under sections 316 to 321 in respect of any amount payable or remittable by a person that may be assessed under this Part, other than interest, unless the amount has been assessed.

315. (1) Le ministre ne peut, outre exiger des intérêts, prendre des mesures de recouvrement aux termes des articles 316 à 321 relativement à un montant susceptible de cotisation selon la présente partie que si le montant a fait l'objet d'une cotisation.

(2) If the Minister sends a notice of assessment to a person, any amount assessed then remaining unpaid is payable forthwith by the person to the Receiver General.

(2) La partie impayée d'une cotisation visée par un avis de cotisation est payable immédiatement au receveur général.

317. (1) If the Minister has knowledge or suspects that a particular person is, or will be within one year, liable to make a payment to another person who is liable to pay or remit an amount under this Part (in this subsection and subsections (2), (3), (6) and (11) referred to as the "tax debtor"), the Minister may, by notice in

317. (1) Dans le cas où le ministre sait ou soupçonne qu'une personne donnée est ou sera tenue, dans les douze mois, de faire un paiement à une autre personne — appelée « débiteur fiscal » au présent paragraphe et aux paragraphes (2), (3), (6) et (11) — qui elle-même est redevable d'un montant en vertu de la présente partie, il

writing, require the particular person to pay without delay, if the moneys are payable immediately, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Part.

peut, par avis écrit, exiger de la personne donnée que tout ou partie des sommes par ailleurs payables au débiteur fiscal soient versées, immédiatement si les sommes sont alors payables, sinon, dès qu'elles le deviennent, au receveur général au titre du montant dont le débiteur fiscal est redevable selon la présente partie.

320. (1) If the Minister has knowledge or suspects that a particular person is holding moneys that were seized by a police officer in the course of administering or enforcing the criminal law of Canada from another person who is liable to make a payment under this Part (in this section referred to as the "tax debtor") and that are restorable to the tax debtor, the Minister may, in writing, require the particular person to turn over the moneys otherwise restorable to the tax debtor, in whole or in part, to the Receiver General on account of the tax debtor's liability under this Part.

320. (1) Dans le cas où le ministre sait ou soupçonne qu'une personne donnée détient des sommes qui ont été saisies par un officier de police, aux fins de l'application du droit criminel canadien, d'une autre personne — appelée « débiteur fiscal » au présent article — tenue de faire un paiement en vertu de la présente partie et qui doivent être restituées au débiteur fiscal, le ministre peut, par écrit, obliger la personne donnée à verser tout ou partie des sommes autrement restituables au débiteur fiscal au receveur général au titre du montant dont le débiteur est redevable en vertu de la présente partie.

322.1 (2) If, on ex parte application by the Minister relating to a particular reporting period of a person, a judge is satisfied that there are reasonable grounds to believe that the net tax for the period, determined without reference to this section, would be a positive amount and that the collection of all or any part of that net tax would be jeopardized by a delay in its collection, the judge shall, on such terms as the judge considers reasonable in the circumstances, authorize the Minister to, without delay,
(a) assess the net tax for the assessed period, determined in accordance with subsection (3); and
(b) take any of the actions described in sections 316 to 321 in respect of that amount.

322.1 (2) Sur requête ex parte du ministre concernant une période de déclaration d'une personne, le juge saisi, s'il est convaincu qu'il existe des motifs raisonnables de croire que la taxe nette pour la période, déterminée compte non tenu du présent article, est un montant positif et que l'octroi d'un délai pour la payer compromettrait son recouvrement en tout ou en partie, autorise le ministre à faire ce qui suit sans délai, aux conditions qu'il estime raisonnables dans les circonstances :
a) établir une cotisation à l'égard de la taxe nette, déterminée conformément au paragraphe (3), pour la période visée;
b) prendre toute mesure visée aux articles 316 à 321 à l'égard du montant en question.

**Federal Courts Act, RSC, 1985, c F-7**

18.5 Despite sections 18 and 18.1, if an Act of Parliament expressly provides for an appeal to

18.5 Par dérogation aux articles 18 et 18.1, lorsqu'une loi fédérale prévoit expressément

the Federal Court, the Federal Court of Appeal, the Supreme Court of Canada, the Court Martial Appeal Court, the Tax Court of Canada, the Governor in Council or the Treasury Board from a decision or an order of a federal board, commission or other tribunal made by or in the course of proceedings before that board, commission or tribunal, that decision or order is not, to the extent that it may be so appealed, subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with, except in accordance with that Act.

qu'il peut être interjeté appel, devant la Cour fédérale, la Cour d'appel fédérale, la Cour suprême du Canada, la Cour d'appel de la cour martiale, la Cour canadienne de l'impôt, le gouverneur en conseil ou le Conseil du Trésor, d'une décision ou d'une ordonnance d'un office fédéral, rendue à tout stade des procédures, cette décision ou cette ordonnance ne peut, dans la mesure où elle est susceptible d'un tel appel, faire l'objet de contrôle, de restriction, de prohibition, d'évocation, d'annulation ni d'aucune autre intervention, sauf en conformité avec cette loi.

**Tax Court of Canada Act, RSC, 1985, c T-2**

12. (1) The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the Air Travellers Security Charge Act, the Canada Pension Plan, the Cultural Property Export and Import Act, Part V.1 of the Customs Act, the Employment Insurance Act, the Excise Act, 2001, Part IX of the Excise Tax Act, the Income Tax Act, the Old Age Security Act, the Petroleum and Gas Revenue Tax Act and the Softwood Lumber Products Export Charge Act, 2006 when references or appeals to the Court are provided for in those Acts.

12. (1) La Cour a compétence exclusive pour entendre les renvois et les appels portés devant elle sur les questions découlant de l'application de la Loi sur le droit pour la sécurité des passagers du transport aérien, du Régime de pensions du Canada, de la Loi sur l'exportation et l'importation de biens culturels, de la partie V.1 de la Loi sur les douanes, de la Loi sur l'assurance-emploi, de la Loi de 2001 sur l'accise, de la partie IX de la Loi sur la taxe d'accise, de la Loi de l'impôt sur le revenu, de la Loi sur la sécurité de la vieillesse, de la Loi de l'impôt sur les revenus pétroliers et de la Loi de 2006 sur les droits d'exportation de produits de bois d'oeuvre, dans la mesure où ces lois prévoient un droit de renvoi ou d'appel devant elle.

**Federal Court Rules (SOR/98-106)**

81. (2) Where an affidavit is made on belief, an adverse inference may be drawn from the failure of a party to provide evidence of persons having personal knowledge of material facts.

81. (2) Lorsqu'un affidavit contient des déclarations fondées sur ce que croit le déclarant, le fait de ne pas offrir le témoignage de personnes ayant une connaissance personnelle des faits substantiels peut donner lieu à des conclusions défavorables.

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-1668-12<br>T-1879-12 |
| **STYLE OF CAUSE:** | Johnson v. HMTQ |
| **PLACE OF HEARING:** | Vancouver, British Columbia |
| **DATE OF HEARING:** | September 25, 2013 |
| **REASONS FOR JUDGMENT AND JUDGMENT BY:** | MANSON J. |
| **DATED:** | October 11, 2013 |

**APPEARANCES:**

| | |
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| Alistair Campbell<br>Michelle Moriartey | FOR THE APPLICANT |
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