Docket: 2022-558(IT)G

BETWEEN:

BELLEVUE FÉLIX,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Motion by written submissions, at Ottawa, Canada

Before: The Honourable Justice Dominique Lafleur

Appearances:

For the appellant:	The appellant himself
Counsel for the respondent:	Antoine Lamarre Noémie Vespignani

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ORDER

UPON the respondent's Notice of Motion (the "Motion") of May 18, 2022, seeking an order striking out certain parts of the Notice of Appeal pursuant to paragraph 53(1)(d) of the *Tax Court of Canada Rules (General Procedure)* without leave to amend the Notice of Appeal, specifically:

(i) paragraphs 36 to 50 in section A of the Notice of Appeal, which is entitled [TRANSLATION] "The relevant facts that form the basis of the appeal";

(ii) issues (ii), (iii), (iv) and (v) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues";

(iii) paragraphs 65, 70, 73 to 91, 96 (including all the subparagraphs) and 97 to 100 in section D of the Notice of Appeal, which is entitled [TRANSLATION] "Grounds"; and

(iv) in section E of the Notice of Appeal, which is entitled [TRANSLATION] "Relief sought", the conclusions with respect to issues (ii), (iii), (iv) and (v) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues", specifically, the third and fourth conclusions at page 28 of the Notice of Appeal, the first conclusion at page 29 of the Notice of Appeal and the alternative conclusion in the Notice of Appeal;

UPON the documents in the record and the request that the motion be dealt with in writing, without appearance of the parties;

AND UPON the parties' written submissions;

AND UPON the appellant's consent to the striking out of issue (v) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues", paragraphs 97 to 100 in section D of the Notice of Appeal, which is entitled [TRANSLATION] "Grounds", and the first conclusion at page 29 in section E of the Notice of Appeal, which is entitled [TRANSLATION] "Relief sought";

THE COURT ORDERS AS FOLLOWS:

1. For the attached reasons, the motion is granted with costs to the respondent, and the following parts of the Notice of Appeal are struck out:

   (i) paragraphs 36 to 50 in section A of the Notice of Appeal, which is entitled [TRANSLATION] "The relevant facts that form the basis of the appeal";

   (ii) issues (ii), (iii) and (iv) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues";

   (iii) paragraphs 65, 70, 73 to 91 and 96 (including all the subparagraphs) in section D of the Notice of Appeal, which is entitled [TRANSLATION] "Grounds"; and

   (iv) in section E of the Notice of Appeal, which is entitled [TRANSLATION] "Relief sought", the conclusions with respect to issues (ii), (iii) and (iv) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues", specifically, the third and fourth conclusions at page 28 of the Notice of Appeal and the alternative conclusion in the Notice of Appeal.

2. Upon the appellant's consent, the following parts of the Notice of Appeal are also struck out:

   (i) issue (v) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues";

   (ii) paragraphs 97 to 100 in section D of the Notice of Appeal, which is entitled [TRANSLATION] "Grounds"; and

   (iii) in section E of the Notice of Appeal, which is entitled [TRANSLATION] "Relief sought", the first conclusion at page 29.

3. The appellant is not permitted to amend the Notice of Appeal.

4. The respondent must file and serve a reply to the notice of appeal no later than 60 days following the date of this order.

Signed at Ottawa, Canada, this 18th day of January 2023.

"Dominique Lafleur"

Justice Lafleur

Translation certified true
on this 15th day of February 2023.
Melissa Paquette

Citation: 2023 TCC 5
Date: 20230118
Docket: 2022-558(IT)G

BETWEEN:

BELLEVUE FÉLIX,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR ORDER

Lafleur J.

I. Motion

[1] The respondent filed a notice of motion (the "Motion") dated May 18, 2022, seeking an order striking out certain parts of the Notice of Appeal pursuant to paragraph 53(1)(d) of the *Tax Court of Canada Rules (General Procedure)* (the "Rules") without leave to amend the Notice of Appeal, specifically:

(i) paragraphs 36 to 50 in section A of the Notice of Appeal, which is entitled [TRANSLATION] "The relevant facts that form the basis of the appeal";

(ii) issues (ii), (iii), (iv) and (v) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues";

(iii) paragraphs 65, 70, 73 to 91, 96 (including all the subparagraphs) and 97 to 100 in section D of the Notice of Appeal, which is entitled [TRANSLATION] "Grounds"; and

(iv) in section E of the Notice of Appeal, which is entitled [TRANSLATION] "Relief sought", the conclusions with respect to issues (ii), (iii), (iv) and (v) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues", specifically, the third and fourth conclusions at page 28 of the

Notice of Appeal, the first conclusion at page 29 of the Notice of Appeal and the alternative conclusion in the Notice of Appeal.

[2] The appellant acknowledged that the following parts had to be struck out:

(i) issue (v) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues";

(ii) paragraphs 97 to 100 in section D of the Notice of Appeal, which is entitled [TRANSLATION] "Grounds"; and

(iii) in section E of the Notice of Appeal, which is entitled [TRANSLATION] "Relief sought", the first conclusion at page 29.

[3] Therefore, the Court will not rule on these parts.

II. Conclusion

[4] The motion is granted with costs to the respondent, and the following parts of the Notice of Appeal are struck out:

(i) paragraphs 36 to 50 in section A of the Notice of Appeal, which is entitled [TRANSLATION] "The relevant facts that form the basis of the appeal";

(ii) issues (ii), (iii) and (iv) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues";

(iii) paragraphs 65, 70, 73 to 91 and 96 (including all the subparagraphs) in section D of the Notice of Appeal, which is entitled [TRANSLATION] "Grounds"; and

(iv) in section E of the Notice of Appeal, which is entitled [TRANSLATION] "Relief sought", the conclusions with respect to issues (ii), (iii) and (iv) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues", specifically, the third and fourth conclusions at page 28 of the Notice of Appeal and the alternative conclusion in the Notice of Appeal.

III. Facts

[5] The appellant is appealing from reassessments made by the Minister of National Revenue (the "Minister"), notices of which are dated August 7, 2015, that

added to the appellant's income under the *Income Tax Act*[1] (the "Act") rental income for the 2006 and 2009 taxation years and that disallowed the deduction of rental expenses for the 2006 to 2008 taxation years.

[6] According to the Notice of Appeal, the appellant's tax audit began in November 2009, when a Canada Revenue Agency ("CRA") auditor sent him a letter requesting the documents relevant to that audit. In May 2009 (the appellant probably intended to write May 2010), the appellant and his agent allegedly gave the auditor four boxes of documents or supporting documentation.

[7] In July 2010, the appellant's file was apparently transferred to the CRA's criminal investigations division. During the investigation, the investigators supposedly sent requirements to the Desjardins Group, Laurentian Bank, the National Bank of Canada, Hydro-Québec and Equifax. Furthermore, the appellant purportedly gave the CRA investigators four boxes of documents containing information concerning the year 2009.

[8] Lastly, in February 2014, the criminal investigations division's file for the appellant was transferred to the CRA's audit division. No penal or criminal charge was brought against the appellant.

IV. Applicable general principles

[9] The power to strike out all or part of a pleading is set out in rule 53 of the Rules, which provides as follows:

53 (1) The Court may, on its own initiative or on application by a party, strike out or expunge all or part of a pleading or other document with or without leave to amend, on the ground that the pleading or other document	53 (1) La Cour peut, de son propre chef ou à la demande d'une partie, radier un acte de procédure ou tout autre document ou en supprimer des passages, en tout ou en partie, avec ou sans autorisation de le modifier parce que l'acte ou le document :
(a) may prejudice or delay the fair hearing of the appeal;	a) peut compromettre ou retarder l'instruction équitable de l'appel;
(b) is scandalous, frivolous or vexatious;	b) est scandaleux, frivole ou vexatoire;
(c) is an abuse of the process of the Court; or	c) constitue un recours abusif à la Cour;

[1] R.S.C. 1985, c. 1 (5th Supp.).

(d) discloses no reasonable grounds for appeal or opposing the appeal.	d) ne révèle aucun moyen raisonnable d'appel ou de contestation de l'appel.
(2) No evidence is admissible on an application under paragraph (1)(d).	(2) Aucune preuve n'est admissible à l'égard d'une demande présentée en vertu de l'alinéa (1)d).
(3) On application by the respondent, the Court may quash an appeal if	(3) À la demande de l'intimé, la Cour peut casser un appel si :
(a) the Court has no jurisdiction over the subject matter of the appeal;	a) elle n'a pas compétence sur l'objet de l'appel;
(b) a condition precedent to instituting an appeal has not been met; or	b) une condition préalable pour interjeter appel n'a pas été satisfaite;
(c) the appellant is without legal capacity to commence or continue the proceeding.	c) l'appelant n'a pas la capacité juridique d'introduire ou de continuer l'instance.

[10] In *R. v. Imperial Tobacco Canada*, [2011] 3 S.C.R. 45, 2011 SCC 42, the Supreme Court of Canada set out the principles with respect to the striking out of a legal claim. A motion to strike must not be taken lightly—it is "a valuable housekeeping measure essential to effective and fair litigation" and "unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial" (para. 19). The test developed by the Supreme Court is as follows:

> ... The court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial. (para. 21)

[11] In my opinion, these principles also apply in the circumstances of this case even though the motion to strike concerns only some parts of the Notice of Appeal.

[12] The test for granting a motion to strike is therefore stringent. The Court should strike out all or part of a pleading only if it is plain and obvious that it discloses no reasonable claim and that the appeal is certain to fail (*Main Rehabilitation Co. Ltd. v. The Queen*, 2004 FCA 403, at para. 3).

[13] In order to determine whether all or part of a pleading should be struck out, the facts set out in the pleading are presumed to be true. The Court does not hear any evidence. In *881751 Ontario Limited v. The Queen, Roy v. The Queen,* 2021 TCC 9 (at para. 15), this Court specified the following:

> ... The Court's approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial. It is not the job of a Motions judge to determine if an argument is worth considering or to reach a conclusion on a disputed point of statutory interpretation. Therefore, for a Motion to strike to succeed, the irregularity or the irrelevancy must be clear and apparent at first glance.

[14] In this case, the respondent is requesting that certain parts of the Notice of Appeal be struck out without leave to amend the Notice of Appeal. In order for the Court to deny leave to amend, it must not be possible to correct these parts by means of an amendment (*Collins v. The Queen*, 2011 FCA 140, at para. 26, and *Simon v. Canada*, 2011 FCA 6, [2011] 1 F.C.R. D-17, at para. 8).

V. Analysis

5.1 Parts of the Notice of Appeal relating to interest

[15] The appellant claims, in particular, that the interest assessed by the Minister is disproportionate; he is asking this Court to reduce it.

[16] In the opinion of the respondent, the Court does not have the jurisdiction to grant the relief that the appellant is seeking; he is therefore requesting that these parts be struck out because they disclose no reasonable grounds for appeal (paragraph 53(1)(d) of the Rules).

Notice of Appeal:

[17] According to the respondent, the following parts of the Notice of Appeal, which have to do with interest, should be struck out:

(i) in section A of the Notice of Appeal, which is entitled [TRANSLATION] "The relevant facts that form the basis of the appeal", paragraphs 36 to 50, in which the appellant describes the steps that he took with the respondent from September 2015 to October 2021 to obtain a copy of his audit file, criminal investigation file and any other relevant correspondence, as well as the requests that he made under the *Access to Information Act*[2] to obtain a copy of his files;

[2] R.S.C. 1985, c. A-1.

(ii) in section D, which is entitled [TRANSLATION] "Grounds", paragraph 96, which contains the appellant's arguments to justify his request for a reduction in interest;

(iii) issue (iv) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues":

> [TRANSLATION]
>
> *(iv) The interest is grossly disproportionate in light of, in particular, the time that the respondent took to conduct a fruitless criminal investigation, as well as the refusal to provide evidence to the appellant and to issue the notices of assessment.*

(iv) the alternative conclusion (page 29 of the Notice of Appeal, section E, which is entitled [TRANSLATION] "Relief sought"):

> [TRANSLATION]
>
> ***STATE AND DECLARE*** *that the interest assessed by the respondent is grossly disproportionate, and reduce it.*

Discussion:

[18] The respondent was correct to request that the parts of the Notice of Appeal relating to interest be struck out. Indeed, the appellant is not arguing that the interest was miscalculated or that it is not payable pursuant to the provisions of the Act, but rather that the interest assessed against him is disproportionate and should be reduced. However, the power to reduce or cancel interest is conferred on the Minister pursuant to subsection 220(3.1) of the Act. This power is discretionary and is subject to the exclusive control of the Federal Court, and not of this Court (*Federal Courts Act*,[3] sections 18 and 18.1, and *J.P. Morgan Management (Canada) Inc. v. Canada (National Revenue)*, 2013 FCA 250, [2014] 2 F.C.R. 557, at para. 90).

[3] R.S.C. 1985, c. F-7.

[19] Indeed, in an appeal from an assessment, this Court's jurisdiction is set out in section 171 of the Act, which states the following:

171 (1) The Tax Court of Canada may dispose of an appeal by	171 (1) La Cour canadienne de l'impôt peut statuer sur un appel :
(a) dismissing it; or	a) en le rejetant;
(b) allowing it and	b) en l'admettant et en :
(i) vacating the assessment,	(i) annulant la cotisation,
(ii) varying the assessment, or	(ii) modifiant la cotisation,
(iii) referring the assessment back to the Minister for reconsideration and reassessment.	(iii) déférant la cotisation au ministre pour nouvel examen et nouvelle cotisation.

[20] Therefore, this Court must determine the validity and correctness of the assessment based on the relevant provisions of the Act and the facts giving rise to the taxpayer's statutory liability (*Ereiser v. Canada*, 2013 FCA 20, [2013] 2 F.C.R. D-9, at para. 31).

[21] The case law is unanimous in stating that this Court cannot order the Minister to exercise his discretion under subsection 220(3.1) of the Act (*Raby v. The Queen*, 2006 TCC 406, at para. 51; *Madore v. The Queen*, [1998] T.C.J. No. 236 (QL), at para. 18).

[22] For these reasons, given that this Court does not have the jurisdiction to decide on the appellant's request for a reduction in interest, the following parts of the Notice of Appeal are struck out because they disclose no reasonable grounds for appeal (paragraph 53(1)(d) of the Rules):

(i) paragraphs 36 to 50 in section A of the Notice of Appeal, which is entitled [TRANSLATION] "The relevant facts that form the basis of the appeal";

(ii) issue (iv) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues";

(iii) paragraph 96 (including all the subparagraphs) in section D of the Notice of Appeal, which is entitled [TRANSLATION] "Grounds"; and

(iv) in section E of the Notice of Appeal, which is entitled [TRANSLATION] "Relief sought", the alternative conclusion in the Notice of Appeal.

[23] As it is not possible to cure the defects by means of an amendment, the Court will not permit the appellant to amend the Notice of Appeal.

5.2 Parts of the Notice of Appeal relating to the *Canadian Charter of Rights and Freedoms*[4] and sections 231.1 and 231.2 of the Act

[24] The appellant is asking that the assessments be vacated on the grounds that the respondent violated sections 7 and 8 of the *Charter* and that the CRA officials did not follow the rules set out in section 231.1 and subsections 231.2(2) and (3) of the Act.

[25] The respondent is requesting that the parts of the Notice of Appeal concerning the *Charter* and sections 231.1 and 231.2 of the Act be struck out because they disclose no reasonable grounds for appeal (paragraph 53(1)(d) of the Rules).

Notice of Appeal:

[26] In the respondent's opinion, the following parts of the Notice of Appeal, which have to do with the *Charter* and sections 231.1 and 231.2 of the Act, should be struck out:

(i) Issue (ii) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues":

[TRANSLATION]

(ii) The reassessments violate the Canadian Charter of Rights and Freedoms; they are illegal; therefore, the added income and the disallowed expenses are illegal;

(ii) Issue (iii) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues":

[TRANSLATION]

[4] Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.) (the "*Charter*").

(iii) The reassessments do not comply with the conditions that must be met under subsection 231.1(2), section 231.2 and paragraph 231.2(3)(b) of the ITA; they are therefore null and the nullity is absolute.

(iii) In section E of the Notice of Appeal, which is entitled [TRANSLATION] "Relief sought", the conclusions with respect to issues (ii) and (iii) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues", specifically, the third and fourth conclusions at page 28 of the Notice of Appeal:

[TRANSLATION]

VACATE the assessments for the years 2006 to 2009 inclusively because the respondent violated sections 7 and 8 of the Canadian Charter of Rights and Freedoms;

VACATE the assessments for the years 2006 to 2009 inclusively because the respondent violated section 231.1 and subsections 231.2(2) and 231.2(3) of the Income Tax Act and its regulations.

(iv) in section D of the Notice of Appeal, which is entitled [TRANSLATION] "Grounds", paragraphs 65 and 70, which appear in a subsection of the Notice of Appeal on the issuance of the notices of assessment beyond the normal reassessment period and not in the subsection on the violation of basic rights, as the appellant contends:

[TRANSLATION]

65. Furthermore, these new grounds stem from the criminal investigations and not from the audit division, and they were obtained illegally, as will be shown later on;

...

70. It is obvious that there were no grounds for initiating an audit and, over and above that, a criminal investigation; this is, quite simply, a fishing expedition.

(v) in section D of the Notice of Appeal, which is entitled [TRANSLATION] "Grounds", paragraphs 73 to 91, which appear in a subsection of the Notice of Appeal that has to do with the appellant's arguments regarding the *Charter* and sections 231.1 and 231.2 of the Act.

Legislation:

[27] Sections 7 and 8 of the *Charter* set out the following:

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. 8 Everyone has the right to be secure against unreasonable search or seizure.	**7** Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale. **8** Chacun a droit à la protection contre les fouilles, les perquisitions ou les saisies abusives.

[28] Sections 231.1 and 231.2 of the Act provide as follows:

Inspections	**Enquêtes**
231.1 (1) An authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Act, (a) inspect, audit or examine the books and records of a taxpayer and any document of the taxpayer or of any other person that relates or may relate to the information that is or should be in the books or records of the taxpayer or to any amount payable by the taxpayer under this Act, and (b) examine property in an inventory of a taxpayer and any property or process of, or matter relating to, the taxpayer or any other person, an examination of which may assist the authorized person in determining the accuracy of the inventory of the taxpayer or in ascertaining the information that is or should be in the books or records of the taxpayer or any amount payable by the taxpayer under this Act, and for those purposes the authorized person may	**231.1 (1)** Une personne autorisée peut, à tout moment raisonnable, pour l'application et l'exécution de la présente loi, à la fois : a) inspecter, vérifier ou examiner les livres et registres d'un contribuable ainsi que tous documents du contribuable ou d'une autre personne qui se rapportent ou peuvent se rapporter soit aux renseignements qui figurent dans les livres ou registres du contribuable ou qui devraient y figurer, soit à tout montant payable par le contribuable en vertu de la présente loi; b) examiner les biens à porter à l'inventaire d'un contribuable, ainsi que tout bien ou tout procédé du contribuable ou d'une autre personne ou toute matière concernant l'un ou l'autre dont l'examen peut aider la personne autorisée à établir l'exactitude de l'inventaire du contribuable ou à contrôler soit les renseignements qui figurent dans les livres ou registres du contribuable ou qui devraient y figurer, soit tout montant payable par le contribuable en vertu de la présente loi;

(c) subject to subsection 231.1(2), enter into any premises or place where any business is carried on, any property is kept, anything is done in connection with any business or any books or records are or should be kept, and	à ces fins, la personne autorisée peut : c) sous réserve du paragraphe (2), pénétrer dans un lieu où est exploitée une entreprise, est gardé un bien, est faite une chose en rapport avec une entreprise ou sont tenus ou devraient l'être des livres ou registres;
(d) require the owner or manager of the property or business and any other person on the premises or place to give the authorized person all reasonable assistance and to answer all proper questions relating to the administration or enforcement of this Act and, for that purpose, require the owner or manager to attend at the premises or place with the authorized person.	d) requérir le propriétaire, ou la personne ayant la gestion, du bien ou de l'entreprise ainsi que toute autre personne présente sur les lieux de lui fournir toute l'aide raisonnable et de répondre à toutes les questions pertinentes à l'application et l'exécution de la présente loi et, à cette fin, requérir le propriétaire, ou la personne ayant la gestion, de l'accompagner sur les lieux.
Prior authorization	**Autorisation préalable**
(2) Where any premises or place referred to in paragraph 231.1(1)(c) is a dwelling-house, an authorized person may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant under subsection 231.1(3).	**(2)** Lorsque le lieu mentionné à l'alinéa (1)c) est une maison d'habitation, une personne autorisée ne peut y pénétrer sans la permission de l'occupant, à moins d'y être autorisée par un mandat décerné en vertu du paragraphe (3).
Application	**Mandat d'entrée**
(3) Where, on ex parte application by the Minister, a judge is satisfied by information on oath that	**(3)** Sur requête *ex parte* du ministre, le juge saisi peut décerner un mandat qui autorise une personne autorisée à pénétrer dans une maison d'habitation aux conditions précisées dans le mandat, s'il est convaincu, sur dénonciation sous serment, de ce qui suit :
(a) there are reasonable grounds to believe that a dwelling-house is a premises or place referred to in paragraph 231.1(1)(c),	a) il existe des motifs raisonnables de croire que la maison d'habitation est un lieu mentionné à l'alinéa (1)c);
(b) entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and	b) il est nécessaire d'y pénétrer pour l'application ou l'exécution de la présente loi;

(c) entry into the dwelling-house has been, or there are reasonable grounds to believe that entry will be, refused, the judge may issue a warrant authorizing an authorized person to enter the dwelling-house subject to such conditions as are specified in the warrant but, where the judge is not satisfied that entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, the judge may (d) order the occupant of the dwelling-house to provide to an authorized person reasonable access to any document or property that is or should be kept in the dwelling-house, and (e) make such other order as is appropriate in the circumstances to carry out the purposes of this Act, to the extent that access was or may be expected to be refused and that the document or property is or may be expected to be kept in the dwelling-house.	c) un refus d'y pénétrer a été opposé, ou il existe des motifs raisonnables de croire qu'un tel refus sera opposé. Dans la mesure où un refus de pénétrer dans la maison d'habitation a été opposé ou pourrait l'être et où des documents ou biens sont gardés dans la maison d'habitation ou pourraient l'être, le juge qui n'est pas convaincu qu'il est nécessaire de pénétrer dans la maison d'habitation pour l'application ou l'exécution de la présente loi peut ordonner à l'occupant de la maison d'habitation de permettre à une personne autorisée d'avoir raisonnablement accès à tous documents ou biens qui sont gardés dans la maison d'habitation ou devraient y être gardés et rendre tout autre ordonnance indiquée en l'espèce pour l'application de la présente loi.
Requirement to provide documents or information **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), of a listed international agreement or, for greater certainty, of a tax treaty with another country, by notice sent or served in accordance with subsection (1.1), require that any person provide, within such reasonable time as is stipulated in the notice,	**Production de documents ou fourniture de renseignements** **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 international désigné ou d'un traité fiscal conclu avec un autre pays, par avis signifié ou envoyé conformément au paragraphe (1.1), exiger d'une personne, dans le délai raisonnable que précise l'avis : a) qu'elle fournisse tout renseignement ou tout renseignement supplémentaire, y

(a) any information or additional information, including a return of income or a supplementary return; or (b) any document. **Notice** **(1.1)** A notice referred to in subsection (1) may be (a) served personally; (b) sent by registered or certified mail; or (c) sent electronically to a bank or credit union that has provided written consent to receive notices under subsection (1) electronically. **Unnamed persons** **(2)** The Minister shall not impose on any person (in this section referred to as a "third party") a requirement under subsection 231.2(1) to provide information or any document relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection 231.2(3). **Judicial authorization** **(3)** A judge of the Federal Court may, on application by the Minister and subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person or more than one unnamed person (in this section referred to as the "group") if the judge is satisfied by information on oath that (a) the person or group is ascertainable; and	compris une déclaration de revenu ou une déclaration supplémentaire; b) qu'elle produise des documents. **Avis** **(1.1)** L'avis visé au paragraphe (1) peut être : a) soit signifié à personne; b) soit envoyé par courrier recommandé ou certifié; c) soit envoyé par voie électronique à une banque ou une caisse de crédit qui a consenti par écrit à recevoir les avis visés au paragraphe (1) par voie électronique. **Personnes non désignées nommément** **(2)** Le ministre ne peut exiger de quiconque — appelé « tiers » au présent article — la fourniture de renseignements ou production de documents prévue au paragraphe (1) concernant une ou plusieurs personnes non désignées nommément, sans y être au préalable autorisé par un juge en vertu du paragraphe (3). **Autorisation judiciaire** **(3)** Sur requête du ministre, un juge de la Cour fédérale peut, aux conditions qu'il estime indiquées, autoriser le ministre à exiger d'un tiers la fourniture de renseignements ou la production de documents prévues au paragraphe (1) concernant une personne non désignée nommément ou plus d'une personne non désignée nommément — appelée « groupe » au présent article —, s'il est convaincu, sur dénonciation sous serment, de ce qui suit : a) cette personne ou ce groupe est identifiable;

(b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.	b) la fourniture ou la production est exigée pour vérifier si cette personne ou les personnes de ce groupe ont respecté quelque devoir ou obligation prévu par la présente loi;

Positions of the parties:

[29] In the appellant's view, the evidence obtained by the criminal investigations division does not meet the requirements of subsection 231.1(2) and section 231.2 of the Act. Consequently, the assessments violate sections 7 and 8 of the *Charter*. In addition, the appellant is of the opinion that the Minister may not use the information obtained by the investigations division to determine his tax liability. In support of these arguments, the appellant relies on the principle set out in *R. v. Jarvis*, 2002 SCC 73, [2002] 3 S.C.R. 757 (*Jarvis*), which holds that taxpayers who are under investigation are entitled to protection under section 7 of the *Charter*.

[30] According to the appellant, the investigators did not inform him of his *Charter* rights, which violates the principles laid down in *Jarvis*. Also according to the appellant, *Jarvis* established the principle that, when an administrative audit and a criminal investigation are being conducted simultaneously, investigators can avail themselves only of the information obtained pursuant to the audit powers prior to the commencement of the criminal investigation and cannot avail themselves of information obtained during the audit subsequent to the commencement of the investigation into penal liability. Moreover, no court warrant was secured in order to obtain the information and documents from Equifax, Hydro-Québec and the various banks, which is contrary to the provisions of paragraph 231.2(3)(b) of the Act. In the appellant's view, as the dominant purpose of the investigation was to determine his penal liability, the investigative powers conferred pursuant to sections 231.1 and 231.2 of the Act could not be exercised by the taxation authorities.

[31] The appellant is therefore seeking the exclusion of all the evidence that was, in his opinion, illegally obtained by the investigations division and illegally sent to the CRA's auditing service.

[32] According to the respondent, the appellant recognizes that no charge was brought against him. The appellant also acknowledges that the information that was obtained by means of the requirements was sent to the CRA's audit division. On the basis of the Notice of Appeal, it is clear that it is not the appellant's penal or criminal

liability that is at issue before this Court, but rather the validity and correctness of the assessments under the Act.

[33] The respondent is of the opinion that, since a criminal investigation has been ruled out (as the appellant has acknowledged), the only remaining purpose is the determination of the appellant's tax liability. However, sections 231.1 and 231.2 of the Act undeniably confer on the Minister powers that may be used to determine the appellant's tax liability.

[34] According to the respondent, in *Jarvis*, the Supreme Court ordered that certain banking records be excluded from any subsequent criminal proceedings because they had been obtained in a manner that violated the rights guaranteed under section 7 of the *Charter*, as the investigation was well under way when the requirement was sent (*Jarvis* at para. 105). However, *Jarvis* does not justify excluding evidence within the context of a subsequent civil (taxation) proceeding.

[35] In conclusion, the respondent considers that, contrary to the appellant's contentions, subsections 231.2(2) and (3) of the Act do not apply given that these subsections pertain to individuals who are not named in the information request, which is not the case here. In addition, subsection 231.2(1) of the Act can apply without the need for prior authorization.

Discussion:

[36] First, it should be noted that the appellant does not raise the issue of the constitutionality of a provision of the Act. Rather, the appellant is claiming that his basic rights were not respected; he points to sections 7 and 8 of the *Charter*, as well as sections 231.1 and 231.2 of the Act.

[37] For the following reasons, and on the basis of the well-established case law principles described below, the Court cannot accept the appellant's arguments. The appellant cannot rely on sections 7 and 8 of the *Charter* to exclude the evidence obtained by the Minister in the exercise of the investigative powers conferred on him pursuant to section 231.1 of the Act, as well as by the sending of information requests under section 231.2 of the Act. Furthermore, contrary to what the appellant claims, the Minister was not required to receive any prior judicial authorization during the appellant's tax audit.

[38] The respondent was therefore correct in requesting that the parts of the Notice of Appeal that relate to the *Charter* and sections 231.1 and 231.2 of the Act be struck out.

[39] The audit of the appellant began in November 2009; the appellant's file was transferred to the CRA's investigations division in July 2010. During that investigation, the Minister sent information requests to various businesses, including Equifax, Hydro-Québec and the National Bank of Canada. Then, in February 2014, the appellant's file was transferred to the auditing division so that the assessments that are the subject of the appeal to this Court could be made.

[40] Therefore, the information that was obtained through the sending of the information requests was used to make the appellant's assessments and not to determine any penal or criminal liability under the Act. Indeed, no penal or criminal charge was laid against the appellant, which the appellant acknowledges in his Notice of Appeal. As previously mentioned, the dispute before this Court relates to the validity and correctness of the reassessments, notices of which are dated August 7, 2015; it is not aimed at determining any penal or criminal liability of the appellant. Also, even though the Minister sent the information requests while the appellant was under investigation, evidence so obtained may be used to make a tax assessment.

[41] In *Jarvis*, the Supreme Court of Canada had to determine whether the evidence obtained in the Minister's exercise of the investigative powers conferred on him pursuant to section 231.1 of the Act, as well as in the sending of information requests under section 231.2 of the Act, could be used as part of a prosecution with respect to an offence under the Act (section 239 of the Act).

[42] According to the Supreme Court, these powers could not be exercised to compel oral statements or written production for the purpose of advancing the criminal investigation (*Jarvis* at para. 97). Thus, "wherever the predominant purpose of an inquiry or question is the determination of penal liability, criminal investigatory techniques must be used. As a corollary, all *Charter* protections that are relevant in the criminal context must apply" (*Jarvis* at para. 98). In such circumstances, the Minister may no longer exercise the investigative powers conferred on him pursuant to section 231.1 of the Act or send information requests under section 231.2 of the Act in order to obtain evidence used to determine the taxpayer's criminal liability.

[43] However, the fact that a criminal investigation is being conducted does not eliminate the possibility of simultaneously carrying out an investigation that is predominantly aimed at assessing the taxpayer's tax liability. The Supreme Court has stated the following in this regard:

> ... it is clear that, although an investigation has been commenced, the audit powers may continue to be used, though the results of the audit cannot be used in pursuance of the investigation or prosecution. (*Jarvis* at para. 103)

[44] More recently, the Federal Court of Appeal has found that the Minister, in exercising the powers conferred on him pursuant to subsection 231.1(1) of the Act while an investigation was under way, had not violated the rights guaranteed to the taxpayer under sections 7 and 8 of the *Charter* (*Romanuk v. The Queen*, 2013 FCA 133 (*Romanuk*)). Therefore, evidence gathered in the exercise of the investigative powers that are provided for under subsection 231.1(1) of the Act could be used in relation to an administrative matter, such as a reassessment (*Romanuk* at para. 7). The Federal Court of Appeal concluded as follows:

> [8] The use of such information or documents in administering the *Act* and reassessing the appellant does not violate her rights under either section 7 or 8 of the *Charter* because the CRA has the right to continue to use its audit powers provided that the information or documents are only used for the purposes of administering the *Act*. If the information or documents are to be used in an investigation or prosecution of an offence under section 239 of the *Act*, the issue for the particular court dealing with the prosecution of the offence under section 239 of the *Act*, will be whether the predominant purpose of the exercise of such powers was to gather information or documents for such investigation or prosecution.
>
> [Emphasis added.]

[45] Following this, in *Piersanti v. The Queen*, 2014 FCA 243, the Federal Court of Appeal confirmed that this Court had acted correctly in dismissing the motion that the taxpayer had brought at the beginning of the hearing to exclude all the documents that the Minister had used to issue the notices of reassessment, on the grounds that those documents had been obtained without judicial authorization during a criminal investigation and in violation of the taxpayer's *Charter* rights. After referring to the principles set out in *Romanuk*, the Federal Court of Appeal arrived at the following conclusion:

> [9] The Judge did not err in law when concluding that the appellant's rights under sections 7 and 8 of the *Charter* were not violated by the CRA when it used the information gathered in the course of the criminal investigation to reassess the

> appellant's income tax liability for the years in question. The Judge's legal finding accords with *Jarvis* and with the self-assessment and the self-reporting nature of the income tax regime. …
>
> [Emphasis added.]

[46] In *Bauer v. The Queen*, 2018 FCA 62, the Federal Court of Appeal confirmed that, on appeal to this Court, evidence obtained through the sending of information requests under section 231.2 of the Act could not be excluded under section 8 of the *Charter* even if an investigation had begun before the information requests were sent. The Federal Court of Appeal stated the following:

> [14] While using requirements under section 231.2 of the ITA to obtain information or documents after an investigation has commenced may result in that information or those documents not being admissible in a proceeding related to the prosecution of offences under section 239 of the ITA, it does not preclude that information or documents from being admissible in a Tax Court of Canada proceeding where the issue is the validity of an assessment issued under the ITA. It is the use of the information or documents that is relevant, not who at CRA issued the requirement for information or documents.
>
> ...
>
> [17] In my view, it is plain and obvious that the CRA's power to issue requirements under section 231.2 of the ITA to obtain information or documents that will be used for the administrative purpose of reassessing a taxpayer is not suspended by the commencement of an investigation. Therefore, any information or documents obtained as a result of the issuance of the requirements in this case cannot be excluded, based on section 8 of the Charter, from the proceedings in the Tax Court of Canada related to the validity of the reassessments of Mr. Bauer's tax liability for 2007 and 2008.
>
> [Emphasis added.]

[47] Lastly, the Federal Court of Appeal has confirmed that a tax assessment is a civil matter involving only economic interests and that it therefore "does not deprive the assessed person of life, liberty or security of the person within the meaning of section 7 of the *Charter*" (*Gratl v. The Queen*, 2012 FCA 88, at para. 8; see also *Johnson v. The Queen*, 2022 TCC 31, at paras. 48–49).

[48] For these reasons, the Court finds that the Minister could use the investigative powers conferred on him pursuant to section 231.1 of the Act as well as send information requests under section 231.2 of the Act during the appellant's tax audit even though an investigation was already under way. Indeed, the goal was to

determine the appellant's tax liability and not any penal or criminal liability. It will be possible to use the evidence that the Minister so obtained as part of a hearing before this Court on the validity and correctness of the reassessments made under the Act, notices of which are dated April 7, 2015.

[49] Additionally, contrary to what the appellant argues, the Minister was not required to receive any prior judicial authorization under the Act. Indeed, subsections 231.2(2) and (3) of the Act only pertain to information requests that concern unnamed persons, which is not the case here. The person who is the subject of the audit is indeed the appellant, who is a named person. Furthermore, subsection 231.1(2) of the Act does not apply in this case because, according to the Notice of Appeal, the appellant gave the documents to the CRA himself, and it is not indicated that an audit was conducted in a "dwelling-house".

[50] For these reasons, the facts that are alleged in the Notice of Appeal and that are taken to be true do not give rise to the relief sought by the appellant. Therefore, the following parts of the Notice of Appeal are struck out because they disclose no reasonable grounds for appeal (paragraph 53(1)(d) of the Rules):

(i) issues (ii) and (iii) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues";

(ii) paragraphs 65, 70 and 73 to 91 in section D of the Notice of Appeal, which is entitled [TRANSLATION] "Grounds"; and

(iii) in section E of the Notice of Appeal, which is entitled [TRANSLATION] "Relief sought", the conclusions with respect to issues (ii) and (iii) in section B of the Notice of Appeal, which is entitled [TRANSLATION] "Issues", specifically, the third and fourth conclusions at page 28 of the Notice of Appeal.

[51] Given that it is not possible to cure the defects by means of an amendment, the Court will not permit the appellant to amend the Notice of Appeal.

Signed at Ottawa, Canada, this 18th day of January 2023.

"Dominique Lafleur"

Lafleur J.

Translation certified true
on this 15th day of February 2023.
Melissa Paquette

CITATION:	2023 TCC 5
COURT FILE NO.:	2022-558(IT)G
STYLE OF CAUSE:	BELLEVUE FÉLIX AND HIS MAJESTY THE KING
PLACE:	Ottawa, Canada
REASONS FOR ORDER BY:	The Honourable Justice Dominique Lafleur
DATED:	January 18, 2023

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