

Date: 20080221

Docket: T-1930-07

Citation: 2008 FC 237

Vancouver, British Columbia, February 21, 2008

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

Applicant

and

**JAY CURRIE also known as
JAY FERGUSON ELLIOTT CURRIE
and JAY F.E. CURRIE**

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a motion on behalf of the Applicant, the Minister of National Revenue (the Minister), for an Order against the Respondent under section 231.7 of the *Income Tax Act* (the Act) to provide information or documents sought by the Minister under subsection 231.2(1) of the Act.

[2] The Respondent was required to provide the information and documents sought by the Minister and failed to do so. The information and documents sought by the Minister are not protected from disclosure by solicitor-client privilege.

[3] The Order sought will require that the Respondent provide the following information:

- a) Complete details of, including but not limited to, the name, complete address and types of transactions with all financial institutions Jay Currie, (sometime known as Jay Ferguson Elliott Currie) including any partnerships, trade names or operating names, has had dealings with for the periods 01 January 2007 to 30 June 2007;
- b) Complete details of, including but not limited to, the names, addresses and moneys received from all parties for all contracts, written or verbal, entered into by Jay Currie (sometime known as Jay Ferguson Elliott Currie) including any partnerships, trade names or operating names, for the period 1 January 2007 to 30 June 2007;
- c) Complete details of, including but not limited to, names, addresses, amounts receivable and projected amounts receivable, of all work-in-progress at 30 June 2007 for Jay Currie (sometime known as Jay Ferguson Elliott Currie) including any partnerships, trade names or operating names;
- d) A complete list of money, shares, securities, interest, dividends and any other asset held directly, indirectly or beneficially for Jay Currie (sometime known as Jay Ferguson Elliott Currie) including any partnerships, trade names or operating names, for the period 01 January 2007 to 30 June 2007;

- e) A complete list of all nominees, including complete names and addresses, who operated trading and/or investment accounts on behalf of Jay Currie, (sometime known as Jay Ferguson Elliott Currie) including any partnerships, trade names or operating names, for the period 01 January 2007 to 30 June 2007;
- f) A complete list, including source names, addresses and amounts, of all income for Jay Currie, (sometime known as Jay Ferguson Elliott Currie) including any partnerships, trade names or operating names, for the period 01 January 2007 to 30 June 2007;

(the Information and Documents);

[4] The motion was set for hearing on December 17, 2007. The hearing was adjourned to enable the Respondent to prepare further submissions and to file a Notice of Constitutional Question. The matter was rescheduled for general sittings at Vancouver on February 18, 2008.

[5] The Court has before it the Applicant's record which includes the Notice of Application, the Affidavit of Linda Brown sworn November 7, 2007, the Applicant's memorandum of Fact and Law and Book of Authorities.

[6] The Respondent's amended record consists of the Respondent's amended Memorandum of Fact and Law and Book of Authorities. The Respondent did not file a Notice of Constitutional Question, nor did he file affidavit evidence.

Analysis

[7] Section 231.2 of the Act states that the Minister may "for any purpose related to the administration or enforcement of this Act, including the collection of any amount payable under this Act by any person" require a person to provide information and/or documents.

[8] The evidence relied on by the Minister to establish the required facts under section 231.7 is set out in the Affidavit of Linda Brown, a Collections Officer in the Vancouver Island Tax Services Office of the Canada Revenue Agency (the CRA). These facts are not disputed by the Respondent. I am satisfied that these facts establish that the Respondent was required to provide the Information and Documents, and that the Information and Documents requested are not protected from disclosure by solicitor-client privilege. I am therefore satisfied that the pre-requisites set out in paragraphs 231.7(1)(a) and (b) for the issuance of a compliance order under the Act have been established.

[9] In his amended record, the Respondent no longer challenges the constitutional validity of the pertinent provisions of the Act. He does state, however, that the process which underlies the Application is not consistent with the *Federal Courts Rules*, fails to set out a discernible process leaving a respondent unaware of what rules are applicable to the proceeding and, consequently, making it impossible for a respondent to properly respond to the application.

[10] The Respondent further contends that, as a consequence of this procedural deficiency, the net effect of the compliance order is to render the "seizure" of the Information and Documents unreasonable, thereby infringing his s. 8 Charter rights.

[11] The Respondent also contends that failure to provide a clear process or follow the *Federal Courts Rules* is contrary to fundamental justice and violated his s. 7 Charter rights.

[12] The only remedy available, in the Respondent's submission, is that the application be dismissed.

[13] For the reasons that follow, all the Respondent's arguments must fail.

[14] Shortly after the coming into force of the impugned provision the Minister sought, pursuant to Rule 72, the Court's direction with respect to proceedings under subsection 231.7 of the Act. Prothonotary Lafrenière issued directions on April 22, 2002, in Court file T-643-02, *Minister of National Revenue v. Neil T. Norris*. These directions set out the procedure to be followed in proceedings under subsection 231.7 of the Act. The process provides as follows:

[6] The Applicant shall file a Notice of Application in Form 301, to be treated by the Registry as both an originating document and notice of motion, which shall:

- (a) set out the day, time and place at which the application will be heard, either at a General Sittings of the Court or such special sitting date as may have been appointed by the Judicial Administrator upon informal request by the Applicant;

- (b) be amended by deleting any references to Rule 300 *et seq.*;
- (c) contain a notice in capital and bold characters which reads as follows: "The Respondent who wishes to oppose the application shall serve a Respondent's Record and file three copies of it not later than 2:00 p.m. on the last business day before the hearing of the application."; and
- (d) be accompanied by the appropriate filing fee.

[7] Once the Notice of Application has been filed, the Applicant shall personally serve the Respondent with an Application Record containing a table of contents, the notice of application, each supporting affidavit and documentary exhibit and the Applicant's memorandum of fact and law. The Applicant shall file three copies of the Application Record, and proof of service thereof in accordance with ss. 237.1 of the *Income Tax Act*, forthwith and in any event no later than two clear days before the return date of the hearing of the application.

[15] The above process has essentially been followed in applications under subsection 231.7 of the Act for a number of years and has been recognized as the appropriate procedure to follow in *MNR v. Cornfield*, 2007 FC 436 at paras. 16, 16 and 30.

[16] While the Notice of Application makes no specific reference to any particular Rule, it does refer to the *Federal Courts Rules* and, more importantly, states in bold print ... "The Respondent who wishes to oppose the application shall serve a respondent's record and file three copies of it not later than 2:00 p.m. on the last business day before the hearing of the application."

[17] I agree with the Applicant's submission that the underlying purpose of the Rules is to serve the interests of fundamental justice. In the instant case, the Respondent had clear notice of the

proceeding initiated against him, the nature of and details of the order sought as well as the stated grounds for the application.

[18] The Respondent was also notified that if he wished to oppose the application, he had to serve and file a "Respondent's record" within the given delays.

[19] In my view, the principles of fundamental justice are not violated because the Notice of Application fails to spell out what is to be included in the respondent's record. The *Federal Courts Rules* with respect to both applications (Rule 310(2)) and motions (Rule 364(2)) provide for what is to be included in a respondent's record. Both provisions are essentially the same and serve to guide parties in the preparation of their responses in such applications.

[20] In the circumstances, the Respondent knew the case he had to meet. Any deficiencies or lack of clarity in the procedure to be followed could easily be corrected by seeking the Court's direction. The process outlined in the Notice of Application is fair and does not violate the principles of fundamental justice.

[21] Since the Respondent's concerns regarding a fair hearing have been met, his objections on constitutional grounds are misplaced. As stated above, the Respondent has notice of the case against him and has the opportunity to make full answer and defence. Confusion, if any, over procedural issues can be answered through directions from the Court. Such issues are not in the nature of those

contemplated under s. 7 of the Charter, where the focus is on such concepts as the right to make full answer defence.

[22] The Respondent's arguments relating to s. 8 of the Charter are fully answered in *R. v. McKinley Transport*, [1990] 1 S.C.R. 627, where the Supreme Court at page 650 of its reasons concluded that seizure contemplated by section 231.(3) of the *Income Tax Act* is reasonable and does not violate s. 8 of the Charter. Further, the Respondent has failed to demonstrate how the impugned process would have caused him any prejudice. He had in excess of 90 days to prepare his case, adduced no evidence and elected not to cross-examine the Applicant's only affiant.

[23] The provisions under the Act regarding compliance orders are clear, as are the facts that must be established by the Minister to obtain such an order. These provisions are specific to compliance order applications and should be favoured over the wholesale application of more general rules. That is not to say the *Federal Courts Rules* in such applications find no application. In the instant, the Rules serve to complement the process directed by the Court for such applications under the Act pursuant to Rule 72.

[24] The evidence of the Minister is that the Respondent owes a tax debt and that the information sought is necessary to the administration and enforcement of the Act, including collection of amounts owing.

[25] In the circumstances, I am satisfied that:

- 1) The requirements have been met for granting an order against the Respondent under section 231.7 of the *Income Tax Act* to provide Information or Documents sought by the Minister under subsection 231.2(1) of the *Income Tax Act*, such requirements being:
 - a) the Respondent was required under subsection 231.2(1) of the *Income Tax Act* to provide the Information and Documents sought by the Minister;
 - b) the Respondent has failed to provide the Information and Documents sought by the Minister; and
 - c) the Information and Documents sought by the Minister are not protected from disclosure by solicitor-client privilege.
- 2) The Respondent has not yet provided the Minister with the Information and Documents; and
- 3) The Information and Documents are not protected from disclosure by solicitor-client privilege within the meaning of subsection 232(1) of the *Income Tax Act*;
- 4) An order under section 231.7 of the *Income Tax Act* be made that the Respondent provide the Information and Documents (described at paragraph [3] above).

ORDER

THIS COURT ORDERS that, pursuant to section 231.7 of the *Income Tax Act*, the Respondent shall comply with the notice issued by the Minister and shall forthwith and in any event not later than 30 days after being served with this Order provide the Information and Documents, set out in paragraph [3] of the above Reasons for Order, to a Canada Revenue Agency officer acting under the authority conferred by the *Income Tax Act* or other person designated.

THIS COURT FURTHER ORDERS that costs are awarded to the Minister in the amount of \$779.24.

"Edmond P. Blanchard"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1930-07

STYLE OF CAUSE: MNR v. JAY CURRIE (aka JAY FERGUSON
ELLIOTT CURRIE and JAY F.E. CURRIE)

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: February 18, 2008

**REASONS FOR ORDER
AND ORDER:** BLANCHARD J.

DATED: February 21, 2008

APPEARANCES:

Ms. Amanda Lord FOR THE APPLICANT

Mr. Jay Currie FOR THE RESPONDENT
(self-represented)

SOLICITORS OF RECORD:

John H. Sims, Q.C. FOR THE APPLICANT
Deputy Attorney General of Canada

n/a FOR THE RESPONDENT
(self-represented)