Federal Court  Cour fédérale

Date: 20130129

Docket: T-639-12

Citation: 2013 FC 87

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, January 29, 2013

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

In the matter of the *Income Tax Act*

and

In the matter of an assessment or assessments established by the Minister of Revenue under the *Income Tax Act*,

AGAINST:

RÉGINALD DESCHÊNES
3699 De l'Alsace
Jonquière, Quebec
G7X 9R3

DIANE BRASSARD
3699 De l'Alsace
Jonquière, Quebec
G7X 9R3

SERGE DESCHÊNES
4081 Marc-Aurèle
Jonquière, Quebec
G7Z 1H4

9099-5374 QUÉBEC INC.
4081 Marc-Aurèle, P.O. Box 117
Jonquière, Quebec
G7X 7W4

Debtors-
Respondents

REASONS FOR ORDER AND ORDER

Introduction

[1] This is an application filed under subsection 225.2(8) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (ITA), to have the jeopardy collection order made *ex parte* by Justice Tremblay-Lamer on March 29, 2012, reviewed and set aside. Under that order, the Court allowed the application by Her Majesty the Queen in right of Canada (Her Majesty), acting on behalf of the Minister of National Revenue, and authorized her to take forthwith any of the actions described in paragraphs (*a*) to (*g*) of subsection 225.1(1) of the ITA in order to collect and/or guarantee the payment of amounts assessed with respect to Réginald Deschênes, Serge Deschênes, Diane Brassard and 9099-5374 Québec Inc. (9099) (collectively referred to as the applicants).

[2] At the time the *ex parte* application was heard, the tax liabilities resulting from the notices of assessment issued with respect to the applicants were as follows:

- $239,505.93 resulting from five notices of assessment issued against Réginald Deschênes on April 28, 2010, for 2002 to 2006. (The amount was originally $341,477.67 but was reduced on February 17, 2012, further to Réginald Deschênes' objection);
- $20,045.69 resulting from four notices of assessment issued against 9099 on March 31, 2010, for 2004 to 2006 and 2009;

- $101,602.25 resulting from four notices of assessment issued against Serge Deschênes on February 17, 2012, for 2003 to 2006;
- $150,000 resulting from one notice of assessment issued against Serge Deschênes on March 14, 2012; and
- $30,000 resulting from one notice of assessment issued against Diane Brassard on March 14, 2012.

[3] The notice of assessment against Diane Brassard (Réginald Deschênes' spouse) and the notice of assessment in the amount of $150,000 against Serge Deschênes (Réginald Deschênes' brother) are the result of the application, in respect of them, of section 160 of the ITA, which reads as follows:

160. (1) Where a person has, on or after May 1, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to	**160.** (1) Lorsqu'une personne a, depuis le 1er mai 1951, transféré des biens, directement ou indirectement, au moyen d'une fiducie ou de toute autre façon à l'une des personnes suivantes :
(*a*) the person's spouse or common-law partner or a person who has since become the person's spouse or common- law partner,	*a*) son époux ou conjoint de fait ou une personne devenue depuis son époux ou conjoint de fait;
(*b*) a person who was under 18 years of age, or	*b*) une personne qui était âgée de moins de 18 ans;
(*c*) a person with whom the person was not dealing at arm's length, the following rules apply:	*c*) une personne avec laquelle elle avait un lien de dépendance, les règles suivantes s'appliquent :
(*d*) the transferee and transferor are jointly and severally liable to pay a part of the transferor's tax	*d*) le bénéficiaire et l'auteur du transfert sont solidairement responsables du paiement d'une partie de

under this Part for each taxation year equal to the amount by which the tax for the year is greater than it would have been if it were not for the operation of sections 74.1 to 75.1 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of any income from, or gain from the disposition of, the property so transferred or property substituted therefor, and

l'impôt de l'auteur du transfert en vertu de la présente partie pour chaque année d'imposition égale à l'excédent de l'impôt pour l'année sur ce que cet impôt aurait été sans l'application des articles 74.1 à 75.1 de la présente loi et de l'article 74 de la *Loi de l'impôt sur le revenu*, chapitre 148 des Statuts revisés du Canada de 1952, à l'égard de tout revenu tiré des biens ainsi transférés ou des biens y substitués ou à l'égard de tout gain tiré de la disposition de tels biens;

(*e*) the transferee and transferor are jointly and severally liable to pay under this Act an amount equal to the lesser of

e) le bénéficiaire et l'auteur du transfert sont solidairement responsables du paiement en vertu de la présente loi d'un montant égal au moins élevé des montants suivants :

(i) the amount, if any, by which the fair market value of the property at the time it was transferred exceeds the fair market value at that time of the consideration given for the property, and

(i) l'excédent éventuel de la juste valeur marchande des biens au moment du transfert sur la juste valeur marchande à ce moment de la contrepartie donnée pour le bien,

(ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act in or in respect of the taxation year in which the property was transferred or any preceding taxation year,

(ii) le total des montants dont chacun représente un montant que l'auteur du transfert doit payer en vertu de la présente loi au cours de l'année d'imposition dans laquelle les biens ont été transférés ou d'une année d'imposition antérieure ou pour une

	de ces années;
but nothing in this subsection shall be deemed to limit the liability of the transferor under any other provision of this Act.	aucune disposition du présent paragraphe n'est toutefois réputée limiter la responsabilité de l'auteur du transfert en vertu de quelque autre disposition de la présente loi.
. . .	[…]
(2) The Minister may at any time assess a taxpayer in respect of any amount payable because of this section and the provisions of this Division apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.	(2) Le ministre peut, en tout temps, établir une cotisation à l'égard d'un contribuable pour toute somme payable en vertu du présent article. Par ailleurs, les dispositions de la présente section s'appliquent, avec les adaptations nécessaires, aux cotisations établies en vertu du présent article comme si elles avaient été établies en vertu de l'article 152.

[4] Under subsections 225.2(8) and (11) of the ITA, the Court must now determine the application summarily and may "confirm, set aside or vary the authorization and make such other order as the judge considers appropriate". The applicants also rely on Rule 399 of the *Federal Courts Rules*, SOR/98-106 (Rules), which states that, in principle, any order that was made *ex parte* may be set aside or varied "if the party against whom the order is made discloses a *prima facie* case why the order should not have been made". The applicants therefore have the burden of proving that the Crown did not meet its obligation to make a full and frank disclosure of the relevant facts before Justice Tremblay-Lamer or that the test set out in subsection 225.2(2) of the ITA for the issuance of a jeopardy collection order was not met (*Canada (MNR) v Services ML Marengère Inc*, [1999] FCJ 1840, [2000] 1 CTC 229 (*Services ML Marengère Inc*)).

[5] The test consists in establishing the existence of "reasonable grounds to believe" that the collection of the tax debt would be jeopardized by a delay to the taxpayers; it is a burden of proof that is less onerous than that of the balance of probabilities (*Canada v Golbeck* (FCA), [1990] FCJ No 852, 90 DTC 6575; *Canada (MNR) v 514659 BC Ltd*, [2003] FCJ 207 at paragraph 6, 2003 DTC 5150). The case law has specified certain factors that could be considered when applying the test, including fraudulent actions by the taxpayer, liquidation or transfer of the taxpayer's assets, evasion of the taxpayer's tax liabilities or assets of the taxpayer that could lessen in value over time, deteriorate or be easily transferred (*Canada (MNR) v Cormier-Imbeault*¸ 2009 FC 499 at paragraph 7, [2009] FCJ No 618). It was also established that a taxpayer's failure to conduct his or her affairs "in an orthodox fashion" may be grounds for justifying the issuance of an authorization under subsection 225.2(2) of the ITA (*Canada (MNR) v Rouleau*, [1995] FCJ 1209 at paragraphs 6-7, 95 DTC 5597).

[6] In this case, after reviewing all of the evidence, the applicants' arguments and the affidavits submitted in support of their application, I find that the impugned order must not be set aside or varied. For the following reasons, this application is therefore dismissed.

(a) Factual background

Facts raised in support of Her Majesty's* ex parte *application

[7] According to the evidence before Justice Tremblay-Lamer, Réginald Deschênes filed his 2009 to 2010 income tax returns late and was imposed penalties for filing those returns late. He was also in default on a tax debt of $2,995.12 for the 2008 taxation year, although a notice of objection was sent to the Canada Revenue Agency (CRA) by his accountant in July 2010. Furthermore, the CRA had already taken collection actions against Réginald Deschênes with respect to part of his tax

debt for 2005, and his accountant, Sylvain Gravel, had told the CRA that Réginald Deschênes would declare bankruptcy if the assessments were upheld.

[8] The evidence established that, even if the CRA's appeals division reduced the amount in the assessments issued against Réginald Deschênes, his tax debt would still be more than $230,000, as he is retired and his only income is an annual pension of $51,377.22, his only seizable asset. Her Majesty claimed that most of Réginald Deschênes' valuable assets were encumbered by several charges, leaving practically zero net worth. Other creditors had already taken actions to collect their debts from Réginald Deschênes, so he transferred the undivided half of an immovable to his spouse, Diane Brassard, and an immovable to his brother, Serge Deschênes.

[9] Diane Brassard's only seizable asset, that is, the undivided half of the family residence in Jonquière, was encumbered by two hypothecs, one legal hypothec and one conventional hypothec, in favour of the Caisse populaire. Her Majesty claimed that Réginald Deschênes's income was low and that he was effectively insolvent, while Diane Brassard declared income varying between $4,096 and $21,007 for the 2002 to 2008 taxation years (no returns were filed for 2005, 2009 or 2010).

[10] Regarding Serge Deschênes, Her Majesty claimed that he engaged in unorthodox behaviour by concealing from the CRA a bank account in which 9099 (which he is the sole shareholder and director of) deposited its income, while it had failed to report its business income for the 2003 to 2006 taxation years. Serge Deschênes and his spouse, Lynne Mimeault, had both already declared bankruptcy, and their family income was insufficient to reimburse Serge Deschênes' tax debt of $250,000. According to the evidence, some creditors had already taken collection actions against

the assets of Serge Deschênes. Almost all of 9099's valuable assets were encumbered by several charges and its creditors had taken collection actions against it. Furthermore, Lynne Mimeault and Serge Deschênes had provided false tax returns for 2002 to 2010. Lynne Mimeault reported an income varying from $1 (for 2002, 2003, 2007, 2009 and 2010) to $20,166 to the CRA, even though she received $620,000 in financing following the transfer of the undivided half of Serge Deschênes' immovable.

[11] Moreover, Her Majesty claimed in her application that she had doubts with respect to the credibility of Réginald and Serge Deschênes. While Serge Deschênes mentioned in a conversation with Thérèse Gauthier on February 20, 2012, that his brother Réginald acts as a nominee for him and 9099 and is a surety for financing, he refused to respond to the questions of the auditor, Bruce Aziz, on this point and Réginald Deschênes made no mention of this fact in his notice of appeal regarding his reassessments. According to Her Majesty, Réginald and Serge Deschênes lacked transparency by refusing to cooperate with the auditor and refusing to disclose all of the relevant facts, which affected their credibility.

Enforcement of the jeopardy collection order

[12] Further to the order dated March 29, 2012, the CRA took enforcement actions against each of the applicants. It obtained two certificates under section 223 of the ITA in dockets ITA-3531-12 and ITA-3532-12, for claims of $150,000 and $101,602.25 against Serge Deschênes, and registered a notice of legal hypothec on two immovables that he owns, including his family residence in Jonquière.

[13] The CRA also obtained a certificate for $239,505.93 against Réginald Deschênes in docket ITA-3531-12, and registered a notice of legal hypothec on four immovables that he owns, including his family residence in Jonquière. Requirements to pay were sent to third parties (mainly tenants) as well as to the financial institutions that Serge and Réginald Deschênes deal with.

[14] With respect to Diane Brassard, the CRA obtained a certificate in docket ITA-3529-12 claiming $30,000, and seized an amount of $5,738.59 held with the Caisse populaire Desjardins in Jonquière.

[15] The CRA obtained a final certificate against 9099 in docket ITA-3528-12, for $20,522.44, and registered a notice of legal hypothec on nine vacant lots and two immovables it owns. It also sent requirements to pay to financial institutions, including a requirement to pay and seize an amount of $16,260.53 held in 9099's bank account with the Bank of Montreal (BMO), pursuant to the *Excise Tax Act*, RSC (1985), c E-15.

[16] Since the issuance of the jeopardy collection order, the CRA has collected $11,670.62 against Réginald Deschênes' debt, including $7,336.08 collected from the assets of his spouse, Diane Brassard; $1,951.44 against Serge Deschênes' debt; and $2,211.53 against 9099's debt (see the affidavit of Thérèse Gauthier, CRA complex case officer).

[17] With their application, the applicants are essentially asking the Court to set aside the jeopardy collection order issued against them by Justice Tremblay-Lamer, including the awarding of costs, and vacate all of the notices of assessment that are the subject of it and the certificates issued in application of section 223 of the ITA. They are also asking the Court to order the CRA to

withdraw all of the collection actions taken under subsection 225.1(1) of the ITA and to allow their personal action for damages against the two CRA officers responsible for their file, Thérèse Gauthier and Bruce Aziz.

b. Issues

[18] In an application for review based on subsection 225.2(8) of the ITA, the Court must respond to the following questions and, in doing so, must consider all of the evidence submitted from both parties:

i. Did the applicants meet their initial burden of proving that the CRA did not make a full and frank disclosure of the factual elements before it or that there are reasonable grounds to believe that the test for issuing a jeopardy collection order was not met?

   If the response to these two questions is negative, the analysis stops here and the applicants' application must be dismissed.

ii. If the response to one (or both) of the previous questions is positive, did Her Majesty demonstrate that there are reasonable grounds to believe that the collection of the applicants' tax debt would be jeopardized by a delay for exercising the measures set out in paragraphs 225.1(1)(*a*) to (*g*) of the ITA?

[19] The applicants raise an additional question, that is, whether the notices of reassessment issued against them were in violation of section 8 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c 11 (Charter), or whether they were the result of evidence obtained in violation of their Charter rights?

c. Analysis

Review of the jeopardy collection order

[20] The parties agree on the law that applies in this case. The applicants instead challenge the presentation of the facts reported in the affidavits of Thérèse Gauthier and Bruce Aziz on which the impugned order was issued. They allege that Her Majesty did not succeed in establishing that there were reasonable grounds to believe that the collection of her debt was in jeopardy and that the Minister did not meet his obligation to make a full and frank disclosure of the facts at the time of the filing of the *ex parte* application. The applicants also challenge the validity of the reassessments established by the CRA, and they claim that auditor Bruce Aziz was in conflict of interest, that he carried out his audit so that criminal charges would be brought against them and that the collection officer Thérèse Gauthier acted in an arbitrary and inappropriate manner while executing the collection actions taken against them.

[21] Finally, the applicants claim that, because the order dated March 29, 2012, contains no conditions, it does not meet the requirement in subsection 225.2(2) of the ITA that states that "the judge shall, on such terms as the judge considers reasonable in the circumstances, authorize the Minister to take forthwith any of the actions described in paragraphs 225.1(1)(*a*) to 225.1(1)(*g*) with respect to the amount".

[22] For the following reasons, I am of the opinion that the applicants did not meet their initial burden of demonstrating that the CRA did not make a full and frank disclosure of the facts before it or that there are reasonable grounds to believe that the test for issuing a jeopardy collection order was not met. Thus, it is unnecessary to move on to the second component of the test, that is, whether Her Majesty demonstrated that there are reasonable grounds to believe that the collection of her debt would be jeopardized by a delay of payment, even though the applicants

are essentially trying to argue that they are not insolvent (*Canada (MRN) c Fiducie Dauphin*, 2010 CF 1144 at paragraph 23, [2010] ACF No 1430 (*Fiducie Dauphin*)).

[23] In their written arguments and in the submissions made before the Court, the applicants reviewed all of the allegations in Thérèse Gauthier's affidavit and tried to demonstrate their falsity. At the very most, they succeeded in explaining certain facts or rectifying others that the CRA was not aware of when the *ex parte* application was filed. They did not succeed in demonstrating that, if the facts, as explained or rectified, had been submitted to Justice Tremblay-Lamer, the jeopardy collection order would have been different.

Réginald Deschênes

[24] The applicants submit that, contrary to the CRA's claims, Réginald Deschênes filed his tax returns for 2009 to 2011 and never received a notice of assessment or an explanatory draft with respect to his tax debt for the 2005 taxation year, for which he was the subject of a prior collection action, and that, if he had, he would have filed an objection like he did for 2008. Réginald Deschênes claims that he never received a letter explaining the assessments issued against him for 2002 to 2006. He denies that he knew about the details of the assessments dated September 7, 2010, totalling $431,350.38, which he characterizes as arbitrary, and claims that he was not informed of the considerable subsequent corrective actions, like the withdrawal of an amount of $134,550 in capital gains from his income for 2004.

[25] Contrary to what the applicants claim, the impugned collection order is limited to $236,770.20, plus interest from November 25, 2011 (that is, the amount of the previously established assessments minus a reduction of $218,878.92 for 2002 to 2006). All of the facts with

respect to the modifications made by the CRA were entered into evidence before the Court and there is nothing to indicate that Her Majesty did not make a full and frank disclosure of them. Regarding the certificate obtained in docket ITA-3531-12 for $239,505.93, it did not correspond to a notice of assessment, but rather a summary assessment of Réginald Deschênes' total tax debt according to the calculation done by the audit division. Whether or not to follow that recommendation is up to the appeals division, even if Réginald Deschênes maintains his objection with respect to his current tax debt of $236,770.20. In any event, the fact that Réginald Deschênes objected to the notices of assessment issued against him does not prevent Her Majesty from protecting her debt or obtaining a jeopardy collection order.

[26] Réginald Deschênes also contends that he is not insolvent. Even if the evidence before me does not allow me to rule on this issue, it shows that, on October 5, 2012, the BMO published, on one of the immovables that he owns, a prior notice of the exercise of the hypothecary right to take in payment. Réginald Deschênes also argues that his accountant never mentioned to the CRA that he intended to declare bankruptcy if the assessment was upheld. However, unlike Thérèse Gauthier, he does not have personal knowledge of that fact and Ms. Gauthier's testimony on this point should be favoured.

[27] Réginald Deschênes submits that the undivided half of the immovable was transferred to his spouse in January 2006, when the CRA audits had not yet started or been announced, and that, in any event, that transaction would not have affected the CRA, which can rely upon section 160 of the ITA to track the property in the patrimony of his spouse.

[28] First, the evidence shows that the first letter addressed to Réginald Deschênes by the auditor Bruce Aziz was dated December 8, 2005 (Bruce Aziz's supplementary affidavit dated June 27, 2012). The case law has established that [TRANSLATION] "the liquidation or transfer of the assets by the taxpayer regardless of his intention" is one of the factors that can justify a jeopardy collection order (*Fiducie Dauphin*, above, at paragraph 24; *Services ML Marengère Inc*, above, at paragraph 63; *Canada (MNR) v Delaunière*, 2007 FC 636 at paragraph 6).

Serge Deschênes, 9099 and Diane Brassard

[29] Serge Deschênes claims that he did not behave in a way that could be characterized as unorthodox, that he never concealed a BMO bank account in 9099's name, that the auditor Bruce Aziz had access to all of the accounts for 9099 and that, after all, the tax claim against it was only $20,045.69 and does not require any collection action given the company's income. Serge Deschênes submits that 9099 owns lots that are under development in Jonquière, Kénogami and Arvida, that it invested in the construction of 132 residential units, which are each valued at $75,500, and that those lots are almost unencumbered and have a resale value that is amply sufficient to cover Her Majesty's tax debt.

[30] During examinations held on July 18, 2012, the accountant for 9099 stated that it did not have an account with BMO or, at the very least, that such an account did not appear in 9099's assets and that none of its returns mentioned it. That testimony confirmed the CRA's suspicions that 9099 had "double accounts" that allowed it to shelter part of its income from taxation (*Canada (MNR) v Robarts*, 2010 FC 875 at paragraph 61, [2010] FCJ 1082; *Services ML Marengère*, above, at paragraph 67).

[31] The applicants claim that Serge Deschênes receives, for each 14-day period, a non-taxable income replacement benefit from the Société de l'Assurance Automobile du Québec, that he holds all of the shares of 9099 and that the CRA did not establish that he would be insolvent if the impugned assessments were upheld. They also claim that the family residence that he co-owns with his spouse has a market value of $470,000 and a net equity of over $90,000. They add that the immovable in Jonquière that Serge Deschênes co-owns with his brother is valued at $362,500 on the City of Saguenay's assessment role and that it is encumbered by only an hypothec of $250,000 in favour of Secure Capital MIC, which also encumbers two other immovables.

[32] Regarding the legal proceedings brought against Serge Deschênes by his creditors, the applicants submit that the only creditor likely to concern the CRA should be the Caisse populaire Arvida-Kénogami, which benefits from a judgment in the amount of $115,000 in capital, interest and costs. Serge Deschênes alleges that that debt has been settled since the jeopardy collection order was issued.

[33] Finally, regarding Diane Brassard's tax debt, the applicants submit that it involves, like for a portion of Serge Deschênes' debt, an assessment based on section 160 of the ITA and not a debt separate from that of Réginald Deschênes and as such it should reduce the fear that Her Majesty's debt is in jeopardy.

[34] Several of the applicants' claims are challenged by Her Majesty and it is far from clear that the applicants succeeded in demonstrating that they are solvent enough to meet their tax debts to Her Majesty if the notices of assessment are upheld. Regardless, solvency is but one factor to consider and it is not determinative in itself. Double accounts, not declaring all income, a lifestyle

that does not correspond to a declared income (fact raised with respect to Serge Deschênes and Lynne Mimeault) and the provision of false statements are more determinative in this case.

Liability of the CRA representatives

[35] Regarding the applicants' allegations against Bruce Aziz and Thérèse Gauthier, the Court believes that they are unfounded and not credible with respect to the evidence in the record. The applicants claim that, during his lengthy audits, Bruce Aziz lost or misplaced documents that belonged to them (copies of bank account statements, cheques, lines of credit statements, etc.), which thus prevented them from adequately challenging the assessments issued against them. According to Serge Deschênes' affidavit, some of those documents were found in the possession of the accountant Sylvain Gravel, whereas, according to Bruce Aziz, all of the documents that were the subject of an audit were returned to Serge Deschênes in person on February 20, 2009, and May 14, 2009. In any event, all of the relevant documents are available from the file that is still pending before the CRA appeals division and, given the nature of those documents, I am not satisfied that they are essential to understanding the assessments issued against the applicants or challenging them.

[36] Similarly, it does not appear to me that the auditor unduly delayed or prolonged his audits. The facts in this case are not particularly complex, but were complicated by the applicants, who provided several version of them. For example, it is very difficult to know who owns the different immovables at issue in this case, or if, during the relevant period, Réginald Deschênes acted as a nominee for his brother. It is also difficult to know whether, before the sale in February 2006, Réginald Deschênes held 9099's shares as a nominee for his brother or whether he actually owned them. The applicants are also responsible in part for the delays and the length of the audit because

they were late in replying to several of the CRA's requests. Regardless, the applicants' argument that the collection of the CRA's debt cannot be jeopardized by a delay to pay if that delay is owing to a lengthy audit cannot be accepted. The delay experienced before the issuance of the notices of assessment and the sending of a requirement to pay is of little relevance.

[37] The applicants' allegation that Thérèse Gauthier was vengeful and acted arbitrarily and capriciously after the impugned order is also unfounded. Instead, the evidence before me shows that the CRA succeeded in collecting only minimal amounts with respect to the amounts in the certificates issued. Ms. Gauthier made seizures on two of Diane Brassard's bank accounts and on three of Réginald Deschênes' bank accounts and took no action subsequent to the registration of the legal hypothecs on the different immovables belonging to the applicants.

[38] The applicants claim that the collection actions taken cause them prejudice in that they prevent them from honouring the payment agreements that 9099 entered into with the Agence de revenu du Québec (RQ). Even if such prejudice could justify a review of the jeopardy collection order, which is not the case in my view, the evidence shows that 9099's failure to pay RQ preceded both the collection actions taken by Her Majesty and the impugned order.

The lawfulness of the CRA's tax audits

[39] The applicants claim that the auditor Bruce Aziz breached the principles from *R v Jarvis*, 2002 SCC 73, [2002] 3 SCR 757 (*Jarvis*), in that the objective of his actions was possible criminal charges against them; that he verified Serge Deschênes' criminal record; that, during the audit, he sent the applicants' file to the department of special investigations without informing them and

collaborated with its representatives; and that he failed to give the applicants formal warnings and inform them of their rights throughout the process.

[40] In *Jarvis*, the Supreme Court of Canada was asked to draw a distinction between the income tax audits and the criminal investigations set out in subsection 231.2(1) of the ITA. The Supreme Court accepted that, because of an adversarial relationship between the taxpayer and the CRA, which exercises its investigative powers, and because of the protection provided by the Charter, there must be some measure of separation between audit and investigative functions within the CRA.

[41] In this case, the evidence establishes that, even if the auditor Bruce Aziz found in his audits that there were facts that could potentially give rise to criminal proceedings against the applicants (such as evidence of undeclared income or the use of double accounts by 9099) and consulted the department of special investigations in that respect, no such action was undertaken by the CRA. The applicants could raise Charter protection and the application of the principles articulated in *Jarvis* if they face criminal proceedings, which is not the case here.

[42] I find that none of the facts alleged by the applicants are a departure from the principles in *Jarvis* and that they did not establish any infringement of their section 8 Charter rights.

[43] For all of the above-mentioned reasons, this application to review the jeopardy collection order dated March 29, 2012, is dismissed.

[44] Considering the result, costs shall be awarded to Her Majesty.

ORDER

THE COURT ORDERS that:

(i) the application to have the jeopardy collection order dated March 29, 2012, set aside is dismissed;

(ii) with costs to Her Majesty.

"Jocelyne Gagné"

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-639-12
STYLE OF CAUSE:	**In the matter of the *Income Tax Act*** **and** **In the matter of an assessment or assessments by the Minister of Revenue under the *Income Tax Act*** **AGAINST:** **RÉGINALD DESCHÊNES** **DIANE BRASSARD** **SERGE DESCHÊNES** **9099-5374 QUÉBEC INC**
PLACE OF HEARING:	QUÉBEC, QUEBEC
DATE OF HEARING:	NOVEMBER 26, 2012
REASONS FOR ORDER:	GAGNÉ J.
DATED:	JANUARY 29, 2013

APPEARANCES:

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Claude Desbiens / Réjean Beaudoin	FOR THE DEBTORS-APPLICANTS

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