

Federal Court



Cour fédérale

**Date: 20140529**

**Docket: T-1403-12**

**Citation: 2014 FC 519**

**Ottawa, Ontario, May 29, 2014**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**MINISTER OF NATIONAL REVENUE**

**Applicant**

**and**

**BRUCE CLINTON JOSEPH RYDER**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] On September 16, 2013, I found Mr. Ryder to be in contempt of Court for failing to comply with the order issued by Mr. Justice Luc Martineau on August 13, 2012, which required the respondent to comply with a notice issued by the Minister of National Revenue. The respondent was ordered to provide the following information and documents:

- (a) Documentary proof relating to the ownership of the mobile food vending cart operated by you or on your behalf, including, but not limited to, copies of any bill of sale receipt, cancelled cheque or written sale agreement;

(b) If the vending cart is not owned by you, the original written lease agreement or contract between you and the owner of this asset. If a lease does not exist, a written statement indicating the terms under which you have been granted use of this asset and who the owner is;

(c) A written statement indicating the amount of income generated by the operation of the vending cart for the period between January 1, 2011 and January 24, 2012; and

(d) In the event you claim you do not earn income from the operation, ownership or lease of the vending cart, a written statement of all other income sources including employers, contractors or benefactors for the period between January 1, 2011 and January 24, 2012.

[2] The respondent did not provide the information or documents. Hence, the finding of contempt.

[3] A sentencing hearing was held with respect to the matter on January 9, 2014 at which time the parties were allowed to submit documents and to make oral argument as to the appropriate sentence to be imposed.

[4] Rule 472 of the *Federal Courts Rules*, SOR/98-106 sets out the penalties that may be imposed where a person is found to be in contempt:

472. Where a person is found to be in contempt, a judge may order that

(a) the person be imprisoned for a period of less than five years or until the person complies with the order;

472. Lorsqu'une personne est reconnue coupable d'outrage au tribunal, le juge peut ordonner:

a) qu'elle soit incarcérée pour une période de moins de cinq ans ou jusqu'à ce qu'elle se conforme à l'ordonnance;

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| (b) the person be imprisoned for a period of less than five years if the person fails to comply with the order; | b) qu'elle soit incarcérée pour une période de moins de cinq ans si elle ne se conforme pas à l'ordonnance; |
| (c) the person pay a fine;  | c) qu'elle paie une amende;   |
| (d) the person do or refrain from doing any act;  | d) qu'elle accomplisse un acte ou s'abstienne de l'accomplir;   |
| (e) in respect of a person referred to in rule 429, the person's property be sequestered; and                   | e) que les biens de la personne soient mis sous séquestre, dans le cas visé à la règle 429;                 |
| (f) the person pay costs.   | f) qu'elle soit condamnée aux dépens.   |

[5] The applicant requested the following order:

- a) A fine of \$2,500 (the "Fine") be imposed upon Mr. Ryder to be paid within thirty (30) days from the date of the Order;
- b) Mr. Ryder is to pay costs on a solicitor-client basis to the Minister through the Minister's counsel or to the Canada Revenue Agency (c/o the Receiver General for Canada) at an amount fixed at \$2,500 (the "Costs") within thirty (30) days from the date of the Order;
- c) In view of the evidence and circumstances therein, if the Minister informs the Court by affidavit that payment of either the Fine or the Costs has not been made within thirty (30) days from the date of the Order, this Court then imposes a sentence of fifteen (15) days imprisonment for default on the payment of the Costs and a consecutive sentence of imprisonment for default on the payment of the Fine to a total of thirty (30) days imprisonment;
- d) Mr. Ryder shall provide to the Minister, through the Minister's counsel or to the Canada Revenue Agency, the following information and documents (the "Information and Documents") sought by the Minister pursuant to subsection 289(1) of the ETA within thirty (30) days from the date of the Order:
  - 1) Documentary proof relating to the ownership of the mobile food vending cart operated by you or on your behalf,

including, but not limited to, copies of any bill of sale receipt, cancelled cheque or written sale agreement;

2) If the vending cart is not owned by you, the original written lease agreement or contract between you and the owner of this asset. If a lease does not exist, a written statement indicating the terms under which you have been granted use of this asset and who the owner is;

3) A written statement indicating the amount of income generated by the operation of the vending cart for the period between January 1, 2011 and January 24, 2012; and

4) In the event you claim you do not earn income from the operation, ownership or lease of the vending cart, a written statement of all other income sources including employers, contractors or benefactors for the period between January 1, 2011 and January 24, 2012.

(collectively, the “Information and Documents”);

e) If the Minister informs the Court by affidavit that Mr. Ryder has failed to provide the Information and Documents to the Minister within thirty (30) days from the date of the Order, then this Court shall impose a sentence of 15 days imprisonment upon Mr. Ryder to be served consecutively with any sentence of imprisonment in respect of a sentence of imprisonment for a failure by the Respondent to pay either the Fine or the Costs.

[6] In *Winnicki v Canada (Human Rights Commission)*, 2007 FCA 52 at paragraphs 17 and 18, [2007] 359 NR 101, the Court of Appeal approved considering the following list of factors when sentencing someone for contempt:

1. the gravity of the contempt in the context of the particular circumstances of the case as they pertain to the administration of justice;
2. whether the contempt offence is the first offence;
3. presence of any mitigating factors such as good faith or an apology; and
4. deterrence of similar conduct.

[7] In *Canada (Minister of National Revenue) v Marshall*, 2006 FC 788, 294 FTR 297, Mr.

Justice Michael Kelen stated at paragraph 16:

To summarize, the factors relevant to determining a sentence in contempt proceedings are:

- i. The primary purpose of imposing sanctions is to ensure compliance with orders of the court. Specific and general deterrence are important to ensure continued public confidence in the administration of justice;
- ii. Proportionality of sentencing requires striking a balance between enforcing the law and what the Court has called “temperance of justice”;
- iii. Aggravating factors include the objective gravity of the contemptuous conduct, the subjective gravity of the conduct (i.e. whether the conduct was a technical breach or a flagrant act with full knowledge of its unlawfulness), and whether the offender has repeatedly breached orders of the Court; and
- iv. Mitigating factors might include good faith attempts to comply (even after the breach), apologize or accept responsibility, or whether the breach is a first offence.

[8] Applying these principles to the present case, I would first note that this offence is a first contempt offence for the respondent. The respondent appealed the compliance order, and he thought that made it unnecessary to comply with it. The respondent submitted that the applicant had no authority to order him to produce documents or information, consequently, he did not produce the documents. He was wrong, but I do not think the subjective gravity of the offence is very high. Still, the applicant submitted that the sentence should be harsher because the respondent unnecessarily delayed the proceedings by filing an appeal that he did not actively pursue. However, I do not take this as a negative factor as the respondent had the right to appeal.

[9] Considering all of this, I am not prepared to impose an immediate custodial sentence. I would instead impose a fine of \$1,250 and if the respondent does not pay the fine within 90 days of the receipt of this order, he shall serve five days of imprisonment.

[10] The respondent shall pay costs on a solicitor-client basis in the amount of \$1,100 to the applicant. If the costs are not paid within 90 days of the receipt of this order, the applicant shall be imprisoned for five days. This period of incarceration is consecutive to the five days imprisonment in paragraph 10 above.

[11] The respondent may make a motion to extend the time for payment of the fine and costs to any Judge of this Court.

[12] As well, I will again order the respondent to provide to the CRA the information and documents demanded in Justice Martineau's order dated August 13, 2012. If he does not do so within 60 days of the date he receives this order, then he shall be imprisoned for five days. This period too shall be consecutive to any other sentences the respondent serves under this order.

**ORDER**

**THIS COURT ORDERS that:**

1. Within ninety (90) days of the date that Mr. Ryder receives this order, Mr. Ryder shall pay a fine of \$1,250.
2. Within ninety (90) days of the date that Mr. Ryder receives this order, Mr. Ryder shall pay costs in the amount of \$1,100.
3. Mr. Ryder may make a motion to extend the time for payment of the fine and costs to any Judge of this Court.
4. Within sixty (60) days of the date that Mr. Ryder receives this order, Mr. Ryder shall provide to the Minister, through the Minister's counsel or to the Canada Revenue Agency, the following information and documents sought by the Minister pursuant to subsection 289(1) of the *Excise Tax Act*, RSC 1985, c E-15:
  - a) Documentary proof relating to the ownership of the mobile food vending cart operated by you or on your behalf, including, but not limited to, copies of any bill of sale receipt, cancelled cheque or written sale agreement;
  - b) If the vending cart is not owned by you, the original written lease agreement or contract between you and the owner of this asset. If a lease does not exist, a written statement indicating the terms under which you have been granted use of this asset and who the owner is;
  - c) A written statement indicating the amount of income generated by the operation of the vending cart for the period between January 1, 2011 and January 24, 2012;  
and

- d) In the event you claim you do not earn income from the operation, ownership or lease of the vending cart, a written statement of all other income sources including employers, contractors or benefactors for the period between January 1, 2011 and January 24, 2012.
- 5.
- a) If the Minister informs the Court by affidavit that Mr. Ryder has failed to pay the fine on time, then Mr. Ryder shall be imprisoned for five (5) days, which shall be served consecutively to any other sentence of imprisonment imposed by this order.
- b) If the Minister informs the Court by affidavit that Mr. Ryder has failed to pay the costs award on time, then Mr. Ryder shall be imprisoned for five days which shall be served consecutively to any other sentence of imprisonment imposed by this order.
6. If the Minister informs the Court by affidavit that Mr. Ryder has failed to provide to the Minister the information and documents ordered under paragraph 5 on time, then Mr. Ryder shall be imprisoned for five (5) days, which shall be served consecutively to any other sentence of imprisonment imposed by this order.

"John A. O'Keefe"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1403-12

**STYLE OF CAUSE:** MINISTER OF NATIONAL REVENUE v  
BRUCE CLINTON JOSEPH RYDER

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** APRIL 7, 2014

**REASONS FOR ORDER AND  
ORDER:** O'KEEFE J.

**DATED:** MAY 29, 2014

**APPEARANCES:**

Darren McLeod FOR THE APPLICANT

Self-Represented FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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