

Federal Court



Cour fédérale

**Date: 20191119**

**Dockets: T-735-17  
T-1052-17**

**Citation: 2019 FC 1456**

**Ottawa, Ontario, November 19, 2019**

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

**BETWEEN:**

**S. ROBERT CHAD**

**Applicant**

**and**

**MINISTER OF NATIONAL REVENUE**

**Respondent**

**JUDGMENT AND REASONS**

[1] The present Application concerns the authority of the Minister to obtain information from a taxpayer with respect to her or his self-reported tax liability. In particular, the Application concerns the Minister's interest in individuals who are "high net worth individuals". The Minister has identified the Applicant as such a person and, as a result, has initiated an investigation into the Applicant's tax liability.

[2] On April 20, 2017, the Minister issued Requirements pursuant to s. 231.1 and s. 231.6 of the *Income Tax Act* (the *Act*). The s. 231.1 Requirement requests that the Applicant provide certain information and documents within Canada, and the s. 231.6 Requirement requests that the Applicant provide certain information and documents outside Canada.

[3] The Applicant seeks judicial review with respect to both Requirements. In response to the present Application, the Minister takes the following general position:

It was reasonable for a delegate of the Minister of National Revenue to decide to ask the Applicant to produce certain information for purposes of an audit of the Applicant and his related economic entities. The Applicant was asked to produce information by way of a request for information issued pursuant to s. 231.1(1) and a requirement for foreign-based information and documents issued pursuant to s. 231.6 of the *Income Tax Act* (the “Requirements”). There is no reason for this Court to interfere with the decision to issue the Requirements.

(Minister’s Memorandum in T-735-17 at para. 1)

[Emphasis added]

**I. Section 231.1 Domestic-Based Requirements: A Distinct Two Stage Process**

A. *The Investigative Stage: Required Production by Request*

[4] Section 231.1(1) states:

231.1 (1) An authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Act,	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) 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	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
---	---

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

rappporter 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) 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,

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;

and for those purposes the authorized person may

à ces fins, la personne autorisée peut :

(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

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.

[5] The existing law recognizes “relevance” as the primary issue in the investigative stage. Under s. 231.1(1), the question at this stage is whether the material requested from the taxpayer “may be relevant” (see *Canada (National Revenue) v. Atlas Tube Canada ULC*, 2018 FC 1086 at paras. 16-23).

*B. The Enforcement Stage: Required Production by Court Order*

[6] The enforcement stage follows the investigative stage. If a taxpayer refuses to comply with a request under s. 231.1 for information and documents, then the Minister may seek a compliance order from the court under s. 231.7. Section 231.7 states:

231.7 (1) On summary application by the Minister, a judge may, notwithstanding subsection 238(2), order a person to provide any access, assistance, information or document sought by the Minister under section 231.1 or 231.2 if the judge is satisfied that

231.7 (1) Sur demande sommaire du ministre, un juge peut, malgré le paragraphe 238(2), ordonner à une personne de fournir l'accès, l'aide, les renseignements ou les documents que le ministre cherche à obtenir en vertu des articles 231.1 ou 231.2 s'il est convaincu de ce qui suit :

(a) the person was required under section 231.1 or 231.2 to

a) la personne n'a pas fourni l'accès, l'aide, les

provide the access, assistance, information or document and did not do so; and	renseignements ou les documents bien qu'elle en soit tenue par les articles 231.1 ou 231.2;
--	---

(b) in the case of information or a document, the information or document is not protected from disclosure by solicitor-client privilege (within the meaning of subsection 232(1)).	b) s'agissant de renseignements ou de documents, le privilège des communications entre client et avocat, au sens du paragraphe 232(1), ne peut être invoqué à leur égard.
---	---

[7] Thus, issues about failure to produce are irrelevant at the investigative stage.

## II. Section 231.6 Foreign-Based Requirements – The Law

### A. *Relevance and Reasonableness*

[8] Section 231.6(2) states:

#### **Requirement to provide foreign-based information**

(2) Notwithstanding any other provision of this Act, the Minister may, by notice served personally or by registered or certified mail, require that a person resident in Canada or a non-resident person carrying on business in Canada provide any foreign-based information or document.

#### **Obligation de fournir des renseignements ou documents étrangers**

(2) Malgré les autres dispositions de la présente loi, le ministre peut, par avis signifié à personne ou envoyé par courrier recommandé ou certifié, exiger d'une personne résidant au Canada ou d'une personne n'y résidant pas mais y exploitant une entreprise de fournir des renseignements ou documents étrangers.

[9] Section 231.6(4) and section 231.6(5) state:

#### **Review of foreign information requirement**

(4) The person on whom a notice of a requirement is

#### **Révision par un juge**

(4) La personne à qui l'avis est signifié ou envoyé peut, dans

served under subsection 231.6(2) may, within 90 days after the service of the notice, apply to a judge for a review of the requirement.

les 90 jours suivant la date de signification ou d'envoi, contester, par requête à un juge, la mise en demeure du ministre.

#### **Powers on review**

#### **Pouvoirs de révision**

(5) On hearing an application under subsection 231.6(4) in respect of a requirement, a judge may

(5) À l'audition de la requête, le juge peut :

(a) confirm the requirement

a) confirmer la mise en demeure;

(b) vary the requirement as the judge considers appropriate in the circumstances; or

b) modifier la mise en demeure de la façon qu'il estime indiquée dans les circonstances;

(c) set aside the requirement if the judge is satisfied that the requirement is unreasonable.

c) déclarer sans effet la mise en demeure s'il est convaincu que celle-ci est déraisonnable.

[Emphasis added]

[Non souligné dans l'original.]

[10] In *Saipem Luxembourg S.A. v. Canada (Customs & Revenue Agency)*, 2005 FCA 218, the Federal Court of Appeal dismissed Saipem's appeal of a requirement issued under s. 231.6 that required Saipem "to produce the whole of its corporate documentation for two fiscal years". The Federal Court of Appeal stated at paragraphs 27, and 35-36:

The element which is present in section 231.6, and which is lacking in section 231.2, is the availability of judicial review of the notice of requirement on the ground of unreasonableness. Such a review lacks any substance if a notice of requirement is reasonable simply because the information requested is, or may be, relevant to the administration and enforcement of the Act. Given that Parliament took the trouble to provide for a review on the basis of reasonableness, I conclude that Parliament intended that a notice of requirement in respect of a foreign-based document must not only

relate to a document which is relevant to the administration and enforcement of the Act but that it must also not be unreasonable.

[...]

The question therefore is whether the Agency's intention to conduct an audit of Saipem supports the need for a notice of requirement in respect of the whole of Saipem's corporate records. A "somewhat probing examination" leads to an inquiry as to whether one can truly conduct an audit solely on the basis of material provided by the person being audited, without the possibility of verification that no further records exist. In practice, the issue seldom arises as I have no doubt that most businesses confronted with a notice of requirement of the sort in issue here, accept the Agency's offer to treat their consent to an on-site audit as sufficient compliance with the notice of requirement. But the reasonableness of the notice of requirement is to be assessed according to its terms, not according to some alternate method of compliance.

It is the Agency's prerogative as to whether it will conduct an audit, and what form that audit will take. Given that the records in question are, by definition, maintained outside Canada, the Agency can do little more to gain access to the records than issue the notice of requirement which it issued here. If the result is an audit which does not meet the Agency's usual standards, it is nonetheless the best audit the Agency can conduct in the circumstances. As a result, I conclude that the Agency's determination to conduct an audit supports the scope of the notice of requirement served upon Saipem by the Minister.

[Emphasis added]

[11] In *Soft-Moc Inc. v. Minister of National Revenue*, 2013 FC 291 (which was affirmed by the Federal Court of Appeal in *Soft-Moc Inc. v. Minister of National Revenue*, 2014 FCA 10), Justice Russell adopted the test from *Saipem Luxembourg*, stating at paragraphs 81-82:

Subsection 231.6 of ITA makes it clear that "foreign-based information or document" means any information or document that is available, or located outside of Canada and that "may be relevant" to the administration or enforcement of the Act, including the collection of any amount payable under the act by any person.

The documents requested in the Requirement need to be both relevant and reasonable, but the cases say that the threshold is low and the powers of the Minister are wide-ranging. See *Tower*, [2003 FCA 307] above, at paragraph 29. As the Respondent points out, *Saipem*, above, also makes it clear that it is not for the Applicant to say what will suffice. See paragraph 35.

[Emphasis added]

[12] In *Soft-Moc*, Justice Russell dismissed a judicial review of a requirement issued under s. 231.6 requesting the Applicant provide “a variety of detailed information” about four Bahamian companies with which the Applicant did business (paras. 2, 11-13, 94). He found the requirement was not overly broad in scope, the proprietary or sensitive character of information is not a reason for finding a notice of requirement unreasonable, and there was no evidence to support the assertions that providing the information requested would destroy its value (paras. 84, 88, 90-92).

B. *Enforcement not relevant under s. 231.6*

[13] While it is unclear if there is an equivalent to s. 231.7 for foreign-based requests under s. 231.6, *Saipem* and *Soft-Moc* indicate that questions about the ability of the taxpayer to produce the requested information and documents are not relevant questions under s. 231.6.

### **III. The History of Minister’s Investigation of the Applicant**

[14] At the present time, the Minister’s interest in the Applicant is only at the investigative stage. As to the course of conduct thus far, in support of the present Application the Minister submitted an affidavit dated August 17, 2017 from Ms. Parnpal Sandhu, Case Manager with the Related Party Initiative, International, Large Business and Investigations Branch of the Canada Revenue Agency (CRA). The affidavit confirms the following facts (Applicant’s Record at Tab 2).



[15] The CRA is currently auditing the Applicant under the Related Party Initiative (RPI). This is a program to examine the tax compliance of high net worth individuals and their related entities. Under this initiative, the Applicant's personal income tax returns for the 2011, 2012 and 2013 taxation years are being examined together with the income tax and GST/HST returns of selected entities with whom the Applicant is related or has an economic relationship.

[16] The Applicant was initially informed about the audit in a letter sent by the CRA on December 18, 2015. This letter included an RPI questionnaire requesting, among other things, the names, addresses, and financial statements of all non-resident entities with whom the Applicant was related or had an economic relationship. The Applicant's representative provided a partial response to the questionnaire, which was received by the CRA on July 11, 2016. The Applicant advised that he would provide several items, including the financial statements of the foreign entities, under separate cover.

[17] On October 4, 2016, the Applicant met with the CRA and stated that offshore trusts identified as The Chodakowski Family Trust and The Ralphie Estate Trust were established on his behalf as part of two Asset Protection Plans. During the meeting, the CRA repeated the request for financial statements of the related foreign entities. On October 6, 2016, the CRA issued audit query #DOM-2 as a follow-up to the October 4, 2016 meeting.

[18] In a letter dated November 3, 2016, the CRA was informed that the governing documents for the Czech International Business Group Ltd and Oz Management Inc. were located in the Bahamas and were being requested in response to CRA's request for those documents. Similarly, the CRA was advised that the financial statements for The Chodakowski Family Trust and The Ralphie Estate Trust were maintained outside Canada and would be provided when received.

[19] In a teleconference call on November 16, 2017, the Applicant's representatives told the CRA that outstanding information would be provided by November 30, 2016.

[20] On November 21, 2016, the CRA wrote to the Applicant's representative outlining the items outstanding from the RPI questionnaire and query #DOM-2.

[21] On December 5, 2016, the following documents were provided to the CRA:

- a. BKR Purpose Trust Agreement;
- b. The Chodakowski Family Trust Agreement;
- c. Certificates of Incorporation, Memoranda of Association, Articles of Association and Share Certificates for both the Czech International Business Group Ltd and Oz Management Inc.;
- d. The Ralphie Estate Trust Agreement; and
- e. Trustee Resolutions of The Ralphie Estate Trust and The Chodakowski Family Trust.

(Parmpal Sandhu Affidavit at para. 10, Applicant's Record at pp. 0008-0009)

[22] In her affidavit, Ms. Sandhu describes the relationship between the Applicant and the entities at that date:

As a result of the information provided by [Mr. Chad] or his representatives, the following information is known to the CRA:

- a. [Mr. Chad] is the Protector of The Chodakowski Family Trust and The Ralphie Estate Trust;
- b. [Mr. Chad] and his family members are the beneficiaries of The Chodakowski Family Trust;
- c. The Chodakowski Family Trust was settled in 2005 by Mr. Lemons;

- d. [Mr. Chad] and his family members are either direct or indirect beneficiaries of The Ralphie Estate Trust;
- e. [Mr. Chad] is the Protector and Authorized Applicant of BKR Purpose Trust located in the Bahamas;
- f. BKR Purpose Trust owns 100% of the shares of Oz Management Inc.;
- g. [Mr. Chad] was a director of Oz Management Inc. until July 29, 2015; and
- h. Oz Management Inc. is the Trustee of The Chodakowski Family Trust, The Ralphie Estate Trust and BKR Purpose Trust.

(Applicant's Record at p. 0009)

#### **IV. The Applicant's Objections**

[23] In summary, the Applicant raised seven objections to both the domestic and foreign Requirements:

- 1. The Requirements were inappropriately issued to the Applicant in his personal capacity;
- 2. The Requirements did not comply with the relevant statutory deadlines;
- 3. The Requirements are overly broad and duplicative;
- 4. With respect to the Requirement issued under s. 231.1, Paragraph 39 of that Requirement requires the Applicant to disclose information about unnamed persons;
- 5. The Requirements require the Applicant to breach his fiduciary duties to the named entities;
- 6. The Applicant is not in possession or control of the requested information and documents; and
- 7. With respect to the Requirement issued under s. 231.6, the Requirement is unreasonable per s. 231.6(6), because the

Applicant does not “control” and is not “related” to the named entities.

See Applicant’s Memorandum in T-735-17 at para. 10, Judicial Review Hearing T-735-17, T-1052-17)

[24] I note that objection #4, which was raised for the first time at the judicial review hearing, is limited to the s. 231.1 Requirement. I also note that objection #7 is limited to the s. 231.6 Requirement.

A. *The Minister’s Reply*

[25] The Minister argues that at the first stage of the process, the issue is only whether the decisions to issue the Requirements are a reasonable exercise of discretion, while the second stage of the process is concerned with compliance. The Minister’s responses to the Applicant’s objections can be summarized as follows:

1. The Requirements were properly issued to the Applicant;
2. The Requirements gave the Applicant a reasonable amount of time to reply, as the Minister has requested this information since as early as October 2016;
3. The Requirements are not overly broad or duplicative;
4. With respect to the Requirement issued under s. 231.1, Paragraph 39 of that Requirement does not require the Applicant to disclose information about unnamed persons;
5. The Minister has the discretion to request a wide array of documents, even where private transactions may be disclosed;
6. The Applicant is able to provide the requested information and documents, as he is a “protector” of the named entities; and

7. With respect to the Requirement issued under s. 231.6, the Requirement is reasonable per s. 231.6(6), because the Applicant is “related” to the named entities.

(See Minister’s Memorandum in T-735-17 at para. 17, Judicial Review Hearing T-735-17, T-1052-17)

**V. Conclusions: The s. 231.1 Requirement**

[26] I find that the Applicant’s reasons for not meeting the Minister’s request display a lack of understanding of the two-stage process authorized by law. The Applicant’s objections at the first stage of the investigative process are limited to essentially the issue of the relevance of the requests advanced by the Minister. The Applicant’s evidence of inability to comply for a range of reasons is properly the subject matter of a potential enforcement stage of the existing process.

[27] For the following reasons, I reject the Applicant’s objections stated at paragraph 23 of these reasons.

[28] As to #1: The fact that the Requirements were issued to the Applicant personally is not unreasonable because the Minister has reason to believe that the Applicant is a “protector” of the named entities.

[29] As to #2: The amount of time the Applicant was given is a matter that can be negotiated between the Applicant and the Minister. I note that the Minister requested information from the Applicant well before the Requirements were issued.

[30] As to #3: I do not find the Requirements to be overly broad. To the extent that the Requirements are duplicative, as the Minister explained in argument, duplication is necessary because it is not known whether the relevant documents and information are within or outside the country.

[31] As to #4: The Applicant carries the burden of proving that the request at paragraph 39 of the s. 231.1 Requirement requests information and documents about “unnamed persons”.

Without evidence on this point, I am unable to find that the s. 231.1 Requirement requests such information.

[32] And as to #5 and #6: As mentioned, the current investigative stage is only concerned with the relevance and content of the requests for information. If the Applicant fails to produce as requested, the Minister may seek a compliance order under s. 231.7.

## **VI. Conclusions: The 231.6 Requirement**

[33] With respect to the Applicant’s objections #1-3, I make the same findings as stated in the analysis above on the s. 231.1 Requirement.

[34] With respect to the Applicant’s objections #5-7, I find that they are irrelevant given that the test pursuant to s. 231.6 is relevance and reasonableness as outlined by *Saipem Luxembourg* and *Soft-Moc*.

## **VII. Costs**

[35] The Minister seeks costs as the successful party.

[36] In oral argument, Counsel for the Minister expressed the opinion that the present decision might have value as a precedent.

[37] While the Applicant has not been successful in the present application, his investment in the litigation might bring clarity to the law.

**JUDGMENT IN T-735-17 AND T-1052-17**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. I make no order as to costs.

"Douglas R. Campbell"

Judge

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

**DOCKETS:** T-735-17 AND T-1052-17

**DOCKET:** T-735-17

**STYLE OF CAUSE:** S. ROBERT CHAD v MINISTER OF NATIONAL  
REVENUE

**AND DOCKET:** T-1052-17

**STYLE OF CAUSE:** S. ROBERT CHAD v MINISTER OF NATIONAL  
REVENUE

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** OCTOBER 28, 2019

**JUDGMENT AND REASONS:** CAMPBELL J.

**DATED:** NOVEMBER 19, 2019

**APPEARANCES:**

Emmett Scrimshaw

FOR THE APPLICANT

Margaret McCabe

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Peacock Linder Halt & Mack  
Barristers and Solicitors  
Calgary, Alberta

FOR THE APPLICANT

Attorney General of Canada  
Edmonton, Alberta

FOR THE RESPONDENT