

Federal Court



Cour fédérale

Date: 20111107

Docket: T-1790-11

Citation: 2011 FC 1270

Vancouver, British Columbia, November 7, 2011

PRESENT: The Honourable Mr. Justice Shore

IN THE MATTER OF FRIENDS OF GOOGOLPLEXION FOR
HUMAN RIGHTS INC. (SOMETIMES DOING BUSINESS AS
NELSON'S INTERNATIONAL HOME AUTO DEPOT INC.)

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

Applicant

and

**FRIENDS OF GOOGOLPLEXION FOR
HUMAN RIGHTS INC. (SOMETIMES DOING
BUSINESS AS NELSON'S INTERNATIONAL
HOME AUTO DEPOT INC.)**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] Robert Hannes Nelson is currently indebted to the Minister of National Revenue (the Minister) for personal income tax liability in the amount of \$64,601.80 concerning the 1987, and 1990 to 1993 taxation years. The reassessments first resulted from unreported income for the

1986, 1987, 1990, 1991, 1992, and 1993 taxation years. His 1986 tax arrears were paid as a result of collection action taken by the CRA including garnishment by way of statutory set-offs.

[2] In *Minister of National Revenue v Cormier-Imbeault*, 2009 FC 499, [2009] 6 CTC 45, the Court (at para 7) cited factors that can justify a jeopardy order:

- a. There are reasonable grounds to believe that the taxpayer has acted fraudulently;
- b. The taxpayer has proceeded to liquidate or transfer his or her assets;
- c. The taxpayer is evading his or her tax liabilities;
- d. The taxpayer has assets that could potentially lessen in value over time, deteriorate or perish; and
- e. The amount of the debt in relation to income and expenses.

[3] In the present case, the evidence before the Court on the Standard of Proof is sufficient in that collection of the Debt would be jeopardized by delay.

[4] Mr. Nelson, Mrs. Nelson and the Company's tax collections histories are also unorthodox. Over the years, Mr. Nelson has campaigned against the Government of Canada, including the Minister and the CRA on numerous occasions. This includes materials which he publishes on his websites, including his medical reports. Mr. Nelson has also made suicide threats to the CRA unless his demands are met.

[5] As well, there is Mr. Nelson's history with the court system. He has commenced numerous actions before the Supreme Court and the Court of Appeal in British Columbia, and also attempted

to re-litigate similar issues in Ontario. Mr. Nelson has also initiated proceedings in the Federal Court and the Federal Court of Appeal. He has unsuccessfully appealed these cases to the Supreme Court of Canada.

[6] As a result of the various proceedings, Mr. Nelson was declared a vexatious litigant in the British Columbia Supreme Court in 1981, in the British Columbia Court of Appeal in 2006, and in the Federal Court and in the Federal Court of Appeal in 2002 and 2003 respectively. He is prohibited from bringing any court proceeding in these courts without leave of a judge of the specific court that the action is being brought in.

[7] In 2004, Mr. Nelson also brought his concerns relevant to the CRA before the International Criminal Court who declined to hear the case as his complaints were not within their jurisdiction.

[8] These behaviours illustrate that Mr. Nelson, Mrs. Nelson and the Company, as directed by Mr. Nelson, have taken whatever steps are available to thwart the collections efforts of the Minister.

II. Background

[9] Robert Hannes Nelson (Mr. Nelson) is the sole director of the Respondent, Friends of Googolplexian for Human Rights Inc. (the Company). Mr. Nelson currently resides at 3460 McCulloch Road, Kelowna, British Columbia (the McCulloch Property).

[10] Mrs. Nelson Merle Nelson (Mrs. Nelson) is Mr. Nelson's spouse. She is reportedly a retired accountant. She also resides on the McCulloch Property.

[11] The Respondent Company is a provincially registered corporation having a registered and records office care of the McCulloch Property. As stated above, Mr. Nelson is the sole director of the Company, and Mrs. Nelson and Mr. Nelson are believed to be its shareholders although this is not specifically known because Mr. Nelson, for the Company, has refused the Canada Revenue Agency (the CRA) access to the Company's books and records.

[12] The Company was first incorporated on February 27, 1959, under incorporation number 0044013. Since that time, its corporate name has changed eleven (11) times.

[13] Mr. Nelson's debt itself was not certified and registered against title to any property owned by him at any time, including the McCulloch Property. However, Mrs. Nelson's debt relevant to one of her section 160(1) assessments (which debt is relevant to Mr. Nelson's debt as section 160(1) imposes joint and several liability upon Mrs. Nelson relevant to Mr. Nelson's debt) is so certified and is registered against title to the McCulloch Property.

[14] Mrs. Nelson is also currently indebted to the Minister for personal income tax liability in the amount of \$203,927.64 concerning the 1991 to 1994 taxation years. Her liability initially arose as a result of reassessments for unreported income for the 1989 to 1994 taxation years. Mrs. Nelson's 1989 and 1990 tax arrears were paid as a result of collection action taken by the CRA. This debt (as is relevant to her T1 assessments) has not been certified and registered against title to any property owned, or previously owned by Mrs. Nelson, including the McCulloch Property.

[15] Mrs. Nelson was assessed pursuant to section 160(1) of the ITA in the amount of \$26,036.50 relevant to Mr. Nelson's transfer to her of his interest in certain real property located at 11753 Alderwood Crescent, Delta, British Columbia (the Alderwood Property) on July 31, 1995. This assessment concerns a non-arms' length transfer for no or inadequate consideration when the transferor is indebted to the Minister. Relevant to this assessment, a jeopardy order was obtained and a certificate relevant to this debt was obtained and was registered against title to the Alderwood Property. This judgment was later paid with all of the sale proceeds when the property was sold.

[16] In addition, on August 1, 1996, Mrs. Nelson was assessed pursuant to section 160(1) in the amount of \$23,251.25 relevant to Mr. Nelson's transfer to her of the McCulloch Property. Pursuant to the aforementioned Jeopardy Order, this debt was certified and registered against title to the McCulloch Property. It remains so registered. Only this debt owing by Mrs. Nelson is registered against title to the McCulloch Property.

[17] Neither Mr. Nelson nor Mrs. Nelson has made any voluntary payments with respect to their debts. Mrs. Nelson recently contacted the CRA in regards to her debts but no resolution relevant to payment of the debts occurred.

[18] The Company is currently indebted to the Minister in the amount of \$50,147.85 (the Debt). Assessments were raised against it pursuant to section 160(1) of the ITA relevant to the transfer by Mrs. Nelson to the Company of her interest in the McCulloch Property and with respect to certain payments made by Mrs. Nelson to the Company.

[19] The Company has not yet filed a notice of objection in respect of the Assessments. Nor has it made any payments in respect of its Debt.

[20] Previous collection action was taken further to statutory set-offs in regards to Mrs. Nelson' and Mr. Nelson's debts. Only the set-off relevant to Mrs. Nelson remains in place.

A. The Respondent's Financial Matters

(1) Assets

[21] Based on CRA's investigation and through the use of several Requirements for Information (RFIs), the following assets belonging to the Respondent Company were identified:

- a. The McCulloch Property, which is the family home of Mr. Nelson and Mrs. Nelson, and which is currently registered in the name of the Company; and
- b. A bank account with the Canadian Imperial Bank of Commerce (CIBC). CIBC confirmed in September 2011 that the Company's bank account has a balance of \$95.22 as of July 31, 2011.

(2) Transfer of Assets

[22] The registered owner of the McCulloch Property was originally Mr. Nelson. As stated above, he transferred his interest in the McCulloch Property along with the Alderwood Property to Mrs. Nelson without adequate consideration (Affidavit of Michael Sundstrom, paras 16-17).

[23] Then, on or about August 13, 1997, Mrs. Nelson transferred her interest in the McCulloch Property to the Company for a reported \$230,000; however, the appraised value of the property at

the time was \$275,000. Since the company did not give adequate consideration to Mrs. Nelson in order to acquire title to the property, the Company was assessed in the amount of \$28,022.48 (Affidavit of Michael Sundstrom, paras 25-26).

[24] In addition to the transfer of the McCulloch Property, Mrs. Nelson (and Mr. Nelson) also made certain transfers to the Company for no consideration as follows:

- a) On or about October 27, 2003, Mrs. Nelson and Mr. Nelson transferred the sum of \$33,485 to the Company for no apparent consideration. The funds concerned insurance proceeds. As a result the Company was assessed in the amount of \$16,742.50 relating to Mrs. Nelson's portion of the insurance monies pursuant to section 160(1) of the ITA. No assessment was raised relevant to Mr. Nelson's portion of the monies given that his debt is already secured relevant to the McCulloch Property (by virtue of the certificate concerning Mrs. Nelson's section 160(1) assessment); and
- b) Between December 2001 and April 2006, \$5,382.87 was transferred by Mrs. Nelson to the Company relevant to Mrs. Nelson's Old Age Security and CPP benefits, and various personal cheques initially made out to Mrs. Nelson. As a result, the Company was assessed pursuant to section 160(1) of the ITA in respect of the transfers.

(3) The Company's Income

[25] The exact nature of the Company's business is unknown. It previously acted as a landlord relevant to the McCulloch Property, but no longer appears to act in this regard.

(4) The Company's Liabilities

[26] Because access to the Company's records has not been provided, it is unknown what its liabilities are, with the exception of the mortgages registered against title to the McCulloch Property.

[27] The McCulloch Property is currently appraised at \$622,000. It has the following financial encumbrances registered against title to this property:

- a) A mortgage in favour of CIBC is registered against the McCulloch Property.
The current balance owing with respect to this mortgage is \$136,177.67 as of August 15, 2011;
- b) A mortgage in favour of the Nelsons' deceased son, Mr. Nelson John Garth Nelson (Garth) is also registered against title to the McCulloch Property. However, it is not considered to be legitimate given the state of the mortgage documentation. Should the mortgage be legitimate, it is considered that no funds are owed under the mortgage.
The mortgage, which appeared to be secured for an amount of \$40,000 at an interest rate of 10%, was to be repaid by way of monthly payments of \$400.00 with the balance due some 13 months later on November 1, 1997. On May 24, 2007, CRA issued an RFI to Garth (prior to his death) concerning the amount owing under the mortgage.
Mr. Nelson, purportedly as agent for Garth, responded and advised that the balance of the mortgage was 'nil' as of May 1, 2007; and
- c) A mortgage in favour of RBC is also registered against title to the McCulloch Property with a face value of \$25,000, but has fluctuated over the years and has reached amounts in excess of \$181,000. Although the RBC mortgage was registered on the same day as

Garth's mortgage and notarized by the same notary public, the RBC mortgage appears on title in priority to Garth's mortgage. On or about September 27, 2010, an RFI was issued to RBC. On October 26, 2010, RBC responded and indicated that it currently does not have any mortgage accounts registered under Mrs. Nelson, Mr. Nelson or the Company. It appears there is no money owing under this mortgage, but the Company has failed to have it discharged (Affidavit of Michael Sundstrom, para 32).

[28] As a result, it is estimated that the Company's interest in the McCulloch Property is valued at approximately \$485,000.

B. Business Transactional Behaviour Analyzed

[29] Mr. Nelson, Mrs. Nelson and the Company have been conducting their affairs in an unorthodox manner. This is illustrated by their dealings with the McCulloch Property which has been the subject of several non-arm's length transfers for no or inadequate consideration. In addition, Garth's mortgage registered against title to this property is not believed to be a legitimate mortgage. Accordingly, it is reasonable to assume, especially given the recent Assessments against the Company, that Mr. Nelson, on behalf of the Company, will take steps relevant to the McCulloch Property to thwart the Minister's collection efforts, unless the requested jeopardy order is granted.

[30] This is especially likely given that Mr. Nelson is the director of three (3) other corporations, and Mrs. Nelson is a director of two (2) corporations. Therefore, it would be relatively easy for Mr. Nelson to cause the McCulloch Property to be transferred to another family corporation.

[31] In addition, the assessments themselves, by their very nature, are unorthodox.

C. Collection Action

[32] It is the intention of the CRA, further to an order of this Court, to effect service of the Jeopardy Order on the Company by personally serving it care of its sole director, Mr. Nelson; or by leaving a copy of the Order directed to the Company both on its own and care of Mr. Nelson, with an adult person at the McCulloch Property; or by posting it to the door of that property; and by sending a copy of the Jeopardy Order by ordinary mail addressed to the Company in its own right and care of Mr. Nelson to the McCulloch Property. As noted above, the Company's registered and records office is located at the McCulloch Property.

[33] It is also the intention of the CRA, further to a court order, to certify the amounts owing by the Company with respect to the Debt and to register the corresponding judgment against title to the McCulloch Property. The CRA would, however, like to take any of the collection measures available under section 225.1 of the ITA, if so permitted.

III. Issue

[34] Are there reasonable grounds to believe that the collection of all or any part of the \$50,147.85 in income tax assessed in respect of the Company would be jeopardized by a delay in the collection of that amount?

IV. Analyses

[35] The Court accepts the position of the Applicant that collection of the above amount is in jeopardy by a delay in the collection of the whole amount, as specified.

A. Re Collection

[36] Section 225.1 of the ITA limits, with certain exceptions, the Minister's right to recover unpaid taxes where the taxpayer disputes his or her assessed amounts and an impartial hearing has not concluded otherwise.

[37] Section 225.1(1) of the ITA provides that, with certain exceptions, the Minister shall not take any of the listed collection actions against a taxpayer until the day after that is 90 days after the day that a Notice of Assessment (or Reassessment) is mailed to the taxpayer, or if the taxpayer files a notice of objection or an appeal of the assessment, until the objection or appeal has been dealt with finally.

B. Authorization to Proceed

[38] Section 225.2 of the ITA provides that, notwithstanding section 225.1, a judge of this Court, on an *ex parte* application by the Minister, may grant an order (a Jeopardy Order) authorizing the Minister to take collection action forthwith if the judge is satisfied that "there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of a taxpayer would be jeopardized by a delay in the collection of that amount."

[39] A useful review of the legislative intent and history is found in the case of *1853-9049 Quebec v The Queen* (1986), 87 DTC 5093 (FCTD) at 5095, a decision of Justice Paul Rouleau of the Federal Court, Trial Division. At page 5095, Justice Rouleau refers to the following excerpts from a speech to the House of Commons by the parliamentary secretary to the Minister of Finance. The extracts are taken from the House of Commons debates for September 24, 1985:

In addition, the proposed Bill includes safety features against possible abuses of the new system. Where there are reasons to believe that the granting of a delay could jeopardize the collection of the amounts in controversy, the Bill allows Revenue Canada to take forthwith recovery action. On the other hand, the taxpayer has a right to ask a Judge to review the opinion of Revenue Canada that the collection of the amount in controversy would be jeopardized by such a delay.

[40] In *Laframboise v The Queen* (1986), 86 DTC 6396 (FCTD) at 6398, Justice Joyal of this Court commented on the specific wording of paragraph 225.2(1) of the ITA [with reference to the phrase "...there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of a taxpayer would be jeopardized by a delay in the collection of that amount"] and stated (at page 6398):

The expression has sufficiently liberal qualifications to it that its ambit appears to me of far greater scope than that found in *Mareva* injunctions. The word "may" and the expression "reasonably considered", when read together, provide considerable latitude to the Minister, a latitude which I believe is not found whenever one deals with a seizure before judgment.

[41] In 1988, the provisions of the ITA were once again revisited and section 225.2 was amended to require prior authorization by a Court before such jeopardy collection procedures could be

initiated. It is due to this amendment that the Minister is required to avail himself of the special collection provisions contained in section 225.2 of the ITA.

C. Test for Granting an Order under Section 225.2

[42] This Court has held that the test on an application by the Minister under section 225.2 of the ITA (a Jeopardy Application) is whether the evidence before the Court on a balance of probabilities or a “standard of proof that ‘while falling short of a balance of probabilities, nevertheless connotes a bona fide belief in a serious possibility based on credible evidence’” (the Standard of Proof) is sufficient to lead to the conclusion that collection would be jeopardized by delay. This Court has also held that the issue is not whether the collection *per se* is in jeopardy but whether the actual jeopardy arises from the likely delay in the collection (*Canada (Minister of National Revenue – MNR) v 514659 BC Ltd*, [2003] FCJ No 207 (TD) at para 6 [*514659 BC Ltd*]; *Danielson v Minister of National Revenue*, [1986] 86 DTC 6518 (FCTD) [*Danielson*]).

[43] Therefore, in order for a Jeopardy Application to succeed, the onus is on the Minister to prove that collection will be in jeopardy as a result of a delay in the collection efforts of the Minister. Justice McNair in *Danielson* above, held (at page 6519):

In my judgment, the issue goes to the matter of collection jeopardy by reason of the delay normally attributable to the appeal process. The wording of subsection 225.1(1) would seem to indicate that it is necessary to show that because of the passage of time involved in an appeal the taxpayer would become less able to pay the amount assessed.

...

...the mere suspicion or concern that delay may jeopardize collection would not be sufficient *per se*. The test of “whether it may reasonably be considered” is susceptible of being reasonably translated into the test of whether the evidence on balance of

probability is sufficient to lead to the conclusion that is more likely than not the collection would be jeopardized by delay...In my opinion the issue is not whether the collection *per se* is in jeopardy but rather whether the actual jeopardy arises from the likely delay in the collection thereof.

[44] In making its application for a jeopardy order, the Minister has an obligation to make full and frank disclosure and to exercise the utmost good faith both in respect of the relevant facts, and the applicable jurisprudence *Canada (Minister of National Revenue) v Robarts*, 2010 FC 875, at paras 33 to 35 [*Robarts*].

[45] A lack of income is not, in and of itself, a sufficient justification for the granting of a jeopardy order. Nor is the fact that the taxpayer's assets are entirely liquid in nature and so can be easily wasted, liquidated or transferred *Robarts* above, at paras 72 and 73.

[46] Further, where there are additional collections avenues available to the Minister which would see the debt paid notwithstanding the collections restrictions period, a jeopardy order is not warranted (*Steele (Re)* [1995] SJ No 784 (SKQB) [QL], at para 12).

[47] If there is compelling evidence on the part of the Minister as to dissipation of the taxpayer's assets or the movement of assets out of the jurisdiction beyond the reach of the Minister and other potential creditors, this is persuasive. Speaking of the evidence that must be adduced by the Minister, Justice McNair in *Danielson* above, stated (at page 6519):

Cogent evidence on the part of the Minister as to the dissipation of the taxpayer's assets or the movement of assets out of the jurisdiction beyond the reach of the Minister and other potential creditors could be very persuasive and compelling. A more

difficult borderline case might be the situation where the taxpayer's assets are of a wasting nature, or likely to decline in value with the mere passage of time.

[48] Unorthodox behaviour which raises a reasonable apprehension that it would be difficult to trace funds or recover them for the tax debt may provide reasonable grounds that a jeopardy order is warranted (*Deputy Minister of National Revenue v Quesnel*, 2001 BCSC 267 [*Quesnel*]).

[49] As set out by Justice Martineau of this Court in *Robarts* above (at para 61), 'unorthodox behaviour' has not been specifically defined by the jurisprudence, although it has given examples of what it considers to be unorthodox behaviour:

- a. Keeping large amounts of cash in places such as one's apartment, safety deposit boxes, and a cold storage depot locker (*Minister of National Revenue v Andre Rouleau*) (1995), 95 DTC 5597 (FCTD) [*Rouleau*]);
- b. Keeping large amounts of cash, untraceable through normal banking records, in the trunk of an automobile (*Minister of National Revenue v Arab*, 2005 FC 264, [2005] 2 CTC 107 at para 20);
- c. Keeping double accounts for a restaurant, with one being for entries in the sales ledger and income tax returns, and the other being for additional sales not reported by the holding company of the restaurant (*Delaunière, re*, 2007 FC 636, 2008 DTC 6274 (Eng) at para 4);
- d. Keeping large amounts of cash in a safety deposit box, a filing cabinet in one's house and in the pocket of a housecoat (*Mann v Minister of National Revenue*, 2006 FC 1358, [2007] 1 CTC 243 at para 43); and

- e. Advancing funds to a company about to be dissolved in order to avoid paying income tax (*Laquerre, re*, 2008 FC 459, 2009 DTC 5596 (Eng) at para 11 [*Laquerre, re*]).

[50] Also, in *Laquerre, re* above, at para 38, the Court considered the Respondent's unorthodox behaviour in addition to that of his non-arm's length companies and family trusts.

[51] Similarly, in *Canada (Minister of National Revenue) v Services ML Marengère*, [1999] Can LII 9004 (CAN LL) [*Marengère*], the Court considered the unorthodox behaviour of the Respondent and its affiliated corporations, and director, in rendering its decision as to whether the Jeopardy Order was appropriate.

[52] The presence of other creditors who could collect on their debts in priority to the Minister unless the requested jeopardy order is granted may also justify the making of the order (*514659 BC Ltd*, above at para 10; *Marengère* above, at para 63).

[53] In *Minister of National Revenue v Cormier-Imbeault*, 2009 FC 499, [2009] 6 CTC 45, the Court (at para 7) cited factors that can justify a jeopardy order:

- a. There are reasonable grounds to believe that the taxpayer has acted fraudulently;
- b. The taxpayer has proceeded to liquidate or transfer his or her assets;
- c. The taxpayer is evading his or her tax liabilities;
- d. The taxpayer has assets that could potentially lessen in value over time, deteriorate or perish; and
- e. The amount of the debt in relation to income and expenses.

[54] The raising of the assessments may itself raise reasonable apprehension that the taxpayer has not been conducting his or her affairs in an orthodox fashion. In *Rouleau* above, Judge Gibson held (at page 5598):

These reassessments were based on net worth statements which the applicant alleges are inaccurate. The net worth statements were in part developed on the basis of information garnered through search warrants obtained by the Minister of National Revenue on May 1994 and a later date, also in May, 1994. In the execution of the search warrants, it was discovered that the applicant had \$25,000.00 in cash in his apartment, approximately \$92,000.00 in cash in safety deposit boxes and over \$96,000.00 in cash in a cold storage depot locker maintained by the applicant.

...

As I indicated earlier, I am not satisfied that the applicant discharged the initial burden on him to show that there are reasonable grounds to doubt that the test for a jeopardy collection order has been met. In *Laframboise v. The Queen* [1986] 3 F.C. 521, Mr. Justice Joyal stated at page 524:

I find that the nature of the Reassessments itself raises reasonable apprehensions that the taxpayer had not been conducting his affairs in what might be called unorthodox fashion. There is reasonable apprehension that in placing surplus funds or investment purposes through the hands of a third party instead of directly, there would be difficulty in retracing these funds or in recovering them.

I find the foregoing quotation apt to the circumstances before me. Certainly the nature of the Reassessments against the applicant indicates a range of income to the applicant quite out of scale with the incomes disclosed by the applicant in his annual returns to the Minister of National Revenue. The way in which he held assets certainly disclosed a conducting of affairs that could be called unorthodox. It also disclosed practices that would have made it very simple for the applicant to spirit away substantial assets if he had been so inclined so that there conceivably could have been difficulty in retracing the assets and in recovering them.

[55] A summary of the principles relevant to the making of a Jeopardy Order was set out by Justice Clancy of the Supreme Court of British Columbia in *Deputy Minister of National Revenue v Quesnel* above, at para 27:

- Jeopardy orders have been considered in a number of authorities. A useful summary of the principles that emerge from those authorities was provided by counsel for Ms. Quesnel. The principles relevant to the circumstances before me are:
- i. the facts must provide reasonable grounds for believing the taxpayer will waste, liquidate or otherwise transfer property so as to make it unavailable to the Minister: *Canada v. Golbeck* (1990), 90 DTC 6575 (F.C.A.);
 - ii. it must be more likely than not that collection will be jeopardized by delay: *Danielson v. Minister of National Revenue* (1986), 86 DTC 6495 (F.C.T.D.); *Satellite Earth Station, supra*;
 - iii. mere suspicion or concern is not sufficient to establish reasonable grounds: *Danielson, supra*, *Satellite Earth Station, supra*;
 - iv. where a taxpayer has never taken any steps to hinder collection proceedings, it suggests that collection will not be jeopardized: *Danielson, supra*;
 - v. where a taxpayer has sold real estate that is the only asset to satisfy the cash debt and the cash received on the sale is still available to satisfy the debt, the sale itself does not constitute grounds for a jeopardy order: *Canada (Minister of National Revenue) v. Landru*, [1993] 1 C.T.C. 93 (Sask. Q.B.);
 - vi. unorthodox behaviour which raises a reasonable apprehension that it would be difficult to trace funds or recover them for the tax debt may provide reasonable grounds: *Laframboise, supra*; *Rouleau, supra*.

See also *Minister of National Revenue v Thériault-Sabourin*, CarswellNat 172, 2003 FCT 124 at paras 13 and 14.

[56] In *Canada (Minister of National Revenue) v MacIver et al*, [1999] 99 DCT 5524 (FCTD) at 5525, Madam Justice Sharlow heard the Respondents' application for a review of the jeopardy orders that had been made pursuant to subsection 225.2(2) of the ITA and stated:

The tax dispute will be resolved in another forum. It is beyond my jurisdiction to consider whether or not the assessments are correct.

For present purposes, I am bound by section 152(8), which deems the assessments to be valid unless and until they are varied on objection or appeal.

[57] Likewise, in *Marengère*, above (at paragraphs 67 and 72 (subparagraph 4)), Justice Lemieux said:

[67]... This case does not turn on intent or on tax planning; it calls to be determined looking at the matter objectively and realistically on the ground so to speak. In other words, it is the effect or result of the taxpayer's action in dealing with its assets that is important and relevant in the assessment of the appropriateness of a collection jeopardy order. Tax liability is not an issue in such proceedings.

[74](4) The Minister does not have to prove fraud or deceit or bad motive.

D. Evidence

[58] In the present case, the evidence before the Court on the Standard of Proof is sufficient in that collection of the Debt would be jeopardized by delay.

[59] There is cogent evidence before the Court of jeopardy in this case, as follows:

- a. The Company's only known exigible asset available to satisfy the Debt is the McCulloch Property;
- b. With respect to the underlying debts (being Mrs. Nelson and Mr. Nelson's debts), only Mrs. Nelson's debt concerning the section 160(1) assessment against her in regards to Mr. Nelson's transfer to her of the McCulloch Property is certified and registered against title to the McCulloch Property. The remainder of her debt is not certified or

registered against title to any property and so the CRA is still unable to collect this debt or secure it by any means without the requested Order;

- c. Accordingly, the Minister would like to certify the Company's debt and register the corresponding certificate against title to the McCulloch Property;
- d. There is concern that, if the Minister is unable to do so immediately, the Nelsons will cause the Company to encumber or transfer the Property during the collections restrictions period to prevent the Minister from pursuing these measures. The collections restrictions period relevant to the Debt will not expire until January 28, 2011, or later, if the Company objects to or appeals its Assessments;
- e. The Company has engaged in unorthodox behaviour in the past with a view to thwarting the collection efforts of the Minister relevant to the Nelsons;
- f. The Company is controlled by Mr. Nelson and is believed to be owned by Mr. and Mrs. Nelson;
- g. Mr. Nelson and Mrs. Nelson have also engaged in unorthodox conduct with a view to thwarting the collection efforts of the Minister and avoiding their tax responsibilities. Mrs. Nelson has previously been the subject of a jeopardy order;
- h. The assessments themselves concerning all of Mrs. Nelson, Mr. Nelson and the Company are, by their very own nature, unorthodox;
- i. Mrs. Nelson and Mr. Nelson have refused to provide financial disclosure to the CRA, and have generally been uncooperative with respect to their tax matters for over twenty (20) years;
- j. Mr. Nelson has been declared a vexatious litigant with the BCSC, BCCA and Federal Court with respect to various actions targeted against the Canadian Government,

including the Minister, CRA, government lawyers and other government personnel.

He has also initiated similar legal actions in Ontario. Mr. Nelson unsuccessfully appealed many of these decisions to the SCC. Moreover, he initiated legal action at the International Criminal Court in The Hague, Netherlands, without success;

- k. The McCulloch Property has been the subject of several non-arm's length transfers for no, or inadequate consideration. Most recently, the McCulloch Property was transferred by Mrs. Nelson to the Company. All of the transfers were controlled and directed by the Nelsons;
- l. Additionally, a mortgage in favour of the Nelson's deceased son, Garth, is registered against title to the McCulloch Property. This mortgage is not believed to be legitimate. There is also a mortgage in favour of RBC registered on title against the McCulloch Property. Although RBC indicates that the mortgage account no longer exists, the Nelsons have not taken steps to have the charge removed from title to the Property;
- m. Mrs. Nelson and Mr. Nelson are the directors of several other related corporations, and so could cause the Property to be transferred to another related corporation at anytime, including during the period in which the Minister is under collection restrictions. As well, the McCulloch Property could be transferred away to another family member, as has occurred in the past; and
- n. Even if collection avenues relevant to such transfers are available to the Minister, it is likely that – given the past conduct of the Nelsons and the Company – an endless 'cat and mouse' game could ensue.

[60] For these reasons, that there are reasonable grounds to believe that the collection of all or any part of the Debt assessed in respect of the Company will be jeopardized by a delay in the collection of that amount.

V. Conclusion

[61] The Court agrees to grant the Minister's request for the following:

- (1) An Order (the Jeopardy Order) under section 225.2(2) of the ITA authorizing the Minister to take forthwith the actions described in paragraphs 225.1(1)(a) to (g) with respect to the amounts assessed in respect of the Company, including the right to certify the amounts owing by the Company with respect to the Debt and to register the corresponding judgment against title to the McCulloch Property.
- (2) An Order authorizing the Minister to effect service of the Jeopardy Order on the Company by personally serving it care of its sole director, Robert; or by leaving a copy of the Order directed to the Company both on its own and care of Robert, with an adult person at the McCulloch Property; or by posting it to the door of that property; and by sending a copy of the Jeopardy Order by ordinary mail addressed to the Company in its own right and care of Robert to the McCulloch Property. As noted above, the Company's registered and records office is located at the McCulloch Property.

JUDGMENT

UPON the *ex parte* application of the Minister of National Revenue (the Minister);

AND UPON reviewing the materials filed by the Minister, including the Affidavit of Michael Sundstrom sworn November 1, 2011, and hearing the submissions of counsel for the Minister, Nicole S. Johnston;

AND UPON being satisfied that there are reasonable grounds to believe that the collection of an amount assessed for tax by the Minister against the Respondent would be jeopardized by a delay in the collection thereof;

THIS COURT ORDERS under section 225.2(2) of the *Income Tax Act* that the Minister is authorized to take forthwith the actions described in paragraphs 225.1(1)(a) through (g) with respect to the amounts assessed in respect of the Respondent (the Jeopardy Order); and

THIS COURT FURTHER ORDERS that the Minister may effect service of the Jeopardy Order on the Respondent by personally serving it care of its sole director, Robert Hannes Nelson (Mr. Nelson); or by leaving a copy of the Order directed to the Respondent both in its own right and care of Mr. Nelson, with an adult person at the address of its registered and records office, namely 3460 McCulloch Road, Kelowna, British Columbia (the McCulloch Property), which address is also the personal residence of Mr. Nelson; or by posting it to the door of that Property; and by sending a copy of the Jeopardy Order by ordinary mail addressed to the Company in its own right and care of Mr. Nelson to the McCulloch Property.

THIS COURT FURTHER ORDERS that the Respondent:

TAKE NOTICE that an *ex parte* application, filed under Court file No. T-1790-11, for a jeopardy order was commenced against you pursuant to subsection 225.2 of the *Income Tax Act*. The Court Order authorizes the Minister of National Revenue to take forthwith any of the actions described in paragraphs 225.1(1(a) through (g) of the *Income Tax Act* with respect to your assessed tax debt.

Pursuant to subsection 225.2(8), the Respondent may, upon six (6) clear days notice to the Deputy Attorney General of Canada, apply to a Judge of the Federal Court to review the Court Order.

Pursuant to subsection 225.2(9), the Respondent's application must be brought within thirty (30) days from the date that the court Order was deemed to be served on you, or within such further time as a Judge may allow, provided that you can satisfy the Judge that your application was made as soon as practicable.

(Copies of the *Federal Courts Rules*, information concerning the local office of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office including the Vancouver office (telephone 604-666-3232)).

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1790-11

STYLE OF CAUSE: MNR v. FRIENDS OF GOOGOLPLEXION FOR HUMAN RIGHTS INC. (SOMETIMES DOING BUSINESS AS NELSON'S INTERNATIONAL HOME AUTO DEPOT INC.)

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: November 7, 2011

REASONS FOR JUDGMENT AND JUDGMENT: SHORE J.

DATED: November 7, 2011

APPEARANCES:

Nicole S. Johnston FOR THE APPLICANT

No appearance FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan FOR THE APPLICANT
Deputy Attorney General of Canada
Vancouver, BC

n/a FOR THE RESPONDENT