

Federal Court



Cour fédérale

Date: 20150513

Docket: T-1616-14

Citation: 2015 FC 634

Ottawa, Ontario, May 13, 2015

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

JOHN T. LEE

Respondent

ORDER AND REASONS

I. Introduction

[1] The Minister of National Revenue (Applicant, Minister) applies for a compliance order under subsection 231.7(1) of the *Income Tax Act* (Act) pursuant to a June 1, 2012 request for information (Requirement) from the Minister to Mr. John T. Lee (Respondent) under subsection 231.2(1) of the Act.

[2] The Requirement was issued to the Respondent for the following purpose:

- a) to take collection action against Mr. Lee with respect to his outstanding personal income tax debt;
- b) to determine whether Mr. Lee has sufficient personal assets to justify raising derivative assessments against him, as director, under section 227.1 of the *Act* and section 323 of the *Excise Tax Act* (ETA) with respect to the corporations' outstanding debts under section 153 of the *Act* and section 228 of the ETA, respectively;
- c) to determine whether it may be appropriate to reassess Mr. Lee under section 160 of the *Act* or section 325 of the ETA in respect of the transfer of property to him by a person with whom he does not deal at arm's length for consideration that was less than the fair market value of the property at a time when the transferor was indebted to the Minister under either the *Act* or the ETA; and
- d) to further the audits of Mr. Lee's 2005 to 2011 taxation years, inclusive, and related to this, if as a result of those audits, Mr. Lee is reassessed, to use the information and documents to be obtained to determine his ability to pay the tax assessed, as well as to take possible collection actions.

[3] I am of the view that it is not clear whether the Requirement was directed to the Respondent personally or to the various corporations from which the Minister also seeks information. Accordingly, and for the reasons that follow, I am not prepared to exercise my discretion to issue the requested compliance order. The Minister's application is dismissed.

II. Background

[4] The Minister served Mr. Lee, the Respondent, at a meeting on June 5, 2012. The Requirement sought comprehensive information and documents that included a listing of his assets, liabilities, sources of income, and a net worth schedule for the period January 1, 2009 to May 31, 2012.

[5] The exact wording of the Requirement is set out in the July 15, 2014 affidavit of the Minister's Case Officer Ms. Arlene Dowdall who states Mr. Lee was given 90 days to provide information as follows:

- a) the names and branches of all banks in which he maintained either accounts or safety deposit boxes or both, including information of amounts on deposit as at May 31, 2012;
- b) details of all brokerage accounts maintained by him, whether or not registered in his name, providing names and addresses of brokers, balances due as at May 31, 2012;
- c) details of all bonds, common shares, and preferred shares owned by him, whether or not registered in his name, including the individual cost per share and current location of each security;
- d) details of all real property owned by him, whether or not registered in his name, including the legal descriptions, amounts of encumbrances, names and addresses of encumbrances, and the location of the applicable registry office;
- e) details of all insurance carried by him, with names of insurance companies, face value of policies, policy numbers, cash surrender values and accrued dividends where applicable, and locations of policies;
- f) details of all mortgages and loans receivable in which he has a beneficial interest, giving details of amounts due to him as at May 31, 2012, dates of registration, registry office where registered, and legal description of property encumbered, including, where applicable the terms of repayment, maturity date, and names and addresses of all mortgagors or other debtors;
- g) details of all loans and mortgages payable by him at May 31, 2012, including the current market value of all security given, together with the legal description of all property pledged;
- h) details of all automobiles owned by him as at May 31, 2012, including year, style, and make of car, license number, names and addresses of lien holders or encumbrances, and cost of each vehicle;
- i) full details of any other assets owned by him, whether or not registered in his name, but not included in the foregoing;
- j) a net worth statement as of May 31, 2012, complete with supporting schedules, showing full details of all his assets, liabilities, household expenses;

- k) details of all moneys received by him from employment and other sources during the period of January 1, 2009 to May 31, 2012, including the names and addresses of the payer, and the nature of the payments;
- l) details of all unsatisfied judgments against him, including the nature of the debt and the names and addresses of judgment creditors; and
- m) for the period of January 1, 2009 to May 31, 2012, a list with dates and individual amounts of all payments made to any pension trust, fund, or other type of annuity, giving the exact location of such pension trust, and the current amount standing to his credit and/or the credit of the beneficiaries.

[6] Although Ms. Dowdall states that the Requirement is in standard form, I find it overly expansive in breadth and in depth. For example, the phrase “whether or not registered in his name” is repeated in the demand for a listing of brokerage accounts, bonds and shares, real property, and any other assets not already included in the listing.

[7] The Minister advises that at the time the Requirement was issued, Mr. Lee had an outstanding personal debt of \$19,801. Ms. Dowdall’s July 15, 2014 affidavit states that Mr. Lee is or has been the director of approximately 44 Ontario corporations that have or had a lengthy history of non-compliance with obligations to remit amounts owing to the Receiver General for Canada with respect to payroll accounts under section 153 of the Act or the GST/HST accounts under section 228 of the *Excise Tax Act*. In her affidavit, Ms. Dowdall estimates Mr. Lee’s corporations owe approximately \$7,341,069 in combined corporate, GST/HST and payroll accounts. She adds that the Minister “will only look at the outstanding the outstanding payroll and GST/HST accounts of Mr. Lee’s corporations.”

[8] Ms. Dowdall further explains that Mr. Lee and his partner, Ms. Laurel Clarry, were both directors of 1573454 Ontario Ltd. which had a GST/HST debt of approximately \$431,091 and a corporate debt of \$2,699,903 all of which she included in the \$7,341,069 total debt above. Ms. Dowdall also states that on August 8, 2013, 1573454 Ontario Ltd. filed a notice of objection in respect of the amounts assessed under section 228 of the *Excise Tax Act* for various periods; however, none of the Respondent's other corporations had filed notices of objection.

[9] Ms. Dowdall indicates in her July 15, 2014 affidavit that she prepared documents in respect of these accounts during the week of January 16, 2012 as follows:

- 124 requirements to pay issued to various financial institutions and other third parties, 12 with respect to Mr. Lee's personal tax debts and 112 with respect to Mr. Lee's corporations tax debts; 48 requirements for information to third parties in order to obtain information and documents relating to Mr. Lee or his corporations, 8 in respect of Mr. Lee personally and 40 issued in respect of Mr. Lee's corporations;
- one requirement to Mr. Lee dated January 13, 2012 that was never claimed from Canada Post;
- two sets of 10 letters to Mr. Lee as director of 6 corporations, the first set seeking information from him as to what he did to prevent the failure to remit amounts due under the Income Tax Act or the Excise Tax Act and the second set advising amounts owing amounts were owing under the Income Tax Act and/or the Excise

Tax Act and that the Crown had a beneficial interest to the property or proceeds arising from the property.

[10] Ms. Dowdall advises that on May 10 and 14, 2012, she and the Canada Revenue Agency (CRA) Team Leader, Mr. Wayne Warner, and the CRA Field Officer, Mr. Norm Davis, held meetings with Mr. Lee and Ms. Clarry.

[11] Mr. Lee states that during the May 14, 2012 meeting he told the CRA representatives that he and Ms. Clarry had no money and were financially strapped because the CRA had already put over one million dollars of liens against their properties. Mr. Lee asked the CRA to consider terminating the Requirement because he felt the CRA already had sufficient security. In reply, Ms. Dowdall states: "Our response was that as long as he was director of the corporation, he was responsible to ensure that all amounts were properly remitted to CRA." At that meeting, Mr. Lee was given a list of the corporations that Ms. Dowdall was managing, and was advised that other listed corporations were being handled by other collections officers. Ms. Dowdall further states: "We reminded him that he is to file all returns/remittances."

[12] On May 15, 2012, Ms. Dowdall wrote to Mr. Lee as follows:

On May 14, 2012, a meeting was held at the Belleville Tax Services office. At this meeting Mr. W. Warner requested from you a complete list of all assets pertaining to yourself as well as any businesses that you are attached to.

Please complete this written statement of your assets and return it at the address below by May 25, 2012.

[13] On June 5, 2012, there was another meeting between Mr. Lee, Ms. Clarry, Mr. Warner and Ms. Dowdall. The Requirement was served on the Respondent at the start of this meeting.

[14] Ms. Dowdall recounts the 5 June 2012 meeting as follows:

At that meeting, Mr. Lee stated that he did not know what most of his corporations were about as he was not involved in their operations. Again, he stated that the reason for arrears in the various accounts was due to the conduct of the former friend / employee. When the discussion turned to Mr. Lee not providing the CRA with a list of assets, he became upset. He indicated that this was a ridiculous request and claimed the CRA had this information already. He stated that there was no funds offshore, and that the CRA had tied up all their funds through its liens. Mr. Warner asked Mr. Lee why he did not want to provide the information. Mr. Lee responded, "You would know everything I had if I listed it for you." Mr. Warner reminded Mr. Lee that the requirement was a legal document and that he was obligated to comply with it. Mr. Warner tried to explain that a list of assets would assist both Mr. Lee and Ms. Clarry and the CRA in that it would enable everyone to determine what businesses were no longer operational and allow the CRA to update the information on its systems. Mr. Lee did not seem receptive to what Mr. Warner was saying. Finally, Mr. Warner advised Mr. Lee and Ms. Clarry that CRA would do what it needed to do. We could not meet daily with Mr. Lee and Ms. Clarry to discuss accounts in order for them to obtain information about accounts that CRA does not have or know. CRA did not know what the corporations did, that was for Mr. Lee and Ms. Clarry to know. There would be no more meetings unless Mr. Lee came in with a list of his assets.

[15] In response to my concern about the scope to the Requirement, the Minister prepared a supplementary application record in which Ms. Dowdall provides a second affidavit, dated September 18, 2014.

[16] In this second affidavit, Ms. Dowdall states that the Requirement is comprehensive with respect to the types of Mr. Lee's assets because the CRA does not know which types or value of

assets the Respondent has. She states that obtaining information concerning only some, or partial information, will not further the purpose for which the Requirement was issued, that being to make payment arrangements or to locate assets that can satisfy Mr. Lee's personal tax debt.

[17] Ms. Dowdall adds that information about the Respondent's personal assets was also relevant to the CRA's efforts to collect on the tax debts of his corporations. She states that Mr. Lee was a director of approximately 44 corporations that had outstanding balances of payroll or GST/HST accounts in the aggregate amount of \$1,545,809, and as a director of these corporations may be subject to derivative assessments under sections 227.1 of the Act and section 228 of the *Excise Tax Act*.

[18] Ms. Dowdall reports in her second affidavit that she conducted corporate searches of the 44 corporations listed in her July 15, 2014 affidavit, and now understands that 34 of those corporations were dissolved more than two years ago. This leaves 10 active corporations save for 1169657 Ontario Ltd. o/a The Winchester Arms, which was dissolved on January 27, 2014.

[19] Ms. Dowdall goes on to state in her second affidavit as follows:

The requirement (and by extension, this Application) is not related to the actions by the Audit Division of the Canada Revenue Agency in connection with any audits of Mr. Lee's corporations. The purpose of those audits is to determine if Mr. Lee's corporation have properly reported income and claimed amounts as deductions under the *ITA*, or properly reported net tax under the *ETA*, to the extent that the requirement may be relevant to Mr. Lee's corporations, it is in respect of the Minister's attempts to collect, by raising a derivative assessment against Mr. Lee, unremitted source deductions or net tax that have been assessed against Mr. Lee's corporations. Specifically, as set out above, the information and documents provided by Mr. Lee responsive to the

Requirement may be considered by the Minister in determining whether Mr. Lee's assets justify raising derivative assessments against him.

[20] Mr. Lee conceded at the hearing before me that he signed for and received the Requirement on June 5, 2012. Further, he makes no claim of solicitor–client privilege.

III. Relevant Statutory Provisions

[21] The relevant provisions of the Act are set out below:

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 comprehensive tax information exchange agreement between Canada and another country or jurisdiction that is in force and has effect or, for greater certainty, of a tax treaty with another country, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as stipulated in the notice,

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

(b) any document

231.7(1) On summary

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 général d'échange de renseignements fiscaux entre le Canada et un autre pays ou territoire qui est en vigueur et s'applique ou d'un traité fiscal conclu avec un autre pays, par avis signifié à personne ou envoyé par courrier recommandé ou certifié, 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.

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

(a) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document and did not do so; and

(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)).

Offences and punishment

238. (1) Every person who has failed to file or make a return as and when required by or under this Act or a regulation or who has failed to comply with subsection 116(3), 127(3.1) or (3.2), 147.1(7) or 153(1), any of sections 230 to 232, 244.7 and 267 or a regulation made under subsection 147.1(18) or with an order made under subsection (2) is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

(a) a fine of not less than \$1,000 and not more than \$25,000; or

(b) both the fine described in paragraph 238(1)(a) and

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) la personne n'a pas fourni l'accès, l'aide, les renseignements ou les documents bien qu'elle en soit tenue par les articles 231.1 ou 231.2;

(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.

Infractions et peines

238. (1) Toute personne qui omet de produire, de présenter ou de remplir une déclaration de la manière et dans le délai prévus par la présente loi ou par une disposition réglementaire, qui contrevient aux paragraphes 116(3), 127(3.1) ou (3.2), 147.1(7) ou 153(1), à l'un des articles 230 à 232, 244.7 et 267 ou à une disposition réglementaire prise en vertu du paragraphe 147.1(18) ou qui contrevient à une ordonnance rendue en application du paragraphe (2) commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire et outre toute

imprisonment for a term not exceeding 12 months.

Compliance orders

(2) Where a person has been convicted by a court of an offence under subsection 238(1) for a failure to comply with a provision of this Act or a regulation, the court may make such order as it deems proper in order to enforce compliance with the provision.

pénalité prévue par ailleurs :

(a) soit une amende de 1 000 \$ à 25 000 \$;

(b) soit une telle amende et un emprisonnement maximal de 12 mois.

Ordonnance d'exécution

(2) Le tribunal qui déclare une personne coupable d'une infraction prévue au paragraphe (1) peut rendre toute ordonnance qu'il estime indiquée pour qu'il soit remédié au défaut visé par l'infraction.

IV. Jurisprudence

[22] In the Supreme Court decision of *R v McKinlay Transport Ltd*, [1990] 1 SCR 627, Wilson held at page 649 that subsection 231(3) of the *Income Tax Act*, RSC 1952, c 148, the precedent to section 231.2 of the Act, provides the “least intrusive means by which effective monitoring of compliance with the ITA can be effected.”

[23] Further, in *Stanfield v Canada (Minister of National Revenue – MNR)* 2008 FC 605, Justice Yvon Pinard found occasion to state at paragraph 16 as follows:

[T]he Minister's power set out in section 231.2 of the ITA does not relate to collection and is not a collection action. In *Donald Fabi v. the Minister of National Revenue*, 2006 FCA 22, [2006] F.C.J. No. 43 (QL), the Federal Court of Appeal stated the following:

[11] With respect, I am of the view that the requests for information by the Minister, made in this case to determine, for tax purposes, the existence or value of an asset which might be concealed or the amount

of its selling price or price of disposal, do not constitute an action in view of collecting claims provable in bankruptcy. The Minister is responsible for implementing and enforcing the Act. This duty, which he performs in the public interest, includes the determination of a taxpayer's tax debt. Determining a taxpayer's tax obligation is an objective relating to the administration and enforcement of the Act. In order to carry out this duty properly, the Minister must be able to ask questions in order to obtain and determine the facts and amounts: [citation omitted]

[24] Subsections 231.2(1) and 231.7(1) of the Act set out three requirements that must be satisfied before a judge may consider it appropriate to exercise discretion to order a person to provide the information or documents sought by the Minister. On point, in *Canada (Minister of National Revenue) v SML Operations (Canada) Ltd*, 2003 FC 868 para 14 (*SML Operations*), Justice Danièle Tremblay-Lamer stated as follows:

- 1) the Court must be satisfied that the person against whom the order is sought “was required under section 231.1 or 231.2 to provide the access, assistance, information or document” sought by the Minister;
- 2) the Court must be satisfied that although the person was required to provide the information or documents sought by the Minister, he or she did not do so; and
- 3) the Court must be satisfied that the information or document sought “is not protected from disclosure by solicitor-client privilege” as defined in the *Act*.

[25] Justice Tremblay-Lamer noted at paragraph 15 the serious nature of the consequence for non-compliance, including fines and possible imprisonment under subsection 238(1) of the Act, and stated: “I will not exercise my discretion to order production of the documents sought by the Minister unless I am satisfied that the conditions have been clearly met.” [underlining in original]

[26] *SML Operations* involved a requirement that was unclear as to whether it was directed against the respondent corporation or against the individual addressee in his personal capacity. Justice Tremblay-Lamer held that, in light of the uncertainty, she was not satisfied that the first part of the requirement test was met. She, therefore, dismissed the Minister’s application.

[27] Similarly, in *Canada (Minister of National Revenue) v Glenn Chamandy*, 2014 FC 354, the Minister had served the requirement on the individual respondent under section 231.1 of the Act. Justice Anne MacTavish found at paragraphs 31 and 32 that the matter before her was similar to *SML Operations* notwithstanding that the requirement was issued under subsection 231.1 of the Act. She observed that paragraph 231.7(1)(a) stipulates a judge must be satisfied that the person against whom the compliance order was sought “was required under *section 231.1 or 231.2* to provide the access, assistance, information or document” in question. [italics in original]

[28] Justice MacTavish found it was not clear whether the requirement was directed to the respondent personally or to the corporation. In consequence, she found the first requirement of section 231.7 of the *Act* had not been satisfied by the Minister.

[29] In *Canada (Minister of National Revenue – MNR) v Marshall*, 2006 FC 279, Justice Michel Shore found that the respondent was indeed the person who was required under subsection 231.2(1) of the Act to provide the books and records of West Lake Housecleaning Ltd., and the books and records of Linda Mae Marshall who sometimes carried on the business of West Lake Housecleaning Ltd. Justice Shore concluded that the respondent had not met the requirement, and that the information and documents sought were not protected from disclosure by solicitor-client privilege. The salient evidence before the Court was evidence provided by the CRA which showed that the business, which had been struck from the Registry, was now operating as a sole proprietorship by the Respondent.

[30] I conclude from the forgoing that while the Minister has broad power to issue a requirement for information under subsection 231.2(1) of the Act it is of crucial importance that the person served with the requirement is clearly identified both in name and role as relating to the nature of the demand.

V. **Issue**

[31] The determinative issues are, first, whether the Minister properly named the Respondent in respect of the Requirement, and second, whether the Minister has sufficiently justified the broad extent of the Requirement.

VI. **Submissions**

[32] Upon review of the Respondent's submissions, I find the Respondent's materials largely irrelevant to the determinative issue of the Requirement of scope and justification. I also find his claims of improper conduct against the Minister unhelpful. For example, the Respondent includes the *Taxpayer Bill of Rights* in support of his contention that the Minister contravened his rights. However, no suggestion was put to the Court that the Act was invalidly enacted or has been improperly invoked in this application.

[33] On point, however, the Respondent complains of the sheer volume of the Requirement and submits that, save for 1226577 Ontario Ltd. and 573454 Ontario Ltd., the corporations are no longer in business. He points to the fact that the Minister's first affidavit listed 44 numbered companies whereas the second affidavit lists just 10. The Respondent maintains that he cannot produce much of the requested information because he either does not have it, or is dissociated from the corporations, or because the Minister has already obtained it.

[34] In turn, the Applicant submits that the evidence of Ms. Dowdall in her first affidavit, and the Respondent's admission at the hearing, confirms the following:

- a) the requirement was served on Mr. Lee;
- b) the Requirement was issued to obtain information and documents from Mr. Lee, and *inter alia* to take collection actions against Mr. Lee and his corporations through the issuance of derivative assessments against Mr. Lee; and

c) Mr. Lee has not complied with the Requirement.

[35] The Minister further submits that there is no evidence that the information and documents sought under the Requirement are protected by solicitor-client privilege.

[36] Consequently, the Minister submits that the pre-conditions for issuing a compliance order have been met and that this Court should grant its requested order.

VII. Analysis

[37] I begin by observing that in this case it is clear that the CRA officials often combined inquiries, meetings and correspondence concerning the Respondent's personal tax debts with his corporations.

[38] The Minister submits that the Requirement requires the Respondent to provide information and documents as follows:

- a) Banks accounts or safety deposit boxes;
- b) Brokerage accounts;
- c) Bonds, common shares, and preferred shares;
- d) Real property, including encumbrances on the property;
- e) Insurance;
- f) Mortgages and loans receivable;
- g) Loans and mortgages payable;
- h) Automobiles
- i) Any other assets;
- j) A net worth statement as of May 31, 2012, complete with supporting schedules, showing full details of all his assets, liabilities, household expenses; income from employment and another source;
- k) Unsatisfied judgments; and
- l) Payments made to any pension trust, fund, or other type of annuity.

[39] I find, however, that the Requirement is broader than the above straightforward list because the words “whether or not registered in your name” is added to the Requirement. This choice of language raises a question of whether the Respondent is being asked to list his personal assets or to include documentation about corporate assets that he would only have access to in his capacity as a director or officer of the corporations.

[40] In examining the reports of meetings between the Respondent and the Minister’s representatives prior to service of the Requirement, I find the Requirement’s clarity is further placed in doubt. I say this because following the 10 and 14 May 2012 meetings, the Minister’s officials wrote to the Respondent stating: “On May 14, 2012, a meeting was held at the Belleville Tax Services Office. At this meeting, Mr. W. Warner requested from you a complete list of all assets pertaining to yourself as well as any businesses that you are attached to.” [emphasis added]

[41] The intended recipient of the Requirement remains unclear in view of the 5 June 2012 meeting between the Minister and the Respondent. At that meeting, Ms. Dowdall reports that “Mr. Warner tried to explain that a list of assets would assist both Mr. Lee and Ms. Clarry and the CRA in that it would enable everyone to determine what businesses were no longer operational and allow the CRA to update the information on its systems.” [emphasis added] It bears repeating that it was at this meeting that the Requirement was served on the Respondent.

[42] If the Respondent was required to provide documents related to the corporations, it becomes clear that the Requirement was not simply directed to the Respondent personally.

[43] In my view, a requirement directed at a director or officer of a company that concerns business assets to be a requirement directed at the corporate entity itself.

[44] Thus, in respect of the Requirement, I am satisfied that the Minister has failed to satisfy one of three pre-conditions required by subsection 231.7(1) of the Act; the specific condition being that the Court must be satisfied that the person against whom the order is sought “was required under section 231.1 or 231.2 to provide the access, assistance, information or document” sought by the Minister. I am not satisfied, notwithstanding the Minister’s assertions that, the Minister has proven that the Respondent was required in his personal capacity only to comply with the Requirement.

[45] Given the serious consequences for non-compliance described by Justice Tremblay-Lamer in *SML Operations*, this Court requires certainty as to who is served with the requirement and what is required of that named person. Comingling personal tax obligations with corporate tax obligations through a single requirement offends the certainty which this Court requires before it will consider granting the Minister a compliance order under subsection 231.7(1) of the Act.

VIII. **Conclusion**

[46] Given my concern about the uncertainty of whether the Requirement was served on the Respondent personally or on the Respondent in his capacity as director or officer of the corporations, I am not prepared to exercise my discretion in favour of the Applicant’s request for a compliance order.

[47] As I have dismissed the Minister's application, the Respondent's request for cross-examination of the affidavits is moot. The Respondent's other requests are also denied.

[48] I make no order for costs.

[49] At the hearing the Minister and Respondent agreed that this summary application interrelates with T-1615-14, a similar application by the Applicant against the Respondent's marital partner, Ms. Clarry. Owing to a health concern on the part of Ms. Clarry, the Minister's application in respect of the Respondent application was heard first. The Minister's application in respect of Ms. Clarry was and remains adjourned *sine die*.

ORDER

THIS COURT ORDERS that:

1. The Minister's application is dismissed.
2. Save for dismissal of the Minister's application, the Respondent's requests are denied.
3. No costs are awarded.

"Leonard S. Mandamin"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1616-14

STYLE OF CAUSE: MINISTER OF NATIONAL REVENUE v JOHN T. LEE

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 26, 2014

ORDER AND REASONS: MANDAMIN J.

DATED: MAY 13, 2015

APPEARANCES:

Margaret Nott

FOR THE APPLICANT

John T. Lee

FOR THE RESPONDENT
(ON HIS OWN BEHALF)

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General
of Canada
Toronto, Ontario

FOR THE APPLICANT

John T. Lee
Toronto, Ontario

FOR THE RESPONDENT
(ON HIS OWN BEHALF)