



**Date: 20140411**

**Docket: T-1812-13**

**Citation: 2014 FC 354**

**BETWEEN:**

**MINISTER OF NATIONAL REVENUE**

**Applicant**

**and**

**GLENN CHAMANDY**

**Respondent**

**REASONS FOR JUDGMENT**

**MACTAVISH J.**

[1] The Minister of National Revenue seeks a “Compliance Order” against Glenn Chamandy based upon his alleged failure to comply with a demand letter issued by the Canada Revenue Agency on November 29, 2012, under the authority of section 231.1 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (*ITA*). This letter sought the production of specified books, records and information which, it is alleged, were requested in the course of an income tax compliance audit with respect to 7049960 Canada Inc.

[2] Mr. Chamandy has advanced a number of arguments as to why he should not be compelled to comply with the Minister’s November 29, 2012 demand. It is not necessary to

address all of these arguments, however, as I am satisfied that the Minister has failed to satisfy one of the statutory conditions for the issuance of a Compliance Order, namely that Mr. Chamandy was required under section 231.1 to provide the books, records and information in question.

[3] As a result, and for the reasons that follow, I am not prepared to exercise my discretion to issue the order sought. Consequently, the Minister's application will be dismissed.

### **I. Background**

[4] Mr. Chamandy is a director and shareholder of 7049960 Canada Inc. On September 26, 2008, counsel for 7049960 Canada Inc. informed the Canada Revenue Agency (CRA) that the company was planning to undertake a series of "straddle" transactions. The Minister describes these transactions as "highly complex, off-shore currency transactions" involving millions of dollars.

[5] Counsel for 7049960 Canada Inc. provided the CRA with a 19-page memorandum outlining the contemplated transactions. The memorandum also spelled out the company's understanding as to the tax implications of the transactions. Counsel asked the CRA for confirmation that the Agency agreed with the company's position as set out in its memorandum.

[6] The CRA responded on October 8, 2008, indicating that based upon the proposed transactions, it agreed with the tax position identified in counsel's memorandum. However, the CRA stated in its letter that an audit and examination of the relevant tax returns would be conducted, and that it would not be bound by its opinion letter until such time as the audit and examination of the transactions was completed.

[7] On April 14, 2009, counsel for 7049960 Canada Inc. advised the CRA that the proposed straddle transactions had been completed. The corporation's tax return and financial statements for the taxation period between October 1, 2008 and January 31, 2009 were filed with the CRA at this time.

[8] The CRA's Laval Tax Service Office examined the relevant transactions in June and July of 2009. During this audit process, the CRA requested that 7049960 Canada Inc. produce additional information and documentation related to the transactions in question. There is no evidence before me that any of this requested information was not provided by the company.

[9] By letter dated July 29, 2009, the CRA advised 7049960 Canada Inc.'s counsel that the company's T2 tax returns had been "examined and audited", that the returns were accepted "as filed" with "no changes", and that the returns were being sent for processing. On August 14, 2009, 7049960 Canada Inc.'s tax return for the taxation period in question was assessed as filed.

[10] In April of 2010, the CRA initiated a program called the Regional Partnership Audit Project (RPAP), to "explore the risks associated with partnerships and to develop virtual regional teams of auditors to audit these complex entities." A team of nine auditors was created in the Quebec region.

[11] According to the uncontradicted evidence of Marc-André Desilets, an auditor with the CRA's "Specialty Audit" section, the RPAP audit team "screened files using a loss as the principal criteria". 7049960 Canada Inc.'s straddle transactions met the screening criteria, with the result that the company's fiscal period ending January 31, 2009 was identified for audit.

[12] The CRA then began an income tax compliance audit of 7049960 Canada Inc. for the fiscal period in question. For the purposes of this audit, on April 12, 2011, a CRA auditor requested a list of books, records and information from 7049960 Canada Inc.

[13] Counsel for 7049960 Canada Inc. replied on November 3, 2011, providing material that he said had already been submitted to the CRA prior to the completion of the transactions under review. Some additional information was also provided at this time in order to “complete [the] answers” to the CRA’s April 12, 2011 letter.

[14] On November 29, 2012, a CRA auditor in Ottawa sent a 12-page letter (the “demand letter” or “request for information”) requesting “all documents and records” as well as information related to approximately 175 different topics. This is the demand underlying the CRA’s request for a Compliance Order.

[15] The information requested in the November 29, 2012 letter included, amongst other things:

- all corporate, tax and financial records for 7049960 Canada Inc. from the date of incorporation;
- Information and documents regarding a Bahamian company called Waterquest Holdings Ltd. (Waterquest), including correspondence with Waterquest, and information regarding two loan transactions between Mr. Chamandy and 7049960 Canada Inc. and Waterquest;

- Information and documents regarding INSCH Capital Management Attorney General;
- Information, documents and records related to 7049960 Canada Inc.'s tax planning and transactions; and
- Documents and records regarding the activities of WAM [Strategy Partners G.P.], including information, documents and records related to a roll-over transaction involving 7049960 Canada Inc.

[16] The November 29, 2012 letter states that the request was being made pursuant to subsection 231.1(1) of the *ITA*. The letter was addressed to 7049960 Canada Inc. However, the salutation portion of the letter says "Dear Mr. Chamandy", and the letter goes on to ask that "you provide [the requested information] to the Canada Revenue Agency (CRA) within 30 days" [my emphasis].

[17] The demand letter went on to state that "for the purpose of this s. 231.1 request for information, all documents and records includes but is not restricted to any correspondence, letters or memoranda and attachments, including drafts, briefing notes, notes to files and copies thereof, audit papers, contracts or agreements, studies, instructions, opinions, memorandum of understanding, enclosures, minutes of meetings, records of discussions, e-mails, diaries, records of telephone conversations stored in writing or electronically".

[18] Counsel for the Minister acknowledges that the range of documents and information requested is extensive, and that compliance with this request would likely be an onerous task.

[19] Throughout December of 2012 and January of 2013, the CRA auditor and counsel for 7049960 Canada Inc. exchanged communications regarding the CRA's request for information. Counsel for 7049960 Canada Inc. asserted, amongst other things, that many of the questions set out in the letter were "unrelated to the inspection" of 7049960 Canada Inc.'s books and records. In addition, counsel submitted that the taxation period at issue had already been "audited and approved" by the CRA, and that the information requested had already been provided.

[20] Counsel also took the position that the period under audit was statute-barred under subsection 152(4) of the *ITA*. Counsel further noted that the November 29, 2012 letter expressly requested copies of communications with counsel made for the purpose of obtaining legal advice which were, on their face, covered by solicitor-client privilege.

[21] The CRA did not agree with counsel's submissions and the parties were ultimately unable to reach any agreement regarding the production of the information sought.

[22] Because the Minister had been unable to obtain the information sought, an application was commenced in this Court seeking a Compliance Order against the respondent, Mr. Chamandy, under section 231.7 of the *ITA*.

[23] In particular, the Minister seeks an order giving Mr. Chamandy 30 days in which to produce "the documents, books, records and information specifically set out in the ... requirement letter issued by the Minister to the Respondent on November 29, 2012."

[24] In support of this application, Mr. Desilets asserted in his affidavit that Mr. Chamandy has not produced any of the books, records and information requested in the November 29, 2012

request for information. The Minister does, however, now concede that the minute books for 7049960 Canada Inc. had in fact already been provided.

## **II. The Relevant Statutory Provisions**

[25] The relevant provisions of sections 231.1 and 231.7 of the *ITA* are set out below:

<p><b>231.1</b> (1) An authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Act,</p> <p>(a) inspect, audit or examine the books and records of a taxpayer and any document of the taxpayer or of any other person that relates or may relate to the information that is or should be in the books or records of the taxpayer or to any amount payable by the taxpayer under this Act, and</p> <p>(b) examine property in an inventory of a taxpayer and any property or process of, or matter relating to, the taxpayer or any other person, an examination of which may assist the authorized person in determining the accuracy of the inventory of the taxpayer or in ascertaining the information that is or should be in the books or records of the taxpayer or any amount payable by the taxpayer under this Act,</p>	<p><b>231.1</b> (1) Une personne autorisée peut, à tout moment raisonnable, pour l'application et l'exécution de la présente loi, à la fois :</p> <p>a) inspecter, vérifier ou examiner les livres et registres d'un contribuable ainsi que tous documents du contribuable ou d'une autre personne qui se rapportent ou peuvent se rapporter soit aux renseignements qui figurent dans les livres ou registres du contribuable ou qui devraient y figurer, soit à tout montant payable par le contribuable en vertu de la présente loi;</p> <p>b) examiner les biens à porter à l'inventaire d'un contribuable, ainsi que tout bien ou tout procédé du contribuable ou d'une autre personne ou toute matière concernant l'un ou l'autre dont l'examen peut aider la personne autorisée à établir l'exactitude de l'inventaire du contribuable ou à contrôler soit les renseignements qui figurent dans les livres ou registres du contribuable ou qui devraient y figurer, soit tout montant payable par le contribuable en vertu de la présente loi;</p>
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and for those purposes the authorized person may

à ces fins, la personne autorisée peut :

(c) subject to subsection 231.1(2), enter into any premises or place where any business is carried on, any property is kept, anything is done in connection with any business or any books or records are or should be kept, and

c) sous réserve du paragraphe (2), pénétrer dans un lieu où est exploitée une entreprise, est gardé un bien, est faite une chose en rapport avec une entreprise ou sont tenus ou devraient l'être des livres ou registres;

(d) require the owner or manager of the property or business and any other person on the premises or place to give the authorized person all reasonable assistance and to answer all proper questions relating to the administration or enforcement of this Act and, for that purpose, require the owner or manager to attend at the premises or place with the authorized person.

d) requérir le propriétaire, ou la personne ayant la gestion, du bien ou de l'entreprise ainsi que toute autre personne présente sur les lieux de lui fournir toute l'aide raisonnable et de répondre à toutes les questions pertinentes à l'application et l'exécution de la présente loi et, à cette fin, requérir le propriétaire, ou la personne ayant la gestion, de l'accompagner sur les lieux.

**231.7** (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

**231.7** (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 :

(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

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;

(b) in the case of information or a document, the information

b) s'agissant de renseignements ou de



or document is not protected from disclosure by solicitor-client privilege (within the meaning of subsection 232(1)).

documents, le privilège des communications entre client et avocat, au sens du paragraphe 232(1), ne peut être invoqué à leur égard.

[...]

[...]

(3) A judge making an order under subsection (1) may impose any conditions in respect of the order that the judge considers appropriate.

(3) Le juge peut imposer, à l'égard de l'ordonnance, les conditions qu'il estime indiquées.

(4) If a person fails or refuses to comply with an order, a judge may find the person in contempt of court and the person is subject to the processes and the punishments of the court to which the judge is appointed.

(4) Quiconque refuse ou fait défaut de se conformer à une ordonnance peut être reconnu coupable d'outrage au tribunal; il est alors sujet aux procédures et sanctions du tribunal l'ayant ainsi reconnu coupable.

### **III. Analysis**

[26] As is evident from the text of section 231.7, there are a number of conditions that must be satisfied by the Minister before this Court will exercise its discretion to grant a Compliance Order.

[27] First, the Court must be satisfied that the person against whom the order is sought “was required under section 231.1 or 231.2 to provide the access, assistance, information or document” sought by the Minister: paragraph 231.7(1)(a).

[28] Second, the Court must be satisfied that although the person was required to provide the information or documents sought by the Minister, he or she did not do so: paragraph 231.7(1)(a).

[29] Finally, the Court must be satisfied that the information or document sought “is not protected from disclosure by solicitor-client privilege” (as defined in the Act):  
paragraph 231.7(1)(b).

[30] In this case, it is not at all clear whether the November 29, 2012 section 231.1 demand letter was directed to 7049960 Canada Inc. or to Mr. Chamandy in his personal capacity. As a consequence, I am not persuaded that the first requirement of section 231.7 has been satisfied by the Minister.

[31] A similar situation confronted this Court in *Canada (Minister of National Revenue) v. SML Operations (Canada) Ltd.*, 2003 FC 868, [2003] F.C.J. No. 1111. At issue in that case was a requirement under section 231.2, as opposed to a request for information under section 231.1 of the Act, as is the situation here.

[32] This difference is not material to the analysis, however, given that paragraph 231.7(1)(a) of the *ITA* stipulates that a judge must be satisfied that the person against whom the compliance order is sought “was required under *section 231.1 or 231.2* to provide the access, assistance, information or document” in question [my emphasis].

[33] The Court identified several facts in *SML Operations* that suggested that the letter at issue in that case was addressed to an individual rather than a corporation, including the fact that the salutation was “Dear Sir”. The Court further noted that the mention of imprisonment as a possible consequence of non-compliance reinforced the position that the true addressee was the individual rather than the corporation: at para. 18.

[34] The Court noted, however, that other facts suggested that the letter was sent to the individual as a representative of the company. In particular, the Court observed that the individual was identified in the letter as being an “officer, director or agent” of the corporation, suggesting that the true addressee was thus the corporation and not the individual: at para. 17.

[35] There are potentially serious consequences that can flow from the failure to obey a compliance order, including fines and/or imprisonment. In light of this, the Court indicated in *SML Operations* that it would not exercise its discretion to order the production of the documents sought by the Minister unless it was satisfied that the statutory conditions of section 231.7 of the *ITA* had been “clearly met”: at para. 15.

[36] After reviewing the conflicting evidence as to the true identity of the addressee, the Court concluded in *SML Operations* that “[i]n light of the uncertainty as to whether the requirement was addressed to the respondent [corporation] or to [the individual] in his personal capacity, I am not satisfied that the first condition has been met”: at para. 19. The same may be said here.

[37] In this case, the November 29, 2012 demand letter was addressed to 7049960 Canada Inc., the taxpayer whose tax obligations are at issue. While there is a reference in the letter to the ability of the CRA to seek a compliance order in the event of failure to comply with the demand, in contrast to the situation in *SML Operations*, there is no reference to possible imprisonment as a sanction for non-compliance.

[38] These facts suggest that the true addressee of the November 29, 2012 demand letter was 7049960 Canada Inc., rather than Mr. Chamandy.

[39] The fact that the salutation portion of the letter says “Dear Mr. Chamandy” could arguably support the view that the true addressee of the letter was Mr. Chamandy rather than 7049960 Canada Inc. It is not clear, however, whether the salutation is addressed to Mr. Chamandy in his personal capacity, or as a representative of 7049960 Canada Inc.

[40] While the November 29, 2012 letter does go on to ask that Mr. Chamandy provide the requested information to the CRA within 30 days, once again it is not clear that Mr. Chamandy is being asked to do so in his personal capacity, or on behalf of the taxpayer corporation.

[41] As the Court noted in *SML Operations*, potentially serious consequences can flow from non-compliance with a request for information under either section 231.1 or 231.2 of the *ITA*. I likewise agree that, as a result, I should not exercise my discretion to order the production of the documents sought by the Minister under section 231.7 of the *ITA* unless I have been satisfied that the statutory conditions of this section have clearly been met.

[42] In light of the uncertainty as to the true addressee of the November 29, 2012 demand letter, the Minister has not satisfied me that Mr. Chamandy was personally required to provide the documents and information sought. Consequently, one of the constituent elements of paragraph 231.7(1)(a) of the *ITA* has not been satisfied, with the result that the Minister’s application is dismissed.

[43] The parties have been unable to agree as to an appropriate amount of costs that should be awarded to the successful party. As a consequence, Mr. Chamandy shall have one week in which to provide brief submissions in relation to the question of costs and the Minister shall have a further week in which to respond, following which an order will issue.

[44] Given the above finding, it has not been necessary to address the parties' submissions with respect to the issue of solicitor/client privilege. I do not wish to conclude, however, without expressing my dismay over the fact that the November 29, 2012 demand letter expressly sought the disclosure of advice provided by lawyers with respect to a number of issues. As counsel for the Minister quite properly conceded at the hearing, this information was clearly protected by solicitor/client privilege. As a consequence, production of the information should never have been sought.

**IV. Conclusion**

[45] For these reasons, the Minister's application for a compliance order is dismissed.

"Anne L. Mactavish"  
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Judge

Ottawa, Ontario  
April 11, 2014

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

**DOCKET:** T-1812-13

**STYLE OF CAUSE:** MINISTER OF NATIONAL REVENUE v GLENN  
CHAMANDY

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 31, 2014

**REASONS FOR JUDGMENT:** MACTAVISH J.

**DATED:** APRIL 11, 2014

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