

Federal Court



Cour fédérale

**Date: 20211202**

**Docket: T-1492-20**

**Citation: 2021 FC 1340**

**Toronto, Ontario, December 2, 2021**

**PRESENT: Mr. Justice Diner**

**BETWEEN:**

**SEYED ABBAS SHOKOUHI**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Seyed Abbas Shokouhi (the Applicant) seeks judicial review of a request for information (RFI), issued by the Minister of National Revenue, in the course of an audit being conducted pursuant to s 231.1(1) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) [the *Act*].

II. Background

[2] On or around April 9, 2018, the Canada Revenue Agency (CRA or the Respondent) initiated an audit of the Applicant covering the 2014 to 2016 taxation years.

[3] Between October 2018 and February 2020, in response to various requests for information, the Applicant sent to CRA a series of documents totalling approximately 1500 pages. These documents consisted largely of bank and credit card statements of accounts in Canada, the United States and Kuwait, held directly by the Applicant or jointly with his spouse, including documents associated with their companies.

[4] In August of 2018, CRA obtained a list of electronic transfers (the Transfers) made between May 2015 and June 2018 totalling over \$600,000, originating from Kuwait and deposited in bank accounts belonging to or controlled by the Applicant. Some of the Transfers were accompanied by notes including “salary”, “living expenses”, and “family support”.

[5] In July 2019, CRA received information from three automobile dealers, which revealed the existence of undisclosed credit cards belonging to the Applicant, and other undisclosed credit cards that were used to make payments related to the lease or purchase of vehicles for members of his family. Further inquiry by CRA revealed that the credit card number of one of the undisclosed credit cards appeared to have been issued by the National Bank of Kuwait—the same bank from which the Applicant received the majority of the Transfers.

[6] On December 16, 2019, CRA informed the Applicant that the audit period was being extended to include the 2017 and 2018 taxation years due to a high risk of undeclared income

and undeclared foreign activity. The letter also advised that the Applicant's submission that the transfers received from Kuwait were gifts could not be accepted.

III. Decision under review

[7] In a letter dated November 10, 2020, addressed to the Applicant, and sent by registered mail, the Respondent requested, pursuant to s 231.1(1) of the *Act*, that the Applicant provide CRA with information and documents for the 2014 to 2018 taxation years.

[8] The information and documents requested in this updated RFI include: statements for the credit cards used to make payments on the three vehicles leased or purchased in 2016; bank statements for the accounts used to pay the above credit cards; statements for all accounts with financial institutions inside and outside Canada held directly, indirectly or jointly with any other individual, corporation or other entity; and, statements for any other bank, credit card or investment account outside Canada.

IV. Issues and Analysis

[9] As a preliminary point, the Respondent correctly notes, and the Applicant concedes, that pursuant to Rule 303(2) of the *Federal Courts Rules*, SOR/98-106 [the Rules], the appropriate respondent in this case is the Attorney General of Canada and not the Minister of National Revenue. The Style of Cause will be accordingly amended.

[10] As for the merits of the application, the Applicant raises four issues to support his argument that the RFI is *ultra vires*, improper, overly broad, ambiguous, overreaching or otherwise non-compliant with the Minister's auditing powers under s 231.1(1).

[11] First, the Applicant argues that s 231.1 of the *Act* does not apply to foreign-based documents, an argument which, as the Respondent points out, does not appear in his Notice of Application. Second, the Applicant argues that the identity of the audited person is not clear. Third, he argues that the RFI pertains to years that are statute barred. Fourth, the Applicant argues that the audit has become unreasonable.

[12] I will address each of the four issues in turn. All attract the standard of reasonableness – the presumptive standard of review that applies to the Minister's issuance of an RFI pursuant to s 231.1(1) of the *Act* (*Friedman v Canada (National Revenue)*, 2021 FCA 101 at para 26). The Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10, which set out a revised framework to determine the standard of review, provides no reason to depart from the reasonableness standard.

[13] A court performing a reasonableness review scrutinizes the disputed decision in search of the hallmarks of reasonableness—which are justification, transparency and intelligibility—to determine whether it is justified in relation to the relevant factual and legal constraints that brought the decision to bear (*Vavilov* at para 99). Both the outcome and the reasoning process must be reasonable and the decision must be based on an internally coherent and rational chain of analysis, justified in relation to the facts and the law (*Vavilov*, at paras 83-85).

[14] In the present context, the Applicant makes statutory interpretation arguments in support of his position. Reviewing courts are accustomed to conducting independent analyses on questions of statutory interpretation. However, these questions are treated differently in a reasonableness review and reviewing courts are not to undertake an independent analysis of what the correct decision ought to have been (*Vavilov*, at paras 83, 115-116). Instead, reasonableness review examines the administrative decision as a whole, including the reasons provided and the outcome, and where legal interpretation is involved, assumes the decision maker will do so in a manner consistent with the “modern principle” of statutory interpretation (*Vavilov*, at paras 117-118, citing *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para. 21, 1998 CanLII 837 (SCC)).

[15] While administrative decision makers are not required to engage in a formalistic interpretive exercise, their task when interpreting a contested provision is to do so in a manner consistent with its text, context and purpose. Where relevant case law exists for the provision in question, this acts as a constraint on what the decision maker can reasonably decide, and divergence from binding precedent needs to be explained (*Vavilov*, at paras 112, 119-121).

[16] In this case, the administrative decision-maker who issued the RFI was operating under the statutory regime set out in ss 231.1, 231.2 and 231.6 of the *Act*. These provisions have been reproduced in full at Annex A to these Reasons.

A. *The Minister’s Decision was reasonable*

- (1) It was reasonable to request the information and documents pursuant to s 231.1(1) rather than s 231.6

[17] The Applicant argues that several of the documents requested in the RFI are foreign-based, namely, statements for credit cards and “accounts with financial institutions inside and outside Canada”. According to the Applicant, s 231.1 cannot apply to documents abroad, since s 231.6 specifically contemplates a means of obtaining foreign-based documents. Relying on *James Richardson & Sons, Ltd. v Minister of National Revenue et al.*, [1984] 1 SCR 614 at 621, 9 DLR (4th) 1, in support of the maxim that the specific should prevail over the general, the Applicant contends that s 231.6 should apply, being the more particular enactment, rather than s 231.1, which he contends is more general both in scope and in parliamentary intent.

[18] The Applicant also relies on *Saipem Luxembourg S.A. v Canada (Customs and Revenue Agency)*, 2005 FCA 218 [*Saipem*] at para 27, where the Federal Court of Appeal [FCA] considered these provisions, and noted that s 236.1, unlike s 231.2, provides for the availability of judicial review on the ground of unreasonableness, finding that an RFI in support of a foreign-based document must (i) relate to a document that is relevant to the administration or enforcement of the *Act* as with s 231.2, and (ii) not be unreasonable. The FCA wrote in *Saipem* (at para 27):

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.

[19] As indicated above, the Respondent points out that this ground did not appear in the Applicant’s notice of application. They argue that pursuant to Rule 301(e) of the Rules, the

Applicant ought to be barred from raising the issue, relying, *inter alia*, on *Republic of Cyprus (Commerce and Industry) v International Cheese Council of Canada*, 2011 FCA 201 at paragraphs 13 and 15.

[20] I agree that the issue was raised late, and the Applicant should have set out their arguments in compliance with the Rules. I will nevertheless, for the edification of the Applicant and given that the Respondent is not ultimately prejudiced, exercise my discretion to address the issue (see, for instance, *Tl'azt'en Nation v Sam*, 2013 FC 226 para 6-7)

[21] The wording of s 231.1(1)(a) allows an authorized person to “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” (emphasis added). Absent any evidence to the contrary, I find that CRA is reasonably entitled to expect that statements for accounts with financial institutions held by the taxpayer are, or should be, in the books or records of the taxpayer. The language used by the *Act* cannot be ignored (*Canada (National Revenue) v Miller*, 2021 FC 851 at para 31).

[22] As the Respondent points out, the FCA considered s 231.6 of the *Act* in *eBay Canada Ltd. v M.N.R.*, 2008 FCA 348, [*eBay*] at paragraphs 38 to 53, noting that the provision was enacted in 1988 before the widespread availability of electronic documents, and when Parliament was likely concerned about how unduly onerous it could be for a person to be required to produce material located outside Canada, and in the possession of another person.

[23] The FCA accordingly held in *eBay* that information stored in electronic form could be located at places other than the site of the servers on which it is stored, and thus in Canada, for the purposes of the *Act*. In doing so, the FCA pointed to the Supreme Court’s descriptions of telecommunications from a foreign state to Canada, and vice versa, as being “both here and there” (*eBay* at paras 17 and 42; see also *Society of Composers, Authors and Music Publishers in Canada v Canadian Association of Internet Providers*, 2004 SCC 45 [*SOCAN*] at para 59, [2004] 2 SCR 427). The FCA noted that *SOCAN* requires that statutory interpretation take contemporary technology into account, such that the interpretation “transposes” or adapts for the technological environment in which it is to be applied (*eBay* at para 42).

[24] Based on the higher Courts’ modern interpretation of s 231.1 and its underlying provisions as adopted in *SOCAN* and *eBay*, I find that it was reasonable for the Respondent to expect that the Applicant’s statements of accounts were, or should be, in his records. Indeed, at the time that the Applicant contested his RFI before this Court, he had already disclosed several statements from a Kuwaiti bank in the context of the audit. Thus, it was entirely reasonable for the Respondent to request the information pursuant to s 231.2 instead of treating it as foreign-based information under s 231.6, particularly in light of the widespread availability of electronic banking today.

[25] As in *eBay*, electronic records for the missing documents should have been accessible in Canada, at least electronically, even if stored on servers abroad. In adopting a modern, practical and adaptable interpretation of s 231.2 as required by the times— which I note was well over a decade ago — the FCA commented as follows in *eBay* (at paras 38-39):



Counsel for eBay Canada says that the Minister’s general power to issue requirements under section 231.2 must be read in light of section 231.6, which specifically prescribes the circumstances in which the Minister may impose a requirement for the production of “foreign-based information”. Counsel relies on the presumption that a general statutory provision should not be interpreted as derogating from a specific provision. However, this argument only comes into play if the information sought by the Minister in this case is indeed “foreign-based” for the purpose of section 231.6. In my view, it is not.

Subsection 231.6 defines “foreign-based information or document” as “any information or document that is available or located outside Canada”. What the Minister requires to be produced in this case is “information”, not a “document”. However, for the purposes of sections 231.1 to 231.7, section 231 defines “document” as including “a record”. “Record”, in turn, is defined by subsection 248(1) to include “any other thing containing information, whether in writing or in any other form”, a definition broad enough to include information in electronic form stored on a server.

[References omitted]

[26] In my view, the Respondent’s interpretation is more consistent with the text, context and purpose of the *Act*, particularly in light of decisions in *eBay* and *SOCAN*, than the formalistic and unadaptable view of ss 231.2 and 231.6 proposed by the Applicant.

(2) The identity of the audited person is clear

[27] The Applicant submits that although the RFI letter is addressed to him, the fact that a portion of the letter requests statements for accounts held “directly, indirectly or jointly with any other individual, corporation or other entity” creates confusion as to who is being audited. On the basis of this purported lack of clarity, the Applicant asserts that the RFI should be cancelled, relying on *Canada (National Revenue) v Lin*, 2019 FC 646 [*Lin*] at paragraphs 30 to 32.

[28] I cannot agree that there is any lack of clarity or that this situation is analogous to the circumstances in *Lin*. A letter addressed to the respondent in *Lin* stated: “Your personal income tax returns and other related or associated entities have been selected for audit.” (*Lin*, at para 30). There, Justice Boswell found that it was unclear who was being audited, and that the person against whom a compliance order was sought must be the same as the person required to provide the access or information sought under s 231.1 or s 231.2.

[29] The factual matrix in this case, however, differs from *Lin*. Here, the RFI letter from CRA is clearly addressed to the Applicant, and there is no suggestion that any other entities are subject to an audit. I do not agree with the Applicant that the situations are analogous.

[30] In short, here I find that the RFI, for purposes related to the administration and enforcement of the *Act*, reasonably requests documents and information that are or ought to be in the Applicants’ records. These documents will assist the Respondent to verify whether the Applicant—and not another individual, corporation or entity—received income that he failed to declare.

(3) The RFI is not statute barred

[31] Although the question was not addressed in the Applicant’s written submissions, the Applicant’s Notice of Application argues that the 2014, 2015, and 2016 taxation years are statute-barred and could not properly be targeted by the RFI. This assertion is misguided. A well-established principle of the law provides that there is no statutory time limit for a request for

information (*Tower v M.N.R.*, 2003 FCA 307 at para 32; *Lin* at para 25; *Canada (Minister of National Revenue) v Stankovic*, 2018 FC 462 para 34).

(4) The request for information is reasonable

[32] Finally, the Applicant acknowledges the CRA's broad discretion and extensive audit powers. Nevertheless, he submits that the 1500 pages of documents he already shared with the CRA, spanning a period of 17 months, complied with audit query sheets and should suffice as a full response to the audit. He argues that the Respondent is abusing their discretion in issuing the RFI and through it, the audit has become unreasonable.

[33] Once again, I cannot agree with this argument. The Supreme Court has previously emphasized that Parliament enacted several provisions which give the Minister broad powers to audit taxpayers, irrespective of whether there exist reasonable grounds to believe a particular tax payer has breached the *Act* (*R. v McKinlay Transport Ltd.*, [1990] 1 SCR 627 at 636-637, 648, 1990 CanLII 137 (SCC); *Redeemer Foundation v Canada (National Revenue)*, 2008 SCC 46 at paras 12-13, 31).

[34] Whether to conduct an audit, its scope and manner, and the course and direction it will follow, are all the prerogative of the CRA (*Canada (National Revenue) v Cameco Corporation*, 2019 FCA 67 [*Cameco*] at para 43; *Saipem* at para 36; *Bayer Inc. v Canada (Attorney General)*, 2020 FC 750, at para 39).

[35] It is not for the Applicant to second-guess the Minister's decisions to request access to the records and information of the taxpayer in the course of an audit. As stated by the FCA in *Cameco* “[t]he purpose of section 231.1 is to facilitate the Minister's unencumbered and immediate access to all books, records and information of the taxpayer and, in section 231.7, to provide recourse to the authority of the Court in the face of a refusal” (at para 27). As the FCA also noted at para. 39 of *Cameco*:

In practical terms, as the auditor follows the audit trail, the audit will likely be more focused, and the requests more targeted to areas which may disclose a problem. The fact that a taxpayer may have previously cooperated in responding to a series of audit requests does not mean that a compliance order should not be issued for the next request. For the taxpayer to say, “well, now you are getting too close to the fire, I will cease to cooperate” and plead past cooperation as a defence against a compliance order could frustrate section 231.1.

[36] Here, there has been no compliance order or assessment, nor is there any suggestion that the RFI was issued for any purpose other than the administration or enforcement of the *Act*. Despite the Applicant's allegations, less than a year passed between the decision to extend the audit to the 2017 and 2018 taxation years, and the issuance of the RFI in question. On the facts of this case, and absent any evidence of reprehensible conduct, the time passed and pages already shared are insufficient to meet the Applicant's burden: there is simply no evidentiary basis to sustain the Applicant's claim of abuse of discretion in the documents requested for the audit.

[37] Viewed holistically, the present Application appears to seek to avoid the statutory obligation to disclose documents and instead attempts to cut the audit process short. Considering the procedural mechanisms that remain available to the parties, and unconvinced by the Applicant's submissions, I decline the invitation to interfere with the RFI, which is reasonably

constituted: to interfere at this stage, absent any evidence of abuse, would be to frustrate the Minister's ability to properly exercise its powers and its duties under the *Act*.

[38] Finally, even though the question was not raised by the Respondent, the jurisprudence raises questions as to whether judicial review is even an appropriate recourse to the mere issuance of an RFI, since the statutory scheme designed by Parliament might be frustrated and unduly delayed, on the basis of prematurity by such applications (*Canada (Attorney General) v Valero Energy Inc.*, 2020 FCA 68 at paras 35-37 and 44; *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250 at paras 49-50 and 84-86). Absent submissions from the parties, that issue is best left for another day. However, what is eminently clear based on the submissions and record before the Court today, is that the Applicant has failed to meet his burden of showing the issuance of the RFI to be unreasonable.

#### V. Costs

[39] After failing to agree on costs post-hearing, both parties provided submissions on costs. After a review of these submissions and considering all the circumstances, costs will be awarded to the Respondent in the amount of \$2400 inclusive of taxes and disbursements.

#### VI. Conclusion

[40] For the reasons outlined above, I would dismiss the application with costs.

**JUDGMENT in file T-1492-20**

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

1. The style of cause is amended to substitute the Minister of National Revenue to the proper Respondent, the Attorney General of Canada.
2. The Application is dismissed, with costs to the Respondent.

"Alan S. Diner"

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Judge

**ANNEX A**

**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

**(c)** subject to subsection 231.1(2), enter into any premises or place where any

**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;

à ces fins, la personne autorisée peut :

**c)** sous réserve du paragraphe (2), pénétrer dans un lieu où est exploitée une entreprise,

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

**(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.

**(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).

**(3)** Where, on *ex parte* application by the Minister, a judge is satisfied by information on oath that

**(a)** there are reasonable grounds to believe that a dwelling-house is a premises

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)** 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.

**(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).

**(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)** il existe des motifs raisonnables de croire que la maison d'habitation est un



or place referred to in paragraph 231.1(1)(c),

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,

**c)** un refus d'y pénétrer a été opposé, ou il existe des motifs raisonnables de croire qu'un tel refus sera opposé.

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

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.

**(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.

**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,

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

(b) any document.

**(1.1)** A notice referred to in subsection (1) may be

(a) served personally;

**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 compris une déclaration de revenu ou une déclaration supplémentaire;

b) qu'elle produise des documents.

**(1.1)** L'avis visé au paragraphe (1) peut être :

a) soit signifié à personne;

**(b)** sent by registered or certified mail; or

**b)** soit envoyé par courrier recommandé ou certifié;

**(c)** sent electronically to a bank or credit union that has provided written consent to receive notices under subsection (1) electronically.

**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.

**(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).

**(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).

**(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

**(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)** the person or group is ascertainable; and

**a)** cette personne ou ce groupe est identifiable;

**(b)** the requirement is made to verify compliance by the person or persons in the group

**b)** la fourniture ou la production est exigée pour vérifier si cette personne ou les personnes de ce groupe ont

with any duty or obligation under this Act.	respecté quelque devoir ou obligation prévu par la présente loi;
<b>(c)</b> and <b>(d)</b> [Repealed, 1996, c. 21, s. 58(1)]	<b>c) et d)</b> [Abrogés, 1996, ch. 21, art. 58(1)]
<b>(4)</b> to <b>(6)</b> [Repealed, 2013, c. 33, s. 21]	<b>(4) à (6)</b> [Abrogés, 2013, ch. 33, art. 21]
[...]	[...]
<b>231.6 (1)</b> For the purposes of this section, foreign-based information or document means any information or document that is available or located outside Canada and that may be relevant to the administration or enforcement of this Act, including the collection of any amount payable under this Act by any person.	<b>231.6 (1)</b> Pour l'application du présent article, un renseignement ou document étranger s'entend d'un renseignement accessible, ou d'un document situé, à l'étranger, qui peut être pris en compte 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.
<b>(2)</b> Notwithstanding any other provision of this Act, the Minister may, by notice sent or served in accordance with subsection (3.1), require that a person resident in Canada or a non-resident person carrying on business in Canada provide any foreign-based information or document.	<b>(2)</b> Malgré les autres dispositions de la présente loi, le ministre peut, par avis signifié ou envoyé conformément au paragraphe (3.1), 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.
<b>(3)</b> The notice referred to in subsection 231.6(2) shall set out	<b>(3)</b> L'avis doit :
<b>(a)</b> a reasonable period of time of not less than 90 days for the production of the information or document;	<b>a)</b> indiquer le délai raisonnable, d'au moins 90 jours, dans lequel les

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|   | renseignements ou documents étrangers doivent être fournis;   |
| <b>(b)</b> a description of the information or document being sought; and   | <b>b)</b> décrire les renseignements ou documents étrangers recherchés;   |
| <b>(c)</b> the consequences under subsection 231.6(8) to the person of the failure to provide the information or documents being sought within the period of time set out in the notice.                  | <b>c)</b> préciser les conséquences prévues au paragraphe (8) du défaut de fournir les renseignements ou documents étrangers recherchés dans le délai ci-dessus.                                  |
| <b>(3.1)</b> A notice referred to in subsection (2) may be  | <b>(3.1)</b> L'avis visé au paragraphe (2) peut être :  |
| <b>(a)</b> served personally;   | <b>a)</b> soit signifié à personne;   |
| <b>(b)</b> sent by registered or certified mail; or   | <b>b)</b> soit envoyé par courrier recommandé ou certifié;  |
| <b>(c)</b> sent electronically to a bank or credit union that has provided written consent to receive notices under subsection (2) electronically.  | <b>c)</b> 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 (2) par voie électronique.                      |
| <b>(4)</b> The person who is sent or served with a notice of a requirement under subsection (2) may, within 90 days after the notice is sent or served, apply to a judge for a review of the requirement. | <b>(4)</b> La personne à qui l'avis est signifié ou envoyé peut, dans les 90 jours suivant la date de signification ou d'envoi, contester, par requête à un juge, la mise en demeure du ministre. |
| <b>(5)</b> On hearing an application under subsection 231.6(4) in respect of a requirement, a judge may   | <b>(5)</b> À l'audition de la requête, le juge peut :   |
| <b>(a)</b> confirm the requirement;   | <b>a)</b> confirmer la mise en demeure;   |
| <b>(b)</b> vary the requirement as the judge considers  | <b>b)</b> modifier la mise en demeure de la façon qu'il   |

appropriate in the circumstances; or

**(6)** Subject to subsection 231.3(7), where any document or thing seized under subsection 231.3(1) or 231.3(5) is brought before a judge or a report in respect thereof is made to a judge, the judge shall, unless the Minister waives retention, order that it be retained by the Minister, who shall take reasonable care to ensure that it is preserved until the conclusion of any investigation into the offence in relation to which the document or thing was seized or until it is required to be produced for the purposes of a criminal proceeding.

**(7)** The period of time between the day on which an application for review of a requirement is made pursuant to subsection (4) and the day on which the application is finally disposed of shall not be counted in the computation of

**(a)** the period of time set out in the notice of the requirement; and

**(b)** the period of time within which an assessment may be made pursuant to subsection 152(4).

**(8)** If a person fails to comply substantially with a notice sent or served under

estime indiquée dans les circonstances;

**(6)** Pour l'application de l'alinéa (5)c), le fait que des renseignements ou documents étrangers soient accessibles ou situés chez une personne non-résidente qui n'est pas contrôlée par la personne à qui l'avis est signifié ou envoyé, ou soient sous la garde de cette personne non-résidente, ne rend pas déraisonnable la mise en demeure de fournir ces renseignements ou documents, si ces deux personnes sont liées.

**(7)** Le délai qui court entre le jour où une requête est présentée conformément au paragraphe (4) et le jour où la requête est définitivement réglée ne compte pas dans le calcul :

**a)** du délai indiqué dans l'avis correspondant à la mise en demeure qui a donné lieu à la requête;

**b)** du délai dans lequel une cotisation peut être établie conformément au paragraphe 152(4).

**(8)** Si une personne ne fournit pas la totalité, ou presque, des renseignements ou documents

subsection (2) and if the notice is not set aside by a judge pursuant to subsection (5), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Act shall, on motion of the Minister, prohibit the introduction by that person of any foreign-based information or document covered by that notice.

étrangers visés par l'avis signifié ou envoyé conformément au paragraphe (2) et si l'avis n'est pas déclaré sans effet par un juge en application du paragraphe (5), tout tribunal saisi d'une affaire civile portant sur l'application ou l'exécution de la présente loi doit, sur requête du ministre, refuser le dépôt en preuve par cette personne de tout renseignement ou document étranger visé par l'avis.

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

**DOCKET:** T-1492-20

**STYLE OF CAUSE:** SEYED ABBAS SHOKOUHI v MINISTER OF NATIONAL REVENUE

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** SEPTEMBER 20, 2021

**REASONS FOR JUDGMENT AND JUDGMENT:** DINER J.

**DATED:** DECEMBER 2, 2021

**APPEARANCES:**

Henri Nahabedian FOR THE APPLICANT

Gilles Robert FOR THE RESPONDENT  
Marie-France Camiré

**SOLICITORS OF RECORD:**

LETTE & ASSOCIÉS L.L.P. FOR THE APPLICANT  
Barristers and Solicitors  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Montreal, Quebec