

Federal Court



Cour fédérale

**Date: 20111107**

**Docket: T-1681-11**

**Citation: 2011 FC 1271**

**Vancouver, British Columbia, November 7, 2011**

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

**BETWEEN:**

**THE MINISTER OF NATIONAL REVENUE**

**Applicant**

**and**

**CASEY HAYNES**

**Respondent**

**REASONS FOR ORDER AND ORDER**

**I. Introduction**

[1] This is an application by the Minister of National Revenue, (the Minister) for an order of this Court pursuant to section 231.7 of the *Income Tax Act*, RSC 1985, c1 (5th Supp) to order the Respondent, Casey Haynes, to comply with a requirement for information served upon the Respondent by the Minister pursuant to section 231.2 of the *Income Tax Act*.

## II. Background

[2] The Respondent is a Registered Massage Therapist and is currently under audit for the tax years 2005, 2006, 2007, 2008 and 2009.

[3] On August 17, 2010, Heather Held personally served Casey Haynes with a Requirement to Provide Information and Documents (the RFI) dated July 7, 2010, issued under section 231.2 of the *Income Tax Act*.

[4] The RFI required the Respondent to provide within thirty (30) days, namely on or before September 17, 2010, documents listed in the RFI including books, ledgers and schedules with respect to the completion of income tax returns, bank records and a list of personal assets among other documents, concerning the period January 1, 2005, to December 31, 2009, (the Information and Documents).

[5] None of the Information and Documents has been received by the CRA.

[6] The Respondent, rather than provide the Information and Documents, corresponded with Canada Revenue Agency and denied that Canada Revenue Agency had any legislative authority for demanding the Information and Documents.

[7] The Minister issued the RFI to the Respondent for purposes related to the administration or enforcement of the *Income Tax Act*. The tax liabilities of the Respondent are under administrative

investigation and the Information and Documents sought from the Respondent are considered necessary to assist in the determination and collection of amounts owed to Her Majesty the Queen.

### III. Issues

[8] This application gives rise to the following issues:

- (a) What are the requirements that must be satisfied before it is appropriate for a judge of this Court to exercise his or her discretion under section 231.7 of the *Income Tax Act* to order a person to provide Information or Documents sought by the Applicant under subsection 231.2(1) of the *Income Tax Act*?
- (b) Have the requirements for an order under section 231.7 of the *Income Tax Act* been satisfied in this case?

### IV. Analysis

[9] The Court fully agrees with the Applicant that the order sought by the Applicant is warranted.

[10] The Minister has the task of administering and enforcing the *Income Tax Act*. Sections 231.2(1) and 231.7(1) of the *Income Tax Act* have been enacted to assist the Minister in that regard.

[11] The leading decision regarding the use of section 231.2(1) (formerly 231(3)) of the *Income Tax Act* is that of the Supreme Court of Canada in *R v McKinlay Transport Ltd*, [1990] 1 SCR 627. In *McKinlay*, Justice Wilson, held (at p 649) that section 231.2(1) of the *Income Tax Act* provides

the “least intrusive means by which effective monitoring of compliance with the *Income Tax Act* can be effected”.

[10] Section 231.2(1) of the *Income Tax Act* reads as follows:

**231.2(1)** Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), 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, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as is stipulated in the notice,

(a) any information or additional information, including a return of income or a supplementary return; or

(b) any document.

**231.2(1)** Malgré les autres dispositions de la présente loi, le ministre peut, sous réserve du paragraphe (2) et pour l'application ou l'exécution de la présente loi (y compris la perception d'un montant payable par une personne en vertu de la présente loi), d'un accord général d'échange de renseignements fiscaux entre le Canada et un autre pays ou territoire qui est en vigueur et s'applique ou d'un traité fiscal conclu avec un autre pays, par avis signifié à personne ou envoyé par courrier recommandé ou certifié, exiger d'une personne, dans le délai raisonnable que précise l'avis :

a) qu'elle fournisse tout renseignement ou tout renseignement supplémentaire, y compris une déclaration de revenu ou une déclaration supplémentaire;

b) qu'elle produise des documents.

[12] Section 231.7(1) of the *Income Tax Act* reads as follows:

**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

**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

document sought by the Minister under section 231.1 or 231.2 if the judge is satisfied that

(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

(b) in the case of information or a document, the information or document is not protected from disclosure by solicitor-client privilege (within the meaning of section 232(1)).

à obtenir en vertu des articles 231.1 ou 231.2 s'il est convaincu de ce qui suit :

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

[13] A review of sections 231.2(1) and 231.7(1) of the *Income Tax Act* suggests that three requirements must be satisfied before it is appropriate for a judge of this Court to exercise his or her discretion under section 231.7 of the *Income Tax Act* to order a person to provide any information or documents sought by the Minister.

[14] First, the Court must be satisfied that the person served with the requirement letter was required under section 231.2(1) of the *Income Tax Act* to provide the information or documents sought by the Minister. Section 231.2(1) of the *Income Tax Act* establish that the person served with the requirement letter will be so required if it appears that the Minister was acting for a purpose related to the administration or enforcement of the *Income Tax Act*, including the collection of any amount payable under the Act by any person, and the person was given a reasonable amount of time for production of the information or documents.

[15] Second, it must be shown to the Court that, although the person was required to provide the information or documents sought by the Minister, he or she did not do so. This requirement is established by section 231.7(1)(a) of the *Income Tax Act*.

[16] Third, the Court must be satisfied that the information or documents are not protected from disclosure by solicitor-client privilege. This requirement is established by section 231.7(1)(b) of the *Income Tax Act*.

#### V. Conclusion

[17] It is clear that the Respondent is a person who was required under section 231.2(1) of the *Income Tax Act* to provide the Information and Documents sought by the Minister. Further, the Minister sought the Information and Documents for purposes related to the enforcement or administration of the *Income Tax Act*.

[18] Service was effected upon the Respondent and the Information and Documents requested are within the knowledge and control of the Respondent. The Respondent was given thirty days to provide the Minister with the requested Information and Documents which are relevant to the determination and collection of amounts payable under the *Income Tax Act* by the Respondent. Accordingly, the first requirement has been satisfied in this case.

[19] The Respondent has clearly failed to provide the Information and Documents sought by the Minister.

[20] Although a director of the Respondent was personally served with the RFI on August 17, 2010, the Respondent has yet to provide the Information and Documents sought by the Minister. Accordingly, the second requirement has been satisfied in this case.

[21] Lastly, it is clear that the Information and Documents sought by the Minister are not protected from disclosure by solicitor-client privilege. Such a privilege attaches only to communications passing between a solicitor and a client in professional confidence. Accordingly, the third requirement has been established in this case.

[22] Based on the foregoing, it is appropriate for a Judge of this Court to exercise his or her discretion to order the Respondent to provide the Information and Documents sought by the Minister under the RFI served upon the Respondent on August 17, 2010.

[23] As the Court is 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 section 231.2(1) of the *Income Tax Act*, such requirements being:
  - a) the Respondent was required under section 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. An order under section 231.7 of the *Income Tax Act* that the Respondent provide the following information and documents sought by the Minister be made pursuant to section 231.2(1) of the *Income Tax Act*:
- a) all books, ledgers and schedules, including electronic data, detailing all transactions for the period from January 1, 2005, to December 31, 2009, with respect to the completion of income tax returns;
  - b) all business and personal bank records for all accounts held jointly, solely or in trust, for the above period. Records include deposit and withdrawal slips, cheques, transfer vouchers and banking statements;
  - c) all operation(s) records:
    - i. accountant's or representative's working papers and adjusting entries for the years under audit;
    - ii. records showing, day-by-day, the amount of business income and disbursements, all year-end adjustments;
    - iii. all sales invoices, sales reconciliation, shipping records,
    - iv. all vouchers to support the amounts expensed;
    - v. inventory, accounts payable and accounts receivable records;
    - vi. all purchase and sales documents for capital acquisitions and dispositions;
    - vii. business investment statements;
    - viii. all credit card statements, line of credit statements and loan/mortgage documents, including the repayment schedules and the purpose of the loans;
  - d) Personal records:



- i. list of major personal assets (e.g. real estate, vehicles, equipment, recreational etc.) along with the approximate costs/proceeds of disposition and year of acquisition/disposal;
- ii. personal investment statements (e.g. RRSP, mutual funds, term deposits, etc.);
- iii. all credit card statements, line of credit statements, and loan/mortgage documents, including the repayment schedules and the purpose of the loans;
- iv. all insurance policy documents;
- v. details of an non-taxable sources of funds impacting the Respondent's financial situation during the audit period;

(collectively, the Information and Documents);

3. The Respondent has not provided the Minister with the Information and Documents; and
4. The Information and Documents are not protected from disclosure by solicitor-client privilege within the meaning of section 232(1) of the *Income Tax Act*.

**THIS COURT THEREFORE ORDERS** pursuant to section 231.7 of the *Income Tax Act* that the Respondent comply with the notice issued by the Minister and shall forthwith, and in any event not later than 90 days after being served with this Order, provide the Information and Documents 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 the Applicant is awarded costs against the Respondent in the amount of \$500.

“Michel M. J. Shore”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1681-11

**STYLE OF CAUSE:** THE MINISTER OF NATIONAL REVENUE v.  
CASEY HANES

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** November 7, 2011

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

**DATED:** November 7, 2011

**APPEARANCES:**

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