

Federal Court



Cour fédérale

Date: 20180907

Docket: T-1113-17

Citation: 2018 FC 897

Ottawa, Ontario, September 7, 2018

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

YOK CHI

Respondent

ORDER AND REASONS

I. Introduction

[1] Before the Court is a motion brought by the Minister of National Revenue [the Minister] for an order finding the Respondent, Yok Chi, in contempt of Court for failing to comply with the order of Justice Peter Annis, dated October 5, 2017. That order [the Compliance Order], issued pursuant section 231.7 of the *Income Tax Act*, RSC, c 1 (5th Supp) [the Act] required Mr. Chi to provide information and documents sought by the Minister under subsection 231.2(1)

of the Act in the context of a compliance audit conducted by the Canada Revenue Agency of Mr. Chi's 2009, 2010 and 2011 taxation years [the Compliance Audit].

[2] The actual request for information was sent to Mr. Chi on June 20, 2016 [the Request for Information]. Over the course of the next several months, some of the requested information was provided to the Minister, some was not. On April 27, 2017, counsel for the Minister advised Mr. Chi's counsel at the time that he had received instructions to file an application for a compliance order pursuant to section 231.7 of the Act. At issue were banking records and bank account statements for four accounts deemed by the Minister to be central to the Compliance Audit. The Minister did not accept Mr. Chi's responses that he could not produce this information. Three of these accounts are registered at an HSBC branch in Hong Kong and are, according to the Minister, under the name of corporations owned or controlled directly or indirectly by Mr. Chi. The fourth account is registered at the TD Bank.

[3] The compliance order application was heard on October 4, 2017. Mr. Chi was present and agreed to the terms of the order sought by the Minister. At that time, Mr. Chi was no longer represented by counsel.

[4] The Compliance Order was issued the next day. It provides as follows:

THIS COURT ORDERS THAT within 45 days of the date hereof, the Respondent shall provide to the Minister monthly bank accounts statements, for each month from January 2008 to December 2014, for the following bank accounts:

HSBC Bank:

078-302965-838

116-713777-838

411-726110-838

TD Bank

The Respondent's personal TD bank account, as identified by the Respondent in page 3 (attached) of the Respondent's February 28, 2017, letter.

THIS COURT ORDERS THAT

1. the Respondent and/or or [*sic*] any corporation which he controls, directly or indirectly, shall take any and all steps necessary, to contact the banks at issue to obtain and produce to counsel for the Applicant, bank issued printed copies of the bank account statements as specified above, for each month from January 2008 to December 2014.

2. after the Respondent has fulfilled his obligations in above paragraph, in the event the Respondent is still not able to obtain and produce to counsel for the Applicant all accounts statements for all periods, he must provide proof and documentation to counsel for the Applicant of making requests to both banks, as well as documentation from the bank(s) stating which portions of the specified banking information is not available, within 45 days of the date of this Order. In the event of any such non-production of the specified banking records, at the request of the Applicant's counsel, the Respondent shall execute a consent and permission for the Minister to make his own inquiries with the above banks concerning the specified accounts.

[5] Page 3 of the letter of February 28, 2017, referred to in the Compliance Order identifies the TD Bank account subject to that Order as follows:

Question 3

Mr. Chi has obtained the following dates regarding the loan from Mr. Kian C. Chan:

The loan was made on 1/3/2011 in the amount of \$1 million USD. The repayments were made as follows

[Dates and amounts omitted]

As we have previously stated, to the best of his recollection the loan was made out of, and the repayments were made into, Mr. Chi's personal TD bank account.

[6] According to the evidence on record:

- a. A copy of the Compliance Order was sent to Mr. Chi via email on October 5, 2017;
- b. On November 22, 2017, counsel for the Minister sent a letter to Mr. Chi advising him that he had not complied with the Compliance Order and that the Minister intended to proceed with contempt of Court proceedings;
- c. On November 30, 2017, Mr. Chi responded via email to the November 22 letter, stating that he had made attempts to obtain the HSBC bank accounts' records at issue and that he was seeking a one week extension to submit these records;
- d. On December 6, 2017, Mr. Chi sent an email to counsel for the Minister, stating he had received from the HSBC branch in Hong Kong a form to complete in order to obtain the HSBC account statements;
- e. On February 12, 2018, counsel for the Minister sent a letter to Mr. Chi, via email, advising him that he had not complied with the Compliance Order and that the Minister would proceed with contempt of Court proceedings; and
- f. Mr. Chi contends he never received that letter, claiming it was sent to an incorrect email address.

[7] On April 23, 2018, Justice Richard Mosley, on a motion brought *ex parte* by the Minister under rules 369, 466, 467 and 470 of the *Federal Courts Rules*, SOR/98-106 [the Rules], was satisfied that there was a *prima facie* case of contempt of the Compliance Order, being that Mr. Chi had failed to provide the information and documents as ordered. Consequently, Justice Mosley ordered Mr. Chi to attend the Court's general sittings in Ottawa on June 27, 2018, and be prepared to: (i) hear proof of the acts of contempt with which he is charged; (ii) present any defence that he may have to that charge; and (iii) speak to the Minister's submissions on an appropriate sentence if he was to be found in contempt [the Show-Cause Order].

[8] The Show-Cause Order also permitted the Minister to introduce, at the show-cause hearing, the contents of the Court file including any correspondence contained therein, directly and without the need for oral proof of the documents. It was served on Mr. Chi on May 15, 2018. On June 2, 2018, the Minister's written submissions on sentencing were served upon Mr. Chi, as provided for in the Show-Cause Order.

[9] On June 26, 2018, in the afternoon, Mr. Chi retained counsel and sought an adjournment of the show-cause hearing scheduled for the following day. The show-cause hearing was rescheduled to July 3, 2018. Mr. Chi was present at the show-cause hearing and he testified as to why he should not be found in contempt of the Compliance Order and as to what sentence he should be given if he was found to be in contempt of the Compliance Order. He also provided the statements for the TD Bank account specified in the Compliance Order.

[10] However, none of the HSBC accounts' information specified in the Compliance Order has been provided by Mr. Chi to date.

II. Issue and Burden of Proof

[11] According to rule 466(b) of the Rules, a person who disobeys a process or order of the Court is guilty of contempt of Court.

[12] As is well established, the general purpose of the Court's contempt power is to ensure the smooth functioning of the judicial process and to uphold the Court's dignity (*Baxter Travenol Laboratories of Canada Ltd v Cutter (Canada) Ltd*, [1983] 2 SCR 388 at 396; *Carey v Laiken*, 2015 SCC 17, [2015] 2 SCR 79 at paras 30 and 36 [*Carey*]). Contempt of Court amounts to a "challenge to the judicial authority whose credibility and efficiency it undermines as well as those of the administration of justice". For these reasons, it is considered a "serious offence" (9038-3746 *Quebec Inc v Microsoft Corporation*, 2010 FCA 151 at para 18).

[13] In order to establish civil contempt, the party alleging the breach of a court order must satisfy the three-part test set out by the Ontario Court of Appeal in *Prescott-Russell Services for Children and Adults v G (N)*, (2006) 82 OR (3d) 686 (Ont CA) at para 27 [*Prescott*], and confirmed in *Carey*, at paras 32-35. That test [the Contempt Test] requires the Minister to show that:

- a. The order alleged to have been breached must state clearly and unequivocally what should and should not be done;

- b. The party alleged to have breached the order must have had actual knowledge of it; and
- c. The alleged contemnor must have knowingly or willfully done the act that the order prohibits or failed to do the act that the order compels.

[14] Contempt of Court must be established beyond a reasonable doubt. Rule 469 of the Rules makes this an explicit requirement. However, there is no need to prove *mens rea* as it is understood in a criminal context. What must be established is that the alleged contemnor had both knowledge of the order and was knowingly disobeying it (*Canadian Private Copying Collective v Fuzion Technology Corp*, 2009 FC 800 at paras 65 and 67 [CPCC]).

[15] Here, there is no doubt, in my view, that the Compliance Order states clearly and unequivocally what Mr. Chi needed to do. Mr. Chi's claim that he was under the impression that if he could not obtain the information subject to the Compliance Order, the Court would do it for him is simply not credible. There is nothing in the language of the Compliance Order lending any kind of support to such a reading of the terms of said Order. There is no evidence either on record that Mr. Chi's ability to read and understand the English language is such that he would have been prone to understand the terms of the Compliance Order the way he claims he did.

[16] It is also clear, in my view, that Mr. Chi had actual knowledge of the Compliance Order at all relevant times as Mr. Chi was present at the hearing before Justice Annis and agreed to the Order sought by the Minister. A copy of the Compliance Order was sent to him the day it was issued, that is on October 5, 2017. Mr. Chi's emails of November 30 and December 6, 2017, seeking an extra week to respond to the Compliance Order, at least with respect to the

information requested in relation to the HSBC accounts, and advising counsel for the Minister that he had finally received the HSBC form that needed to be filled out in order to obtain that information, are further evidence of Mr. Chi's actual knowledge of said Order. Mr. Chi is not disputing that fact.

[17] I am therefore satisfied that the first two parts of the Contempt Test have been established by the Minister.

[18] What remains to be decided then is whether Mr. Chi has, beyond a reasonable doubt, intentionally failed to do the acts that the Compliance Order compels him to do. If I find that he did, the appropriate penalty to be imposed on Mr. Chi will have to be determined.

III. Analysis

A. *Did Mr. Chi Intentionally Fail to Do the Acts that the Compliance Order Compels Him to Do?*

(1) The Acts of Contempt Mr. Chi is Charged With

[19] It is a fact that Mr. Chi has not provided the information and records specifically ordered by the Compliance Order, except with respect to the TD Bank account which were provided just before the show-cause hearing held on July 3, 2018, which is more than 6 months after the expiry of the Compliance Order's 45-day compliance period.

[20] The Minister, quoting from *Telus Mobility v Telecommunications Workers Union*, 2002 FCT 656 [*Telus Mobility*], underscores the fact that the willfulness element of the Contempt Test is present only to exclude casual or accidental and unintentional acts of disobedience (*Telus Mobility* at paras 10-11). Here, she says, there is no evidence that Mr. Chi made any real attempt to comply with the Compliance Order or that his failure to do so was accidental or unintentional. She further claims that in spite of being made aware of the Compliance Order, Mr. Chi has refused or neglected to provide the required information, showing thereby a pattern of continued inaction that goes back to the Request for Information, which prompted the present proceedings. According to the Minister, Mr. Chi simply does not wish to provide the required information and has opted, as a result, to willfully disregard the Compliance Order.

(2) Mr. Chi's Evidence

[21] As indicated previously, Mr. Chi was present at the show-cause hearing and chose to testify. His evidence of his efforts to comply with the Compliance Order can be summarized as follows:

- a. Mr. Chi emailed account officers at HSBC in Hong Kong to obtain the account information on November 8, 2017, and followed up on November 30, 2017. He says he received no response to these emails.
- b. In early December 2017, he received from HSBC a form he needed to complete to obtain the HSBC bank statements and informed counsel for the Minister, Mr. Warren, of such. A copy of this form was filed as R-1 at the contempt hearing. Mr. Chi completed and

signed a copy of the form and sent it by airmail in January or February 2018, but received no statements for the HSBC accounts. His follow-up calls led to nothing.

- c. Mr. Chi does not recall receiving an email from Mr. Warren in February 2018. Mr. Chi speculates that Mr. Warren's email may have been sent to the wrong address as he changed email addresses; he wrote to Mr. Warren from his new account and provided his cell phone number.
- d. In April 2018, Mr. Chi went to Hong Kong on a business trip. While in Hong Kong, he organized a meeting with the HSBC so that he could have a face-to-face discussion regarding the three HSBC accounts that are the subject of the Compliance Order. He met with Woody Cheng, who informed him that two of the accounts had been purged and that, for the third account, a request had to be made through the central office. The central office would then send the information to the branch to transfer the information to Mr. Chi. Mr. Chi requested that they do so.
- e. On July 1, 2018, counsel for Mr. Chi reached out to Mr. Chi's contacts at the HSBC in Hong Kong, Patti Leung, Cavor K. Y. Pang, Hei Long Chu, Eric W. Y. Fu and Woody Cheng. He received a response from Mr. Anthony Hei Long Chu informing him that they could not accept email instructions and that he was only in charge of personal accounts. Mr. Chi describes this response as part of the same pattern of having his inquiries pushed around. There is no evidence of responses from any of the other contacts at HSBC.

- f. The statements of the TD Bank account referred to in the Compliance Order were provided to the Minister while responding to the Request for Information and therefore, prior to the Compliance Order being issued.

[22] In cross-examination, Mr. Chi confirmed that R-1 is not a copy of the completed form sent to HSBC but rather a sample of the form that was filled in and sent. He also confirmed that he continues to live at the same address as the one to which Mr. Warren sent a letter in November 2017 informing him that he was not in compliance of the Compliance Order. Mr. Chi did not believe that he had received any emails from Mr. Warren after December 6, 2017, noting that he changed email addresses and that the February 12, 2018, email from Mr. Warren to Mr. Chi produced by him does not list which email account it was sent to.

[23] Finally, Mr. Chi admitted that he was able to produce, at the request of the Minister, information concerning one of his HSBC Hong Kong accounts but was unable to obtain the information from the three HSBC accounts at issue in the same manner. When asked by Mr. Warren whether these three accounts were accounts he had handled in the past, he responded: "I believe so."

[24] In re-direct, Mr. Chi spoke mostly about the loan to a friend which prompted the Minister to seek production of the TD Bank account statements at issue.

(3) Mr. Chi has Intentionally Disobeyed the Compliance Order

[25] Mr. Chi claims that he did his very best to provide the information regarding the HSBC accounts and that it now appears that providing that information is virtually impossible. It is therefore not clear, he says, that the Compliance Order can be complied with, which is relevant to determining both whether there is contempt and the appropriate penalty. He suggests that it is open to the Court to conclude that an individual, such as him, who is unable to comply with a compliance order, cannot be found in contempt and claims that, like in *Canada (National Revenue) v CD2I Coopérative de Services en Développement International*, 2009 FC 820 [Dropsy], where the respondent was found not to be in contempt, he made his best efforts to request documents from a foreign entity, as required by the Compliance Order, but that his attempts to obtain those documents were rebuffed.

[26] Mr. Chi also submits that there is no evidence that he has signing authority or that he is the account holder for the three HSBC accounts at issue and that such evidence is essential for a finding of contempt. Unlike in *Canada (Minister of National Revenue) v Marshall*, 2006 FC 788 [Marshall] and *Canada (Minister of National Revenue) v Bjornstad*, 2006 FC 818 [Bjornstad], cited by the Minister, where the respondents in these two cases made no attempts to comply with Court orders or participate in the contempt proceedings, he submits that he is not willfully in contempt. On the contrary, he clearly attempted to comply with the Compliance Order but was informed that two of the accounts had been purged. As for the third account, he has asked that the requested statements be sent to him, though he has yet to receive them.

[27] Mr. Chi invites the Court to consider not just the efforts made in the 45 days following the Compliance Order, but rather all of the efforts previously made to obtain the requested bank statements, including those of his former counsel prior to the Compliance Order being issued. He submits that there is a clear and detailed history on the record of his former counsel's attempts to assist him in complying with the Request for Information, and that most of the request was satisfied, except for the three HSBC accounts at issue.

[28] As for the TD Bank account, Mr. Chi contends that since the statements were provided to the Minister prior to the Compliance Order being issued, there is no contempt. In any event, he says, the fact that he provided the Minister with this information prior to the contempt hearing has purged any contempt he could have committed regarding that account.

[29] I cannot accept Mr. Chi's defence to the contempt charges he faces.

[30] In *CPCC*, Justice Luc Martineau of this Court clarified how the third step of the *Prescott* test, that the alleged contemnor must have knowingly or willfully done the act that the order prohibits or failed to do the act that the order compels, should be applied. He explained that contempt must be proven beyond a reasonable doubt, meaning that:

[...] the acts constituting the alleged breaches must be intentional or deliberate, or they must arise out of a serious indifference or a contemptuous disregard at the Court. In that sense, "deliberate" certainly includes any conduct which is fully considered, not impulsive or accidental. In this respect, the "wilful blindness" of the alleged contemnor may also be considered (*CPCC* at para 63).

[31] I agree with Mr. Warren that the Contempt Order clearly requires that Mr. Chi provide either the requested account statements or documentary evidence that he cannot obtain those statements. Mr. Chi did neither.

[32] Of the four outstanding accounts subject to the Compliance Order, only the TD Bank account statements were provided and there is no evidence that they were provided at any time prior to the day of the show-cause hearing. I find Mr. Chi's assertion that these statements were provided to the Minister prior to the Compliance Order being issued not to be credible. First, it contradicts the Minister's evidence in support of both the compliance order application and the show-cause order application. Second, why would Mr. Chi have consented to the terms of the Compliance Order if these statements had already been provided? Mr. Chi's assertion that they were defies common sense.

[33] But even if I were to accept that the TD Bank statements were provided prior to the Compliance Order being issued, I fail to see, if Mr. Chi had paid any attention to the terms of said Order, why this was not raised with Mr. Warren within the compliance timeline set out in the Order, or why Mr. Chi did not simply provide them again so as to ensure compliance with the Order, at least with respect to these statements, and dissipate thereby any confusion regarding the production of this information. Instead, the evidence shows that it was only on the day prior to the contempt hearing, that is nearly 9 months after the issuance of the Compliance Order, that these statements came up in the discussion. In either case, there is no excuse for not complying with the Compliance Order.

[34] With respect to the three HSBC accounts, Mr. Chi, as we have seen, claims to have done everything he could to obtain the requested statements and to comply, thereby, with the Compliance Order, especially given the fact that these accounts are held by a foreign entity. He further claims that there is no evidence that he is the signing authority for these three accounts.

[35] I agree with Mr. Chi that “[e]vidence of impossibility to comply or due diligence may constitute legitimate excuse for not complying to the terms of an order or injunction” (*CPCC* at para 74). However, I find no such evidence in the present case.

[36] At this point, it is worth reiterating the acts Mr. Chi was directed to perform under the Compliance Order. Firstly, within 45 days of the Order, he was to “take any and all steps necessary, to contact the banks at issue” and obtain and produce to counsel for the Minister the bank statements at issue for the period specified in the Order. Secondly, if it turned out that he was unable to obtain and produce said statements, he was to “provide proof and documentation to counsel for the [Minister] of making requests to both banks, as well as documentation from the bank(s) stating which portions of the specified banking information is not available, within 45 days of the date of this Order”.

[37] As pointed out by counsel for the Minister, there is only one piece of documented evidence for the whole period between the issuance of the Compliance Order and the show-cause hearing, which was scheduled for June 27, 2018, of the steps taken by Mr. Chi to contact the HSBC and to obtain the bank statements at issue. There is no documented evidence whatsoever from the HSBC stating which portions of the specified banking information are not available.

That one piece of documented evidence is the November 8, 2017 email sent by Mr. Chi to an HSBC employee in Hong Kong, Mr. Eric W. Y. Fu, and copied to Mr. Warren on November 30, 2017, which is past the Compliance Order's 45-day compliance timeline, as well as the email, dated December 6, 2017, from Mr. Chi to Mr. Warren advising Mr. Warren that the HSBC had "finally sent me a form to fill up to obtain bank statement [*sic*]". There is nothing further in writing after that date. In particular, there has been no follow-up whatsoever with Mr. Warren or the Canada Revenue Agency to the December 6 email. There is no documented evidence either of any follow-up to this email with the HSBC in Hong Kong.

[38] Two short emails to the Minister's counsel in the intervening 9 months between the issuance of the Compliance Order and the original show-cause hearing date fall well short, in my opinion, of a clear and unequivocal effort to comply with the Compliance Order. Mr. Chi could not even produce at the show-cause hearing the form he actually filled out in order to obtain the statements of the three HSBC accounts at issue. There is no document trail either for the meeting he requested in April 2018 with the HSBC in Hong Kong.

[39] Even his oral evidence at the show-cause hearing shows sporadic efforts throughout this intervening 9-month period to obtain the requested HSBC records. In particular, it shows long periods of inaction. In particular, it shows no activity between the date the Show-Cause Order was served on Mr. Chi, that is May 15, 2018, and the original date of the show-cause hearing, June 27, 2018. Mr. Chi only retained counsel the day prior to that date, sought a postponement of the hearing and then, through counsel, sent out a number of emails to the HSBC in Hong Kong in the two days preceding the actual hearing date of July 3, 2018. I agree with counsel for the

Minister that this is rather clear evidence that only minimal efforts were made by Mr. Chi to obtain the requested information from the date the Compliance Order was issued and the weeks preceding the actual show-cause hearing.

[40] In other words, the evidence before me displays sporadic attempts by Mr. Chi to contact representatives at the HSBC in Hong Kong to obtain the bank statements at issue, most of them fruitless as Mr. Chi either failed to follow-up on information provided or failed to obtain the evidence that could support his contention that he is unable to comply with the Compliance Order.

[41] For example, Mr. Chi met with Mr. Woody Cheng in Hong Kong in April 2018, who allegedly informed him that two of the three accounts at issue had been purged and that the information for the third account had to be obtained through HSBC's main branch. However, Mr. Chi has provided no written confirmation from the HSBC that the two accounts had been purged and that the requested statements were therefore no longer available. He also provided no documentary evidence of any request he made that the statements for the third account be obtained from the main branch, or evidence of any follow-up he made with the main branch during the almost 3-month period between his meeting with Mr. Cheng and the show-cause hearing. There is also limited evidence of Mr. Chi contacting individuals who were in a position to provide information relating to corporate accounts, which the three outstanding HSBC accounts clearly appear to be.

[42] Furthermore, Mr. Chi has provided no documented evidence from the HSBC “stating which portions of the specific banking information is not available” as required by paragraph 2 of the Compliance Order, should his efforts to comply with paragraph 1 of said Order be unfruitful, nor is there any evidence of Mr. Chi making any effort to obtain such evidence.

[43] As for the difficulty in obtaining information from a “foreign entity”, I believe it is safe to say that the HSBC is one of the largest banking and financial services organizations in the world. The evidence on record shows that Mr. Chi was able to obtain information from the HSBC in Hong Kong in response to the Request for Information. The HSBC in Hong Kong is not exactly the type of foreign entity that was considered in the case law submitted by Mr. Chi. In *Dropsy*, the respondent was not found in contempt of Court, as he could not access the records of a foreign corporation based in the British Virgin Islands for which he acted as an unofficial delegated director. It is worth noting in *Dropsy* that all communication between the respondent and his only contact within the foreign corporation had been cut off (*Dropsy* at para 22). Furthermore, the respondent had never been to the British Virgin Islands, had no knowledge of whether the corporation had any other employees and had no contact information for the corporation other than his own contact (*Dropsy* at para 25). I think it is fair to assume that a major bank like the HSBC has the ability to produce bank records.

[44] Mr. Chi spent some time at the show-cause hearing on the efforts he made through the Request for Information process to comply with such request. He also spent some time on the merits of some of the demands of said Request. First, a show-cause hearing on a contempt charge in the context of a compliance order issued under the Act is not an appeal of the compliance

order. My role, therefore, is not to determine whether or not the Compliance Order was, in whole or in part, appropriately issued, but is rather to determine whether the taxpayer has failed to abide by it. Second, the issue before me is whether Mr. Chi is in contempt of the Compliance Order. Hence, efforts made prior to the issuance of the Compliance Order cannot be considered efforts made to comply as the Compliance Order did not exist.

[45] In *Canada (National Revenue) v Money Stop Ltd*, 2013 FC 133 [*Money Stop*], this Court noted the “critical” importance of ensuring compliance with orders made under the Act in light of the largely self-reporting nature of the Canadian income tax regime. Here, contrary to Mr. Chi’s submissions, the evidence before me points not to a clear and unequivocal effort to comply, but rather leads me to conclude, beyond a reasonable doubt, that Mr. Chi has demonstrated a “serious indifference or contemptuous disregard at the Court” (*CPCC* at para 63).

[46] I therefore find Mr. Chi in contempt of the Compliance Order.

B. *What is the Appropriate Penalty in the Circumstances of this Case?*

[47] Rule 472 sets out the possible penalties that a judge of this Court may order on a finding of contempt. This rule reads as follows:

Penalty	Peine
472 Where a person is found to be in contempt, a judge may order that	472 Lorsqu’une personne est reconnue coupable d’outrage au tribunal, le juge peut ordonner :
(a) the person be imprisoned for a period of less than five	a) qu’elle soit incarcérée pour une période de moins de cinq

years or until the person complies with the order;	ans ou jusqu'à ce qu'elle se conforme à l'ordonnance;
(b) the person be imprisoned for a period of less than five years if the person fails to comply with the order;	b) qu'elle soit incarcérée pour une période de moins de cinq ans si elle ne se conforme pas à l'ordonnance;
(c) the person pay a fine;	c) qu'elle paie une amende;
(d) the person do or refrain from doing any act;	d) qu'elle accomplisse un acte ou s'abstienne de l'accomplir;
(e) in respect of a person referred to in rule 429, the person's property be sequestered; and	e) que les biens de la personne soient mis sous séquestre, dans le cas visé à la règle 429;
(f) the person pay costs.	f) qu'elle soit condamnée aux dépens.

[48] At the sentencing stage, the trial judge should take into account “the gravity of the contempt in the context of the particular circumstances of the case as they pertain to the administration of justice” (*Professional Institute of the Public Service of Canada v Bremsak*, 2013 FCA 214 [*Bremsak*]; *Baxter Travenol Laboratories of Canada Ltd v Cutter Canada Ltd*, [1987] 2 FC 557 at 562; *Lyons Partnership, LP v MacGregor* (2000), 186 FTR 241 at para 21). Sentencing is an individualized exercise and the trial judge has wide discretion when determining the appropriate sanction for civil contempt, based on the circumstances (*Bremsak* at para 36).

[49] When determining the appropriate sentence for contempt, several factors are relevant: “[a]ggravating factors include the objective gravity of the contemptuous conduct, the subjective gravity of the conduct (i.e. whether the conduct was a technical breach or a flagrant act with full knowledge of its unlawfulness), and whether the offender has repeatedly breached orders of the

Court” while “good faith attempts to comply (even after the breach), apologiz[ing] or accept[ing] responsibility, [and] whether the breach is a first offence” are mitigating factors (*Marshall* at para 16; see also *Winnicki v Canada (Human Rights Commission)*, 2007 FCA 52 at para 17). Provision for “reasonable excuse” for non-compliance, such as the inability to obtain certain records and information, must be factored into the sentence (*Canada (National Revenue) v Cicarelli*, 2018 FC 644 at para 15).

[50] When sentencing a contemnor to pay a fine, the fine must not be a mere token, but must reflect the ability of the person found in contempt to pay the fine (*Bremsak* at para 35; *Wanderingspirit v Marie*, 2006 FC 1420 at para 4; *Desnoes & Geddes Ltd v Hart Breweries Ltd*, 2002 FCT 632 at para 7). Furthermore, Courts sometimes impose substantial fines to match the gravity of the contempt, to deter the contemnor’s continuing conduct and to deter others from comparable conduct (*Carey* at para 31).

[51] Based on an examination of the Court’s prior penalty decisions in *Marshall*, *Money Stop* and *Bjornstad*, which all involved failures to comply with compliance orders issued under the Act, the Minister submits that it would be appropriate for Mr. Chi to be ordered to pay a fine of \$3,000.00, to pay costs of \$5,000.00 and to provide the HSBC account statements at issue. The Minister proposes that failure to do so within 30 days should subject Mr. Chi to 30 days’ imprisonment.

[52] In *Marshall*, the respondent was ordered to pay a \$3,000.00 fine, to pay the Minister’s legal costs of \$2,000.00 and to comply with the Court’s compliance order by providing the

requested documents or providing an explanation as to why those documents could not be obtained. Failure to pay the fine and costs subjected the respondent to 30 days' imprisonment, while failure to provide the requested documents subjected the respondent to 10 days' imprisonment. Relevant factors in determining sentencing were the respondent's failure to provide any of the requested information to the Minister, lack of willingness to cooperate with the Minister or to meet with representatives of Canada Revenue Agency, failure to account for her non-compliance, lack of remorse and the absence of any undertaking to comply (*Marshall* at para 17).

[53] In *Money Stop*, the individual respondent was ordered to pay a \$5,000.00 fine, to pay the Minister's legal costs in the amount of \$19,905.74 and to provide the remaining requested documents or to explain why those documents could not be provided. Failure to pay the fine and costs subjected the respondent to 30 days' imprisonment, while failure to provide the requested documents subjected the respondent to 3 years' imprisonment. In that case, the number of opportunities that the respondent was given to comply with the compliance order and the fact that electronic versions of the records were provided without the necessary access information, despite the access having been specifically requested, were considered aggravating factors (*Money Stop* at paras 15-18).

[54] In *Bjornstad*, the respondent was ordered to pay a \$2,000.00 fine, to pay the Minister's legal costs of \$4,090.85 and to comply with the Court's previous order by providing the requested information and documents or to explain why those documents could not be provided.

The respondent in that case provided none of the requested information or documents, and failed to participate in any of the proceedings leading to the finding of contempt.

[55] In the present case, the contempt is serious and Mr. Chi has failed to provide a “reasonable excuse” for non-compliance. There are, though, some mitigating factors that call for a sentence milder than the ones the Court handed down in *Marshall*, *Money Stop* and *Bjornstad* as Mr. Chi did apologize, participate in the contempt proceedings and provide some of the information and documents sought under the Request for Information, although he failed to provide, to this day, information deemed central to the Compliance Audit. This is also Mr. Chi’s first offence. Mr. Chi claims that the fact he was working on a very tight schedule, had a young son and travelled extensively should be factored in as a mitigating factor. I do not agree, as this is the daily reality of a significant number of Canadian businessmen and businesswomen.

[56] I therefore conclude that the circumstances of this case require Mr. Chi to pay a fine, to pay the Minister’s costs in an amount that I fix at \$3,500.00, and to comply with the Compliance Order within 30 days of this Order by providing the documents and information set out in the Compliance Order, with the exception of the TD Bank account information, which has already been provided.

ORDER in T-1113-17

THIS COURT ORDERS that:

1. The Respondent, Mr. Chi, is guilty of contempt of this Court's Order dated October 5, 2017 [the Compliance Order].
2. The Respondent, Mr. Chi, shall pay a fine of \$2,000.00 within 30 days from the date of service of this Order and shall also pay the Minister's legal costs in the amount of \$3,500.00 within 30 days from the date of service of this Order. Failure to pay this fine and these costs within said 30-day delay shall subject the Respondent, Mr. Chi, to 15 days' imprisonment.
3. The Respondent, Mr. Chi, shall comply with the Compliance Order by providing the information and documents listed in said Order, with the exception of the TD Bank account statements, to counsel for the Minister within 30 days from the date of service of this Order or provide documented evidence as to why these statements cannot be provided within 30 days from the date of service of this Order. Failure to do so within said 30-day delay shall subject the Respondent, Mr. Chi, to 15 days' imprisonment.
4. The Respondent, Mr. Chi, shall not be imprisoned for failure to pay the fine and costs described in paragraph 2 of this Order if, within 30 days from the date of service of this Order, the Respondent, Mr. Chi, arranges with counsel for the Minister for an oral examination under oath and provides evidence satisfactory to

the Court that he is not able to pay the fine and costs or that he needs an extended time period in which to pay.

5. The Respondent, Mr. Chi, shall not be imprisoned for failure to provide the information and documents, with the exception of the TD Bank account statements, listed in the Compliance Order or documented evidence as to why these statements cannot be provided if, within 30 days from the date of service of this Order, the Respondent, Mr. Chi, arranges with counsel for the Minister for an oral examination under oath and provides evidence satisfactory to the Court that he is not able to produce these documents.
6. If counsel for the Minister informs the Court by affidavit that payment of the fine and costs described in paragraph 2 of this Order have not been made within 30 days from the date of service of this Order, and that the Respondent, Mr. Chi, has not arranged with counsel for the Minister for an oral examination under oath with respect to his inability to pay said fine and costs, the Court shall issue a warrant for the imprisonment of the Respondent, Mr. Chi, for 15 days, such term to run consecutive to any other term imposed by this Order.
7. If counsel for the Minister informs the Court by affidavit that the Respondent, Mr. Chi, has not provided the information and documents, with the exception of the TD Bank account statements, listed in the Compliance Order or has failed to provide a full explanation as to why he does not have this information and these documents, then the Court shall issue a warrant for the imprisonment of the

Respondent for 15 days, such term to run consecutive to any other term imposed by this Order.

“René LeBlanc”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1113-17

STYLE OF CAUSE: MINISTER OF NATIONAL REVENUE v YOK CHI

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JULY 3, 2018

ORDER AND REASONS: LEBLANC J.

DATED: SEPTEMBER 7, 2018

APPEARANCES:

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FOR THE APPLICANT

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