

Federal Court



Cour fédérale

**Date: 20190109**

**Docket: T-935-18**

**Citation: 2019 FC 22**

[REVISED ENGLISH TRANSLATION]

**Ottawa, Ontario, January 9, 2019**

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

**Docket: T-935-18**

**BETWEEN:**

**MINISTER OF NATIONAL REVENUE**

**Applicant**

**and**

**LES DÉVELOPPEMENTS BÉARENCE INC.**

**Respondent**

**JUDGMENT AND REASONS**

I. Summary

[1] On May 29, 2018, Justice Grammond of this Court made the following order against the respondent, Les Développements Béarence Inc. (Béarence):

[TRANSLATION]

Orders the respondent to provide, within five days following this order, a copy of its general ledger for the taxation years 2012 to 2015, which includes:

An Excel file containing all the daily transactions for the years at issue;

A transaction report for each of the accounts mentioned in the trial balance for the taxation years 2012 to 2015.

[2] On November 6, 2018, the parties appeared before me further to the filing of a motion by the Minister of National Revenue [the applicant] asking that the respondent be found in contempt of court for failing to comply with Justice Grammond's order. The law regarding the burden of proof in contempt of court situations is clear and consistent. To establish civil contempt, the applicant must prove beyond a reasonable doubt that the respondent has not complied with the order. To this end, the applicant must prove that:

- i. the order alleged to have been breached "must state clearly and unequivocally what should and should not be done";
- ii. the party alleged to have breached the order must have had actual knowledge of it;
- iii. the party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels (*Carey v Laiken*, 2015 SCC 17, [2015] 2 SCR 79 at paras 32 to 35; *ASICS Corporation v 9153-2267 Québec inc.*, 2017 FC 5; *Canada (National Revenue) v Chi*, 2018 FC 897).

For the reasons that follow, I find that the applicant has not proven beyond a reasonable doubt the essential elements of the offence of contempt of court.

II. Relevant facts

[3] The Canada Revenue Agency [CRA] is currently conducting an audit of Béarence for the taxation years 2005 to 2015. This follows another audit by the CRA for the taxation years 2009 and 2010. On March 28, 2018, the applicant sent a requirement to provide information and documents under subsection 231.2(1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [the Act].

This requirement demanded that Béarence provide the following information:

[TRANSLATION]

A copy of the minutes book, updated to 2017 (please note that the copy of the minutes book provided to the CRA for the last audit is not the most up-to-date version, it being dated April 2012);

A copy of the General Ledger from 2005 to 2015 (Revenu Québec has provided us with the available documents; however, the general ledger is not listed as being among them).

[4] Following discussions between Béarence's representative, Martin Véronneau, and the applicant, the applicant waived the requirement to obtain a copy of Béarence's general ledger for the taxation years 2005 to 2011. Despite these discussions, the applicant was of the view that Mr. Véronneau's had not fully responded to the requirement. On May 1, 2018, the applicant stated that Béarence had to provide [TRANSLATION] "a complete copy of its General Ledger for the taxation years 2012 to 2015, inclusive, by May 4, 2018", even though Mr. Béarence insisted that everything the company had in its possession had already been given to the applicant.

[5] Béarence argues that it provided all the information in its possession that is relevant to the audit. Béarence admits that Revenu Québec had additional information in its possession, information which the applicant has consistently invited the applicant to obtain by contacting Revenu Québec. Béarence also admits that not all the information provided is in the format required by the CRA.

[6] I accept all the evidence tendered by Mr. Véronneau to the effect that Béarence has provided all the information required by the applicant. I also agree with Mr. Véronneau's arguments to the effect that this information is available, either through Revenu Québec or the CRA, including the Quebec and federal sales tax forms.

[7] I accept Mr. Véronneau's evidence that the mandate of Béarence's accountant had changed in recent years. Before 2012, Béarence had asked its accountant to prepare audited books. Since 2012, it has only asked that the books be prepared with a "notice to the reader". This means that since 2012, the accountant has no mandate to audit each transaction.

[8] Béarence is a small business. During its least busy year, it handled only 53 transactions; during its busiest year, there were approximately 130 transactions. Béarence is a land development company. Accordingly, its only source of income is from the sale of land. The expenditures are not complicated.

### III. Relevant provisions

[9] The relevant provision of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) is subsection 231.2(1), which reads as follows:

**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 served personally or by registered or certified mail, require that any person provide, within such reasonable time as is stipulated in the notice,

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

(b) any document.

IV. Analysis

[10] I agree without hesitation that, as argued by Béarence, with the minute books, the information filed with Revenu Québec, and the information submitted to the CRA, including all the information concerning the provincial and federal sales taxes to which the CRA has access, the applicant has all the information it needs to conduct its audit. The applicant claims that even though all the information is available, Béarence has a responsibility to provide it in the required format.

[11] The applicant cites *Tower v. MRN* [2004] 1 FC 183, 2003 FCA 307 (CanLII) [*Tower*]. In *Tower*, the CRA had required access to the communications exchanged between the taxpayers and their accountant for financial planning purposes. In *Tower*, these documents did in fact exist. Consequently, the only issue to be decided was whether they were included in the documents

that the CRA could require under subsection 231.2(1) of the Act. The Court of Appeal found that they were. Also, in *Tower*, the CRA had required that the taxpayers answer certain written questions. The taxpayers objected to this request because, among other reasons, they had to provide documents in a question-and-answers format. The Federal Court of Appeal had concluded that this information, in the format of answers, could be demanded under subsection 231.2(1) of the Act because it “may be relevant to determining their tax liability under the Act” (*Tower* at para 30).

[12] The purpose of subsection 231.2(1) of the Act is to allow the CRA to determine tax liability—no more, no less. This leads me to pose a fundamental question: Is the CRA entitled to require Béarence to spend money to provide the information in a format required by the CRA when this information has already been provided and is available in another format. My answer is no, for the sole reason that the information’s format has no impact on determining the tax liability.

[13] I will now turn to the main issue before me, that is, whether the applicant has proven beyond a reasonable doubt that Béarence violated Justice Grammond’s order. Again, the answer is no. In my opinion, neither the CRA nor this Court can impose the format in which the information must be provided to the CRA, provided that all the necessary information for determining the tax liability is supplied.

[14] If I am wrong and the CRA and this Court are indeed entitled to determine the format of the information provided to the CRA for an audit, I am of the opinion that, in the circumstances,

the applicant has not proven beyond a reasonable doubt that Béarence violated Justice Grammond's order. I have come to this conclusion for two reasons:

1. The language of the order appears to assume that the information exists in the format described in the order. The order does not claim to require that Béarence create new documents. If the Court had ordered Béarence to create documents and Béarence objected, it could have tried to file an appeal against that decision. However, an order to provide something that does not exist leaves doubt in the taxpayer's mind as to what must be done;
2. Considering that the order does not require Béarence to create documents, that all the information required is already available and that the purpose of subsection 231.2(1) of the Act is to determine the tax liability of the taxpayer, I find that Mr. Véronneau's testimony raises a reasonable doubt as to his intent to do an act that the order prohibits or his intent not to do an act that the order compels.

V. Conclusion

[15] For these reasons, I find Béarence not guilty of contempt of court.

**JUDGMENT in docket T-935-18**

**THIS COURT'S JUDGMENT is that** Béarence is not guilty of contempt of court.

“B. Richard Bell”

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Judge



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

**DOCKET:** T-935-18

**STYLE OF CAUSE:** MINISTER OF NATIONAL REVENUE v. LES  
DÉVELOPPEMENTS BÉARENCE INC.

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** NOVEMBER 6, 2018

**JUDGMENT AND REASONS:** BELL J.

**DATED:** JANUARY 9, 2019

**APPEARANCES:**

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