

**Court File No. 2004-2365(IT)I**

**TAX COURT OF CANADA**

**IN RE: the Income Tax Act**

**BETWEEN:**

**SANTOKH SINGH**

**Appellant**

**- and -**

**HER MAJESTY THE QUEEN**

**Respondent**

**HEARD BEFORE MR. JUSTICE MILLER  
in the Courts Administration Service, Courtroom Number B,  
180 Queen Street West, 6<sup>th</sup> Floor,  
Toronto, Ontario  
on Tuesday, January 30, 2007 at 10:15 a.m.**

**APPEARANCES:**

Mr. Howard J. Alpert

for the Appellant

Ms. Eleanor H. Thorn

for the Respondent

**Also Present:**

Mr. William O'Brien

Court Registrar

Ms. Sheila Finlay

Court Reporter

**A.S.A.P. Reporting Services Inc. 8 (2007)**

**200 Elgin Street, Suite 1004**

**130 King Street, Suite 1800**

**Ottawa, Ontario K2P 1L5  
(613) 564-2727**

**Toronto, Ontario M5X 1E3  
(416) 861-8720**

1 Toronto, Ontario

2 --- Upon commencing on Tuesday, January 30, 2007

3 at 10:15 a.m.

4 ...

5 THE COURT: Ms. Thorn, why  
6 wouldn't your department consent to a section 86  
7 order if the RCMP are prepared to release these  
8 documents with a court order, rather than taking no  
9 position? Why don't you just consent to an order  
10 so we can get the documents back?

11 MS. THORN: Because we have to be  
12 here anyway for the other motion, so I thought  
13 since we are hearing this --

14 THE COURT: Do you think there's  
15 going to be another motion? All he wants to do is  
16 get his documents back. It strikes me if the RCMP  
17 gives him the documents --

18 MS. THORN: I have stated our  
19 position to him in letters already, and he still  
20 insists that the CRA has the documents. I don't  
21 know any other way to get through to Mr. Albert  
22 that there are ways to get those documents.

23 THE COURT: One of the ways is a  
24 court order.

25 Okay. Before you even address

1 Rule 82, Mr. Alpert, correct me if I'm wrong, but  
2 you don't need an order under both of these, do  
3 you?

4 MR. ALPERT: No.

5 THE COURT: If I give you a court  
6 order that you can trot off to the RCMP and they  
7 give you all of these boxes of documents so you can  
8 properly prepare a list of documents and ultimately  
9 prepare your client's trial, you're not,  
10 presumably, turning around and seeking full  
11 disclosure of documents that you now have anyway,  
12 are you?

13 If I give you a Rule 86 order, are  
14 you still looking for a Rule 82 order?

15 MR. ALPERT: Well, I think the  
16 order is that the documents are, I mean, I think  
17 we're entitled to both orders.

18 THE COURT: I don't get it.  
19 Practically, you want the documents.

20 MR. ALPERT: We do want the  
21 documents.

22 THE COURT: So you get the  
23 documents, they're your documents. They're not the  
24 Crown's documents, they're your documents seized  
25 from your client. You get a court order, the RCMP

1 gives you the documents, what now are you seeking  
2 full disclosure from the government for?

3 MR. ALPERT: No, I'm not, that  
4 would be quite clear.

5 I do want to set one matter of the  
6 record straight, and obviously I'm quite content to  
7 get that order under Rule 86 that the RCMP deliver  
8 the documents to the client.

9 When my friend was making her  
10 submission here, my friend stated that certain  
11 statements were made by the RCMP to the appellant  
12 to the effect that he could come pick up his  
13 documents and there was a six-month period. There's  
14 nothing in the record about that. My friend was  
15 giving evidence here of her own. There's nothing in  
16 the record.

17 MS. THORN: I already said it's  
18 over the phone, and I'm not certain about the six  
19 months, anyway.

20 MR. ALPERT: There's nothing in  
21 the record, and there's nothing in the record about  
22 the appellant waiving his rights.

23 THE COURT: As far as I'm  
24 concerned, that's water under the bridge. It  
25 doesn't impact on what my order should be.

1 MR. ALPERT: I understand that,  
2 but I just wanted to get the matter clear because I  
3 think there's an inference here, and it will go to  
4 the costs submissions, that the appellant somehow  
5 is the author of his own misfortune here, and  
6 there's evidence like that in the material. I was  
7 never told anything like that.

8 THE COURT: That's fine. I have  
9 your point, Mr. Alpert.

10 MR. ALPERT: Thank you.

11 THE COURT: Before I get to Rule  
12 82, my view is I'm quite prepared, and I don't  
13 think the Crown has any objection, that I give a  
14 Rule 86 order and order the RCMP to return these  
15 documents to your client, Mr. Alpert.

16 Frankly, I'm just going to adjourn  
17 the Rule 82 motion, hopefully never to have it see  
18 the light of day again.

19 MS. THORN: Your Honour, we've  
20 just heard from Mr. Alpert. He's quite insistent,  
21 so we might as well go ahead and I make my  
22 argument.

23 THE COURT: He wasn't insistent.

24 MS. THORN: He said I still have  
25 to --

1 THE COURT: Excuse me. I heard  
2 him say that if he gets the Rule 86 order that he  
3 would be content with that.

4 I believe that's what I heard you  
5 say, Mr. Alpert?

6 MR. ALPERT: That would be fine.

7 I like Your Honour's suggestion of  
8 adjourning the Rule 82 application until we can see  
9 that I do get compliance from the RCMP. So I like  
10 that suggestion.

11 THE COURT: That's the only reason  
12 I would adjourn this. I can't imagine that the  
13 RCMP wouldn't give him all of the documents. If  
14 there are some documents that they believe they  
15 have passed on to Canada Revenue and the agency  
16 doesn't have them anymore and you still have them,  
17 I can't imagine that would be the case.

18 MR. ALPERT: But it's extra  
19 protection, it's just a safeguard here and would  
20 leave the material before the Court. On that  
21 basis, I think that that's a prudent way to go.

22 I agree with the line of reasoning  
23 that Your Honour has adopted.

24 THE COURT: But I want to be very  
25 clear, Mr. Alpert. If the RCMP releases all the

1 seized documents to you, I do not anticipate  
2 hearing a Rule 82 application.

3 MR. ALPERT: I can assure you that  
4 that won't be any problem, in that regard.

5 THE COURT: Ms. Thorn, if you're  
6 not happy with that route, tell me what you would  
7 prefer.

8 MS. THORN: I'm quite happy with  
9 that. The only thing is that I'd like to clear up  
10 the basis of Mr. Alpert's request on the 82 matter.

11 But since Your Honour is reluctant to hear that --

12 THE COURT: Ms. Thorn, I don't  
13 ever want to be accused of cutting somebody off  
14 from telling me something that they want to tell  
15 me. If you want to make some representations on  
16 that, notwithstanding you heard my preference is  
17 that it simply be adjourned, by all means.

18 MS. THORN: I don't want to unduly  
19 take up Your Honour's time.

20 THE COURT: I have nothing else on  
21 today.

22 MS. THORN: It was also stated by  
23 Mr. Alpert that the respondent, in this matter, has  
24 possession of the appellant's documents and records  
25 seized by the RCMP in the immigration matter. He

1 cited no source or grounds for that information.  
2 No evidence of fact or law has been produced or  
3 referred to by Mr. Alpert as to the basis of the  
4 belief, other than the fact that the respondent is  
5 Her Majesty the Queen, sworn by the auditor in Her  
6 affidavit.

7 Other than photocopying, in June,  
8 some of the appellant's records held by the RCMP  
9 for the purpose of reassessing the appellant's 2000  
10 taxation year, none of the things seized from the  
11 appellant by the RCMP was, at any time, past or  
12 present, in Her's or anyone else's at CRA's  
13 possession, control or power. This is in full  
14 compliance with the Income Act and Privacy Act.

15 THE COURT: Just address, for a  
16 moment, Ms. Thorn, now that you've gone down this  
17 path, who is the respondent?

18 MS. THORN: The respondent is Her  
19 Majesty the Queen.

20 THE COURT: Does that not include  
21 the RCMP?

22 MS. THORN: Yes, but the RCMP is  
23 not a party to this tax matter.

24 THE COURT: No, but Her Majesty  
25 the Queen is a party. If the Department of Revenue



1 Canada had some documents, or the Department of  
2 Finance had some documents, you're telling me that  
3 because it's two different departments of the same  
4 litigant, Her Majesty the Queen, that Her Majesty  
5 the Queen cannot be said to have control over those  
6 documents; that's your argument?

7 MS. THORN: Her Majesty the Queen,  
8 in this tax matter, cannot have access to any other  
9 documents, any other documents held by anybody  
10 else, unless it is legislated and provided for in  
11 an act of parliament.

12 THE COURT: Where do you draw that  
13 principle from?

14 MS. THORN: From the Privacy Act  
15 and also the Income Tax Act.

16 Under the Privacy Act, one of the  
17 government departments can have access to  
18 information regarding an individual, information  
19 that's being held by another department, provided  
20 it is authorized under some act of parliament.

21 In fact, if the respondent had,  
22 indeed, went to the RCMP, took all of the  
23 appellant's things away, then I would say the  
24 appellant would have a legitimate complaint. That  
25 is not the case here.

1 All the auditor did was to act  
2 under section 231.1 and go to the RCMP and say,  
3 "hey, we need to reassess this person. I  
4 understand you have some documents. We need access  
5 to the information and we will take copies of  
6 documents in order to reassess."

7 That is exactly what the auditor  
8 did. She did not violate the Income Tax Act or the  
9 Privacy Act.

10 THE COURT: Doesn't that strike  
11 you, though, because the expression is "a party  
12 having possession, control or power". Now, if  
13 Revenue Canada has the right to go to the RCMP and  
14 say, "I want to see these documents", and the RCMP  
15 shows them those documents and Revenue Canada can  
16 copy whatever documents it wants, isn't there some  
17 argument that it's within Revenue Canada's power to  
18 access those documents and therefore they are  
19 available for full discovery?

20 MS. THORN: Yes, to the  
21 photocopied documents.

22 THE COURT: But she could  
23 photocopy the whole works.

24 MS. THORN: No, we did not.

25 THE COURT: I know you didn't, but

1 the Act talks in terms of the power. If she had  
2 the power to copy some documents, why wouldn't she  
3 have the power to copy all the documents?

4 MS. THORN: Because under the Act  
5 it says only for the purpose of reassessment.

6 For example, if there's a document  
7 with respect to the appellant's personal life, et  
8 cetera, the auditor would not have the power to  
9 photocopy those.

10 THE COURT: But this is a tax  
11 matter dealing with alleged income from immigration  
12 clients, and the seized documents dealt with  
13 immigration fraud with immigration clients. I  
14 think there would be a pretty strong argument that  
15 every one of those documents might well bear on the  
16 tax matter. Whose call would it be?

17 MS. THORN: Maybe it has to do  
18 with his medical condition, et cetera, and it is  
19 not related to the particular reassessment, then  
20 the auditor would be wrong to have photocopied  
21 those documents.

22 The authorities referred to by my  
23 friend are with respect to identified documents  
24 within the opposing party's control and power.  
25 That's not the case here. The respondent has no

1 control or power over any of the other things.

2 As far as the copies made from the  
3 appellant's documents are concerned, everything has  
4 been produced on demand by the appellant.

5 Of course, I still have argument  
6 with respect to 82, but this is what I want to  
7 clarify at the outset.

8 THE COURT: Thank you very much.

9 MS. THORN: Thank you, Your  
10 Honour.

11 THE COURT: Two things: Firstly,  
12 if I am making a Rule 86 order ordering the RCMP to  
13 release documents, Mr. Alpert, how should I  
14 describe that, documents seized from Mr. Singh on  
15 such and such a date, or can you give me some help  
16 in making it absolutely clear as to what it is  
17 we're seeking from the RCMP?

18 MR. ALPERT: The documents that  
19 were seized by the RCMP, it was a Criminal Code  
20 procedure, I believe, under section 367 of the  
21 Criminal Code, that the appellant had acted  
22 contrary to paragraph 94(1)(i) of the Immigration  
23 Act of Canada. I think that's set out in paragraph  
24 F. At paragraph R and S, actually, of the reply of  
25 the respondent, it says Exhibit B of the

1 proceeding.

2 I had put up a book that has page  
3 numbers. It's actually at page 24, these two  
4 paragraphs at page 24. They're at the top of page  
5 6 of the reply. These are the admissions by the  
6 respondent of what actually happened, that in  
7 January of 2006 the Royal Canadian Mounted Police  
8 conducted a legal search and seizure of the --

9 MS. THORN: 2001.

10 MR. ALPERT: 2001. I'm sorry,  
11 January 2001, I apologize. That the RCMP conducted  
12 a legal search and seizure at the appellant's  
13 premises pursuant to a properly obtained search  
14 warrant.

15 Then at paragraph S, that the  
16 arrest was on indictment of 13 counts under section  
17 367 of the Criminal Code. I believe that the  
18 documents were seized pursuant to the provisions of  
19 the Immigration Act of Canada.

20 THE COURT: I think I have enough  
21 information to properly describe what it is we're  
22 looking to get back.

23 MR. ALPERT: The materials there,  
24 they're in the possession of, the care, custody and  
25 control of, the RCMP.

1 THE COURT: Did you want to make  
2 any submissions on costs, Mr. Alpert?

3 MR. ALPERT: Yes. I would submit,  
4 and I think Your Honour has tuned to the argument  
5 that I have submitted, that these were two  
6 different departments of the same respondent. The  
7 CRA has, at all times, had access to the  
8 information held by the RCMP. They could have  
9 photocopied all of these documents, all of them, at  
10 any time, and has the power to consent to this  
11 order.

12 The appellant has been put to  
13 unnecessary costs and expense as a result of the  
14 respondent's conduct. I would ask for costs on a  
15 solicitor-client basis in this case because the  
16 respondent was given ample opportunity to return  
17 the materials. There were numerous letters that  
18 were written to the respondent's counsel asking for  
19 the respondent's consent to cooperate with the  
20 police. It's evidenced, from the position taken  
21 today, that that consent was not forthcoming.

22 THE COURT: Did you ever actually  
23 put it directly to Ms. Thorn: "Look, if you help  
24 me get this Rule 86 order, if you consent to that,  
25 I'll go to the RCMP and get the seized documents

1 and there will be no need to seek full disclosure  
2 from the Crown?" Was that ever put in front of the  
3 Crown?

4 MR. ALPERT: Yes, it was. It was  
5 in my materials. I have letters that I wrote. They  
6 are in the materials here. That, repeatedly, was  
7 the gist of it. I was asking for cooperation.

8 THE COURT: I don't want just the  
9 "gist" of it, I want it clear that the government  
10 would not give you a consent under Rule 86 on the  
11 understanding that there would be no need for Rule  
12 82.

13 MR. ALPERT: This is at Exhibit K.

14 THE COURT: Yes.

15 MR. ALPERT: If we come to my  
16 letter of October the 3rd, I set out the things  
17 here.

18 The original motion was adjourned  
19 on consent sine die to permit the parties to  
20 attempt to cooperate. I said to her in that letter  
21 there, to the Department of Justice there, that I  
22 confirm that I was served with the respondent's  
23 motion materials herein setting out the position  
24 that they took. I confirm that on October the 3rd  
25 I telephoned you again regarding this motion. I

1 pointed out to you that the RCMP is the Canada  
2 national police service and an agency of the  
3 Ministry of Public Safety and Emergency  
4 Preparedness Canada:

5 "Accordingly, I advised you  
6 that the Respondent herein is  
7 Her Majesty the Queen and  
8 that both the CRA and RCMP  
9 are agencies of the  
10 Respondent, Her Majesty the  
11 Queen. Therefore, I  
12 suggested to you that the  
13 Respondent, Her Majesty the  
14 Queen, is in fact in  
15 possession of the documents  
16 being requested for  
17 production --"

18 Then I state at the second  
19 paragraph on the second page of the letter:

20 "As a result, both of us are  
21 hoping to resolve this matter  
22 amicably. The proposed  
23 adjournment will permit me  
24 additional time to attempt to  
25 obtain production of the



1 requested documents  
2 voluntarily from the RCMP.  
3 You have indicated to me you  
4 will provide me with your  
5 cooperation in obtaining the  
6 requested documents  
7 voluntarily from the RCMP."

8 THE COURT: Just slow down a  
9 little bit, Mr. Alpert.

10 MR. ALPERT: Sorry?

11 THE COURT: Just slow down, it's  
12 difficult to catch it all.

13 MR. ALPERT: I'm sorry. I'll just  
14 go back:

15 "As a result, both of us are  
16 hoping to resolve this matter  
17 amicably. The proposed  
18 adjournment will permit me  
19 additional time to attempt to  
20 obtain production of the  
21 requested documents  
22 voluntarily from the RCMP.  
23 You have indicated to me you  
24 will provide me with your  
25 cooperation in obtaining the

1 requested documents  
2 voluntarily from the RCMP."

3 It says:

4 "In the event that I am  
5 successful in obtaining the  
6 production of the requested  
7 documents voluntarily from  
8 the RCMP, I shall withdraw  
9 my Motion on consent without  
10 costs. However, in the  
11 event that I am not  
12 successful in obtaining  
13 production of the requested  
14 documents voluntarily from  
15 the RCMP, I shall be forced  
16 to serve and file amended  
17 Motion materials under Rules  
18 82 and 86 of Tax Court of  
19 Canada Rules of Practice in  
20 order to seek Orders  
21 compelling the production of  
22 the requested documents from  
23 the Respondent and the  
24 RCMP."

25 "As discussed, we are both

1 of the view that the  
2 above-mentioned Motion, if  
3 required, should be dealt  
4 with prior to the Status  
5 Hearing, which is now to be  
6 scheduled on December 7th."

7 The status hearing has now been  
8 adjourned sine die awaiting the outcome of this  
9 motion. I say:

10 "Accordingly, I confirm that  
11 I have advised you in  
12 our telephone conversation  
13 that in the event that my  
14 request for an adjournment  
15 of the Motion is not  
16 granted, the Examination of  
17 the Appellant previously  
18 scheduled by you to take  
19 place --will have to be  
20 adjourned to a new date."

21 I was served with a notice they  
22 wanted to cross-examine the appellant. That did  
23 not take place, it was withdrawn.

24 " --will have to be  
25 adjourned to a new date that

1 is mutually convenient to  
2 both parties in order to  
3 permit the Appellant to file  
4 and serve amended Motion  
5 materials under Rules 82 and  
6 86 of the Tax Court of  
7 Canada Rules and Practice in  
8 order to seek Orders  
9 compelling the production of  
10 the requested documents from  
11 the Respondent and/or the  
12 RCMP. Please advise me that  
13 you are willing to accept  
14 service of the amended  
15 Motion materials, if  
16 required, on behalf of the  
17 RCMP since it and the CRA  
18 are both agencies of the  
19 Respondent."

20 Again, this is the same letter  
21 there. The response I got is that they wouldn't  
22 cooperate and that I had to bring the motion.

23 That's the response I got from Ms.  
24 Thorn ultimately at Exhibit O to her letter of  
25 October 12th. It's at the last page of Tab 2:

1 "This is further to your  
2 telephone calls last week  
3 requesting assistance in  
4 obtaining the Things seized  
5 from the Appellant by the  
6 RCMP in the criminal  
7 immigration fraud matter.  
8 The Respondent in this tax  
9 matter has no right to any  
10 of the Appellant's Things  
11 other than is provided under  
12 the Income Tax Act Audit  
13 only, obtained from those  
14 Things copies of documents  
15 that are necessary to  
16 support the tax assessment;  
17 and copies thereof were  
18 already provided to you.  
19 I suggest that you  
20 consulting the legislation/s  
21 and regulation/s under which  
22 the Appellant's Things were  
23 seized. There would be  
24 provisions setting out to  
25 whom, and how, such Things



1 would have suggested, "let's get a Rule 86 order by  
2 consent" and away you go.

3 MS. THORN: All through he's  
4 insisted on this 82 matter. Since we're coming  
5 here, what's the purpose of consenting to that and  
6 ultimately have to do a very costly Affidavit of  
7 Documents? There's really no ground for the 82  
8 request, anyway.

9 Presumably the whole tenor of the  
10 thing, and also as stated in the appellant's  
11 affidavit, is that we refuse to provide any  
12 assistance. Well, as opposing counsel, and I've  
13 told Mr. Alpert that I will help within limits, and  
14 that's exactly what I did.

15 Mr. Alpert was told all along that  
16 once our list of documents was prepared, he may  
17 inspect and take copies in accordance with the  
18 Rules. If he can identify and produce a list of  
19 documents not listed on our list, we would provide  
20 him with a copy if that document is relevant to the  
21 issue.

22 To help things along, Mr. Alpert  
23 was provided with the respondent's audit report and  
24 the appeals report as well.

25 You can also tell from Tab 2,

1 Nancy Pasterelli's affidavit, Exhibit I, that it  
2 was only after my suggestion on September 28, 2006  
3 when Mr. Alpert called me to assist him, I said:  
4 "Why don't you ask the RCMP directly for the return  
5 of the things?" I even provided him with the  
6 RCMP's number.

7 I also said: "Why don't you  
8 contact the criminal lawyer in this matter, he  
9 might have documents?" And, also, "contact the  
10 financial institutions that the appellant worked  
11 with." Of course, he could also have contacted the  
12 appellant's accountant where the auditor obtained  
13 leads to prepare those demands for information from  
14 the bank.

15 Well, on the same day Mr. Alpert  
16 called me back and said, "I've spoken with the  
17 RCMP" and he wants to adjourn the motion. There's  
18 been many telephone calls from Mr. Alpert along the  
19 same line insisting that we have the appellant's  
20 things, which resulted in my October 12th letter  
21 that was previously referred to you. I said, "look,  
22 there are legislations and provisions that provide  
23 for the return of the seized things." I don't know  
24 what Mr. Alpert did with that.

25 Based on the foregoing, I said



1           that "as opposing counsel I've done all I could". I  
2           can't very well do Mr. Alpert's job for him  
3           representing the appellant.

4                        I would ask that the third party  
5           motion application, if allowed, I would rely on the  
6           Bawolin case under Tab 8 of the appellant's book of  
7           authorities, to similarly ask for costs from the  
8           appellant. In that particular case, it was  
9           \$300.00.

10                       THE COURT: Thank you.

11                       Anything further, Mr. Alpert?

12                       MR. ALPERT: No.

13                       THE COURT: Solicitor-client costs  
14           are quite an exception, and my handling of them is,  
15           I would only order them in some very egregious  
16           circumstances where I am satisfied that one side or  
17           the other has acted outrageously that would justify  
18           solicitor-client costs. I don't see that type of  
19           behaviour in this case, Mr. Alpert.

20                       You are successful on your  
21           application with respect to Rule 86. I do make an  
22           order that the RCMP are to return the seized  
23           documents seized in January 2001 from Mr. Singh. On  
24           that motion I will also order costs at \$500.00.

25                       The motion with respect to Rule 82

1 is adjourned sine die.

2 Thank you all very much.

3 --- Whereupon proceedings adjourned at 11:20 a.m.

I HEREBY CERTIFY THAT I have, to the best  
of my skill and ability, accurately recorded  
by Stenograph and transcribed therefrom, the  
foregoing proceeding.

Sheila M. Finlay, Certified Shorthand Reporter