

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20160216**

**Docket: A-278-15**

**Citation: 2016 FCA 53**

**CORAM: DAWSON J.A.  
NEAR J.A.  
BOIVIN J.A.**

**BETWEEN:**

**MINISTER OF NATIONAL REVENUE**

**Appellant**

**and**

**JOHN T. LEE**

**Respondent**

Heard at Toronto, Ontario, on February 16, 2016.  
Judgment delivered from the Bench at Toronto, Ontario, on February 16, 2016.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**DAWSON J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Toronto, Ontario, on February 16, 2016).

**DAWSON J.A.**

[1] On June 1, 2012, the Canada Revenue Agency issued a Requirement for Information directed to the respondent. The Requirement was issued under subsection 231.2(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.) (Act). It required the respondent to provide a broad range of information and documents relating to the respondent's financial and tax affairs. For example, the Requirement obliged the respondent to provide details of all common and preferred shares he

owned, irrespective of whether the shares were registered in his name. While the respondent acknowledged receipt of the Requirement, he failed to comply with it. No information or documents were provided to the Canada Revenue Agency in response to the Requirement.

[2] In consequence, the Minister of National Revenue applied to the Federal Court under section 231.7 of the Act, seeking an order compelling the respondent to provide the information and documents mandated by the Requirement.

[3] For reasons cited as 2015 FC 634, a judge of the Federal Court dismissed the Minister's application. This is an appeal from the order of the Federal Court.

[4] As we understand the reasons of the Federal Court, the Judge declined to grant the requested order because:

- i) The Requirement was "overly expansive in breadth and in depth" (reasons, paragraph 6).
- ii) The intended recipient of the Requirement was unclear; the Requirement failed to clearly identify the recipient "both in name and role" (reasons, paragraphs 3, 30, 39, 41 and 44).
- iii) In the Judge's view, "a requirement directed at a director or officer of the company that concerns business assets to be a requirement directed at the corporate entity itself" (reasons, paragraph 43).

[5] We see no merit in any of these concerns. Section 231.2 of the Act confers broad and general powers on the Minister to require any person to produce any information or any document for any purpose related to the administration or enforcement of the Act.

[6] On an application under section 231.7 of the Act, the Court must be satisfied that:

- i) The person against whom the order is sought was required under section 231.1 or 231.2 of the Act to provide the access, assistance, information or documents sought by the Minister;
- ii) Although the person was required to provide the information or documents sought by the Minister, he or she did not do so; and,
- iii) The documents or information sought is not protected from disclosure by solicitor-client privilege as defined within the Act.

[7] The fact the Requirement required disclosure of assets owned beneficially by the respondent neither made the Requirement overbroad nor ambiguous. Further, the scope or breadth of the Requirement is a matter for the Minister, so long as the information requested is required for any purpose related to the administration or enforcement of the Act.

[8] Moreover, it is not improper for a requirement to issue that requires information to be provided about a third party. See, for example, *Taxpro Professional Corporation v. Canada (National Revenue)*, 2011 FC 224, 385 F.T.R. 103; aff'd 2011 FCA 306, 427 N.R. 354.

[9] In the present case, the Requirement was clearly and unequivocally directed to the respondent, he was required to provide the information or documents sought by the Canada Revenue Agency, he did not do so and he made no claim that the information or documents sought were protected from disclosure by solicitor-client privilege. The Federal Court ought to have issued the requested order. The cases of *Canada (Minister of National Revenue) v. SML Operations (Canada) Ltd.*, 2003 FC 868, [2003] 4 C.T.C. 201 and *Canada (Minister of National Revenue) v. Chamandy*, 2014 FC 354, 452 F.T.R. 261 relied upon by the Federal Court were distinguishable on their facts.

[10] It follows that the appeal will be allowed and the order of the Federal Court will be set aside, with costs both in this Court and the Federal Court to be paid by the respondent to the appellant. Pronouncing the order that should have been made by the Federal Court, the respondent will be ordered to provide to the appellant or her officers any access, assistance, information or documents sought from the respondent and required of him by the Requirement dated June 1, 2012.

“Eleanor R. Dawson”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-278-15

**STYLE OF CAUSE:** MINISTER OF NATIONAL  
REVENUE v. JOHN T. LEE

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** FEBRUARY 16, 2016

**REASONS FOR JUDGMENT OF THE COURT BY:** DAWSON J.A.  
NEAR J.A.  
BOIVIN J.A.

**DELIVERED FROM THE BENCH BY:** DAWSON J.A.

**APPEARANCES:**

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