Federal Court  Cour fédérale

Date: 20210426

Docket: T-400-19

Citation: 2021 FC 363

Ottawa, Ontario, April 26, 2021

PRESENT: Madam Justice Walker

BETWEEN:

ZEIFMANS LLP

Applicant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

JUDGMENT AND REASONS

[1] Zeifmans LLP (Zeifmans) requests the Court's review of a January 30, 2019 Requirement to provide information (RFI) issued by the Minister of National Revenue (Minister) pursuant to subsection 231.2(1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (ITA). The RFI was issued to Zeifmans, an accounting firm, in the course of an audit conducted by the Canada Revenue Agency (CRA) of three of Zeifmans' clients: Mr. Marc Vaturi, Ms. Diana Vaturi (also known as Diana Ghermezian) and Mr. Nader Ghermezian (collectively, the Named Persons).

[2] Zeifmans has raised a number of arguments challenging both the Minister's authority to issue the RFI without judicial authorization and the scope and purpose of the RFI itself. I have considered each of the arguments but conclude that the Minister reasonably relied on subsection 231.2(1) of the ITA to issue the RFI without applying for and obtaining judicial authorization in accordance with subsections 231.2(2) and (3).

[3] Briefly, I also find that:

1. The Minister made no reviewable error in issuing the RFI to Zeifmans, a partnership, or in omitting to include reference to an individual partner of the firm in the addressee section of the RFI;

2. The RFI was issued within the Minister's authority to seek information related to the administration and enforcement of the ITA;

3. The Minister's reference to unnamed persons as "entities owned, operated, controlled or otherwise connected" to the Named Persons was reasonably clear in the context of the statutory authority granted to the Minister in the ITA and the jurisprudence; and

4. Zeifmans has identified no authority, whether statutory or jurisprudential, in support of its argument that the Minister was required to make inquiry beyond the information provided to her prior to issuing the RFI.

[4] Accordingly, Zeifmans' application will be dismissed.

I. Overview

[5] In 2014, the CRA commenced an audit of the 2012 and 2013 taxation years of the Ghermezian family. The Named Persons are members of the family, Mr. Marc Vaturi by marriage to Ms. Diana Vaturi (also known as Diana Ghermezian). In the years since, the audit has expanded to encompass the January 1, 2012 to December 31, 2017 period.

[6] The CRA has taken many steps since 2013 to secure information from and about, among others, the Named Persons and their business and banking transactions, including: Related Party Initiative (RPI) questionnaires; direct requests for further information and an interview; requests for bank statements and other supporting documents; numerous third party requirements for information regarding transaction and banking records from Canadian banks; a requirement for information to Mr. Vaturi; compliance action through the Department of Justice; and an audit letter. The CRA also contacted Zeifmans and the Named Persons' legal counsel. The CRA has largely received no response or incomplete responses to its requests.

[7] To continue its pursuit of the Named Persons' banking and business records, the Minister issued the RFI to Zeifmans on January 30, 2019. Zeifmans filed the notice of application in this matter on March 1, 2019.

[8] The evidentiary record before the Court consists of the Certified Tribunal Record (CTR) and an affidavit sworn by Mr. Brian McGee, one of Zeifmans' partners. The Minister has not filed affidavit evidence in support of her position in this application. The CTR contains a copy of the RFI and a certificate signed by Scott Jeffery, Case Manager with the CRA, dated March 28, 2019, certifying the two documents that were considered by the Minister's delegate in making the decision to issue the RFI on behalf of the Minister: (1) the Information Sheet for the RFI (redacted on the basis of relevance, solicitor-client privilege and section 37 of the *Canada Evidence Act*, RSC 1985, c C-5); and (2) a draft RFI. The Respondent subsequently removed the majority of redactions from the Information Sheet. A fully unredacted version was provided to the Court following an Order by Prothonotary Furlanetto dated July 23, 2019.

[9] The RFI is addressed to Zeifmans at their offices on Bridgeland Avenue in Toronto, Ontario. Its subject line is "Requirement to provide information regarding Marc Vaturi, Diana Vaturi (also known as Diana Ghermezian), and Nader Ghermezian". The introductory paragraphs of the RFI have led to considerable dispute between the parties and read as follows:

> For purposes related to the administration or enforcement of the *Income Tax Act* (the "**Act**"), Zeifmans LLP ("**Zeifmans**") is required to provide within **thirty (30) days** from the date of this notice of requirement, pursuant to the provisions of subsection 231.2(1) of the Act, the following information and documents pertaining to the period of **January 1, 2012 to December 31, 2017**.
>
> For the above-named individuals, whether solely or jointly, and entities owned, operated, controlled or otherwise connected to the above-mentioned individuals, please provide:
>
> […]
>
> [Emphasis in original]

[10] The RFI sets out a long and detailed list of required information and documents. Zeifmans is directed to provide the information "[f]or any one or more individuals that the request applies to". The RFI is signed by a CRA audit manager, International and Large Business Directorate, as the Minister's delegate.

II. Issues

[11] Zeifmans argues that the Minister's decision to issue the RFI was *ultra vires* or otherwise contrary to law and that the RFI contains serious errors that are subject to review against, at minimum, a stringent application of reasonableness principles:

1. Was the RFI an "unnamed persons" requirement for information such that the Minister was required to apply for judicial authorization in accordance with subsections 231.2(2) and (3) of the ITA?

2. Was the RFI imposed on a "person" as required by subsection 231.2(1)?

3. Was the RFI issued for a purpose other than the administration or enforcement of the ITA?

4. Is the RFI unreasonable due to lack of clarity or because the Minister did not make enquiries or seek clarification from the CRA audit team prior to its issuance?

III. Standard of Review

[12] The parties submit and I agree that the issues described in paragraphs 2, 3 and 4 immediately above should be reviewed for reasonableness, consistent with the presumptive standard of review for administrative decisions following the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*). However, Zeifmans argues that the RFI requires it to produce information relating, in part, to one or more unnamed persons and that the Minister's decision to issue the RFI without applying for judicial authorization must be assessed for correctness. In its view, such a decision must be right and not merely reasonable.

[13] Zeifmans relies on two of the situations identified by the Supreme Court in which a departure from the presumption of reasonable review is warranted: legislative intent and general questions of law of central importance to the legal system as a whole (*Vavilov* at paras 17, 33, 53, 59-62). Zeifmans argues that the obligation to apply for judicial authorization in subsection 231.2(2) signals Parliament's intention that a judge should make the final decision as to whether authorization is necessary. Zeifmans states that the obligation is analogous to an appeal right or to a legislated enhanced standard of review. Zeifmans also argues that the question of judicial authorization is a question of law of central importance to the Canadian legal system. It characterizes provisions that contemplate a judge's approval as protective provisions.

The determination of the circumstances in which the provisions apply must be undertaken correctly or the protection is lost.

[14] I have considered Zeifmans' arguments carefully but conclude that there is no basis for departing from the presumptive standard of reasonableness in my review of the Minister's decision to issue the RFI pursuant to subsection 231.2(1) without first applying to a judge for authorization.

[15] The Supreme Court has identified the following situations in which a departure from the presumption of reasonable review is warranted: legislative intent (legislated standards of review and statutory appeal mechanisms) and the rule of law (constitutional questions, general questions of law of central importance to the legal system as a whole, and jurisdictional boundaries between administrative bodies) (*Vavilov* at para 69). The Court did not foreclose other categories that would call for correctness review but cautioned that such categories would be exceptional (*Vavilov* at para 70):

> [70] […] That being said, the recognition of any new basis for correctness review would be exceptional and would need to be consistent with the framework and the overarching principles set out in these reasons. In other words, any new category warranting a derogation from the presumption of reasonableness review on the basis of legislative intent would require a signal of legislative intent as strong and compelling as those identified in these reasons (i.e., a legislated standard of review or a statutory appeal mechanism). Similarly, the recognition of a new category of questions requiring correctness review that is based on the rule of law would be justified only where failure to apply correctness review would undermine the rule of law and jeopardize the proper functioning of the justice system in a manner analogous to the three situations described in these reasons.

[16] I find that the Minister's obligation to apply for judicial authorization to issue a requirement for information in certain circumstances is not analogous to an appeal right or to an unstated intention for appellate review. Subsections 231.2(2) and (3) of the ITA are not exceptional provisions and I cannot discern a compelling indication of legislative intent to the contrary. There is no suggestion in section 231.2 that Parliament intended that a decision to proceed without judicial authorization would be subject to review for correctness, nor is there a provision elsewhere in the ITA to this effect.

[17] A decision regarding the necessity to apply for authorization in accordance with subsections 231.2(2) and (3) requires the Minister to engage with questions of statutory interpretation and to consider the application of the subsections to the facts before her. In my view, Zeifmans' arguments regarding the importance of subsections 231.2(2) and (3) and their purpose in constraining the Minister's information-seeking powers are properly considered within the *Vavilov* framework for reasonableness review (see *Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 at paras 32-35 (*Entertainment Software*); *Roofmart Ontario Inc. v Canada (National Revenue)*, 2020 FCA 85 at para 20).

[18] Questions of statutory interpretation are not unique and can be reviewed for reasonableness (*Vavilov* at paras 115-116):

> [115] Matters of statutory interpretation are not treated uniquely and, as with other questions of law, may be evaluated on a reasonableness standard. Although the general approach to reasonableness review described above applies in such cases, we recognize that it is necessary to provide additional guidance to reviewing courts on this point. This is because reviewing courts are

> accustomed to resolving questions of statutory interpretation in a context in which the issue is before them at first instance or on appeal, and where they are expected to perform their own independent analysis and come to their own conclusions.
>
> [116] Reasonableness review functions differently. Where reasonableness is the applicable standard on a question of statutory interpretation, the reviewing court does not undertake a *de novo* analysis of the question or "ask itself what the correct decision would have been": *Ryan*, at para. 50. Instead, just as it does when applying the reasonableness standard in reviewing questions of fact, discretion or policy, the court must examine the administrative decision as a whole, including the reasons provided by the decision maker and the outcome that was reached.

[19] Where, as here, a decision maker has not explicitly considered the legislative provisions in question in its decision, the Court turns to the implied interpretation made by the decision maker as reflected in the record and assesses whether the interpretation was reasonable (*Vavilov* at para 123).

[20] The Supreme Court in *Vavilov* described general questions of law of central importance to the legal system as those that require uniform and consistent answers because of their impact on the administration of justice as a whole (*Vavilov* at para 59). In such cases, correctness review is necessary because the questions at issue resolve questions that are of "fundamental importance and broad applicability", with significant legal consequences for the justice system (*Harrison v Canada (National Revenue)*, 2020 FC 772 at para 46).

[21] A requirement that the Minister secure judicial approval to obtain information and documents regarding one or more unnamed taxpayers does not impact the administration of the Canadian justice system as a whole. The effect of the Minister's interpretation of the legal constraints within which she has authority to issue a requirement for information under

section 231.2 is confined to the recipient and taxpayer(s) in question. In this case, her conclusion will primarily affect Zeifmans and the Named Persons under audit, and may affect the Named Persons' related entities referred to in the RFI. The question of whether those related entities are "unnamed persons" for purposes of subsections 231.2(2) and (3) is a matter of statutory interpretation for the Minister, subject to review by the Court. It is not a question of central importance to the legal system as a whole.

[22] What then does the reasonableness standard entail in this case? The Supreme Court describes a reasonable decision as follows (*Vavilov* at para 85):

> [85] […] a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision.

[23] Typically, the Court's review of an administrative decision begins with the reasons given by the decision maker in light of the record, the submissions of the parties and the governing statutory scheme (*Vavilov* at paras 83, 86, 96, 125). The review has two aspects: the reasoning process of the decision maker must be intelligible and logical, and the outcome must be justified. Where formal reasons are not given, and are not required, the Court looks to the record as a whole to understand the decision and its rationale (*Vavilov* at paras 123, 137). The Court also considers the relevant statutory constraints, here section 231.2, and must necessarily focus on the outcome of the decision (*Vavilov* at para 138). In this application, the legislative scheme of the Minister's powers to obtain information and documents in furtherance of her administration and enforcement of the ITA is central to my review of the RFI (*Entertainment Software* at paras 34-35).

IV. Analysis

1. *Was the RFI an "unnamed persons" requirement for information such that the Minister was first required to apply for judicial authorization in accordance with subsections 231.2(2) and (3) of the ITA?*

[24] The RFI requires Zeifmans to produce information and documents pertaining to the January 1, 2012-December 31, 2017 period for the Named Persons and "entities owned, operated, controlled or otherwise connected to" the Named Persons. I will refer to this group of entities as the Unnamed Persons.

[25] Zeifmans' principal submission in this application is that the RFI imposes, in part, a requirement for information and documents relating to unnamed persons. Zeifmans submits that, as it is a "third party" not under audit, the Minister was required to apply for and obtain judicial authorization to issue the RFI in accordance with subsections 231.2(2) and (3) of the ITA. She did not do so and her decision to issue the RFI without that authorization was unreasonable.

[26] Zeifmans makes two arguments in support of its position: (A) an application for judicial authorization is always required where the Minister issues a requirement to a third party who is not itself under audit if the requirement seeks information about one or more unnamed persons, whether or not its purpose is to verify the unnamed persons' compliance with their duties and obligations under the ITA (subsection 231.2(2)); and (B) in any event, in this case, the RFI was issued by the Minister to verify compliance by the Unnamed Persons with the ITA (subsection 231.2(3)).

[27] The legislative framework within which the Minister issued the RFI is set out in section 231.2. Subsection 231.2(1) authorizes the Minister to require a person to provide information or documents for any purpose related to the administration or enforcement of the ITA. Subsections 231.2(2) and (3) curtail the Minister's broad power where she seeks information relating to unnamed persons from a third party. In these cases, the Minister must seek judicial authorization from this Court prior to proceeding (subsection 231.2(2)) and the Court must be satisfied that (a) the unnamed person or group of unnamed persons is ascertainable and (b) the requirement for information is made to verify compliance by the person or persons in the group with any duty or obligation under the ITA (subsection 231.2(3)).

[28] The Minister may enforce a requirement for information by bringing a summary application to the Court for a compliance order pursuant to section 231.7 of the ITA. If the recipient of the requirement fails to comply with the order, a judge may find the recipient in contempt (subsection 231.7(4)).

[29] For ease of reference, section 231.2 of the ITA reads as follows:

Requirement to provide documents or information	**Production de documents ou fourniture de renseignements**
231.2 (1) Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act (including the collection of any amount payable under this Act by any person), of a listed international agreement or, for	**231.2 (1)** Malgré les autres dispositions de la présente loi, le ministre peut, sous réserve du paragraphe (2) et, pour l'application ou l'exécution de la présente loi (y compris la perception d'un montant payable par une personne en vertu de la présente loi), d'un accord international désigné ou d'un traité fiscal conclu

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 is stipulated in the notice,

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

a) qu'elle fournisse tout renseignement ou tout renseignement supplémentaire, y compris une déclaration de revenu ou une déclaration supplémentaire;

(b) any document.

b) qu'elle produise des documents.

Unnamed persons

Personnes non désignées nommément

(2) The Minister shall not impose on any person (in this section referred to as a "third party") a requirement under subsection 231.2(1) to provide information or any document relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection 231.2(3).

(2) Le ministre ne peut exiger de quiconque — appelé « tiers » au présent article — la fourniture de renseignements ou production de documents prévue au paragraphe (1) concernant une ou plusieurs personnes non désignées nommément, sans y être au préalable autorisé par un juge en vertu du paragraphe (3).

Judicial authorization

Autorisation judiciaire

(3) A judge of the Federal Court may, on application by the Minister and subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person or more than one

(3) Sur requête du ministre, un juge de la Cour fédérale peut, aux conditions qu'il estime indiquées, autoriser le ministre à exiger d'un tiers la fourniture de renseignements ou la production de documents prévues au paragraphe (1) concernant une personne non désignée

unnamed person (in this section referred to as the "group") if the judge is satisfied by information on oath that	nommément ou plus d'une personne non désignée nommément — appelée « groupe » au présent article —, s'il est convaincu, sur dénonciation sous serment, de ce qui suit :
(a) the person or group is ascertainable; and	**a)** cette personne ou ce groupe est identifiable;
(b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.	**b)** la fourniture ou la production est exigée pour vérifier si cette personne ou les personnes de ce groupe ont respecté quelque devoir ou obligation prévu par la présente loi;
(c) and (d) [Repealed, 1996, c. 21, s. 58(1)]	**c) et d)** [Abrogés, 1996, ch. 21, art. 58(1)]

(A) Is judicial authorization always required where the third party is not under audit?

[30] Zeifmans submits that the Minister was required to apply for judicial authorization pursuant to subsection 231.2(2) because: (a) it is a third party not under investigation or audit by the CRA; and (b) the RFI contemplates the production of information and documents related to the Unnamed Persons. Effectively, Zeifmans' position is that the requirement to apply for authorization in subsection 231.2(2) is independent of the application of the two conditions for obtaining that approval set out in paragraphs 231.2(3)(a) and (b). Zeifmans relies on the Federal Court of Appeal (FCA) decision in *Canada (Minister of National Revenue) v Toronto Dominion Bank*, 2004 FCA 359 (*TD Bank*).

[31] The Minister disagrees. She submits that subsections 231.2(2) and (3) must be read together with the result that an application to the Court is required solely where the Minister determines that the CRA is seeking to verify compliance by unnamed persons with their duties or obligations under the ITA. The question of whether the third party recipient of the requirement for information is subject to audit is not relevant. The Minister relies on a 2005 FCA decision, *Canada (Customs and Revenue Agency) v Artistic Ideas Inc.*, 2005 FCA 68 (*Artistic Ideas*), and line of cases from this Court adopting the *Artistic Ideas* interpretation of section 231.2.

[32] I am not persuaded by Zeifmans' submissions. None of the purpose or structure of section 231.2 of the ITA or the jurisprudence of the FCA and this Court post-dating *TD Bank* support Zeifmans' position that subsections 231.2(2) and (3) must be read as discrete requirements. I agree with the Minister that the prevailing interpretation of section 231.2 is that of the FCA in *Artistic Ideas* and that subsections 231.2(2) and (3) must be read together. The Minister is required to apply for judicial authorization to issue a requirement for information to a third party if the requirement requests information and documents relating to ascertainable unnamed persons for the purpose of verifying compliance by those unnamed persons with their obligations under the ITA.

[33] In order to describe the parties involved in the two FCA cases and the subsequent Federal Court cases, and to relate those cases to the facts before me, I will use the following terms: "unnamed persons", the person(s) about whom the information and documents are sought; "third party", the party to whom a requirement is issued; and "named person(s)", the person(s) who are under audit by the CRA. Some cases involve two parties: a third party from whom the

information is sought (who may be a true third party not under audit or may also be a named person under audit, as in *Artistic Ideas*) and unnamed person(s).

[34] In *TD Bank*, the Minister sent a requirement to the Bank, a third party not under audit, requesting information concerning one of their clients, a named person. The Bank refused to provide information regarding "the name of the holder" of a certain account, one category of information sought by the Minister in connection with the investigation of the named person, and any other information which would confirm the holder's identity. The Bank argued that the Minister must proceed under subsection 231.2(2) to obtain information in this category and the FCA agreed. Justice Décary stated that subsection 231.2(2) applied to protect both the third party and the unnamed person. The Bank needed to ensure it was under a legal obligation to disclose the information and the unnamed person was entitled to have their privacy respected (*TD Bank* at para 7).

[35] The Minister stated that he did not know whether the holder of the account was under investigation or audit (because he did not know who the holder of the account was). As a result, he could not satisfy the condition set out in paragraph 231.2(3)(b) and judicial authorization would not be granted. This conundrum led the Minister to argue that he should not be required to seek such authorization at all. The FCA found that the Minister's argument would invalidate subsections 231.2(2) and (3) (*TD Bank* at para 8):

> [8] […] Additionally, the effect of accepting his interpretation of section 231.2 would be to invalidate subsections 231.2(2) and (3) and the protection they provide, since the Minister would be obtaining under subsection 231.2(1), without prior judicial consent, information concerning unidentified persons once he is not investigating or says he is not investigating those persons. The

> very purpose of subsections 231.2(2) and (3) is to protect unidentified persons who are not being investigated while making it possible in the interests of justice, and subject to judicial review, for information to be obtained on persons who are in fact under investigation.

[36] Four months later, Justice Rothstein, then at the FCA, issued his decision in *Artistic Ideas*. The Minister had sent a requirement for information to Artistic Ideas, a third party art dealer under audit. Artistic was involved in a scheme in which it sold works of art to taxpayers who in turn donated the works to charities. The donors and the charities were two groups of unnamed persons for purposes of section 231.2. The participating donors obtained a tax deduction for their donation based on the appraised value of the works which exceeded the purchase price paid. The Minister required Artistic to produce information relating to the charities and the donors and the Bank refused to release the information. Justice Rothstein agreed with this Court's analysis of section 231.2 and confirmed that the Minister was entitled to the names of the charities but not to the names of the donors.

[37] The Minister argued in *Artistic Ideas* that subsections 231.2(2) and (3) apply only if the third party is not under investigation. Justice Rothstein disagreed and focussed on the audit status of the unnamed persons (*Artistic Ideas* at para 10). He stated that the donors were precisely the persons to whom the two subsections apply because the Minister intended to investigate the donors using the information obtained from *Artistic Ideas*. Conversely, there was no evidence suggesting that the Minister intended to audit the charities involved in the scheme. Justice Rothstein stated (*Artistic Ideas* at para 11):

> [11] However, where unnamed persons are not themselves under investigation, subsections 231.2(2) and (3) do not apply. Presumably, in such cases the names of unnamed persons are

> necessary solely for the Minister's investigation of the third party. In such cases a third party served with a requirement to provide information and documents under subsection 231.2(1) must provide all the relevant information and documents including the names of unnamed persons. That is because subsection 231.2(2) only pertains to those unnamed persons in respect of whom the Minister may obtain an authorization of a judge under subsection 231.2(3).

[38] This Court has addressed the application of section 231.2 (and the equivalent provision in the *Excise Tax Act*, RSC 1985, c E-15) in a series of cases and has followed Justice Rothstein's reasoning in *Artistic Ideas* (see *Canada (National Revenue) v Morton*, 2007 FC 503 at para 11 (*Morton*); *Canada (National Revenue) v Advantage Credit Union*, 2008 FC 853 at paras 16-17 (*Advantage Credit Union*); *Canada (National Revenue) v Amex Bank of Canada*, 2008 FC 972 at para 54 (*Amex Canada*); *London Life v Canada (Attorney General)*, 2009 FC 956 at paras 21-24 (*London Life*)).

[39] The fact situations in *Morton*, *Advantage Credit Union*, *Amex Canada* and *London Life* are similar to that in *TD Bank* and the present case. The cases involved the issuance of a requirement for information involving unnamed persons to a third party who was not under audit. Certain of the cases came before the Court at the compliance order stage where a requirement had been issued in reliance on subsection 231.2(1), the third party had refused to comply and the Minister was pursuing enforcement under section 231.7 of the ITA. The Court adopted the *Artistic Ideas* approach to section 231.2 in each of the cases. In *Advantage Credit Union*, Justice Mandamin, then of this Court, considered the contradictory conclusions of *TD*

Bank and *Artistic Ideas*, cited the decision in *Morton* and followed *Artistic Ideas* (*Advantage Credit Union* at para 17):

> [17] I agree with Deputy Justice Strayer [in *Morton*]. Section 231.2(2) clearly relates "one or more unnamed persons" to the authorization required in subsection 231.2(3). Those "one or more unnamed persons" in subsection 231.2(2) are individuals in subsection 231.2(3) for whom "the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act." I conclude that the interpretation of s. 231.2(2) given by the Federal Court of Appeal in *Artistic Ideas*, above, governs this matter.

[40] In *London Life*, the CRA was auditing an insurance broker whose income included the receipt of commission payments from *London Life*. The Minister issued a requirement for information to *London Life* and requested information and documents pertaining to unnamed clients of the insurance broker. Neither London Life nor the unnamed clients were the target of a CRA audit or investigation. London Life relied on *TD Bank* and resisted divulging the clients' information on the basis that the Minister had not sought judicial authorization.

[41] The Court concluded that the requirement served on London Life was valid and dismissed London Life's application. The Court referred to *TD Bank* and *Artistic Ideas* and again followed *Artistic Ideas*, linking the obligation to proceed under subsection 231.2(2) with the condition in paragraph 231.2(3)(b) that the information relating to unnamed persons must be requested for the purpose of verifying their tax compliance. The Court stated that the FCA had resolved any contradiction between its two prior cases in *eBay Canada Ltd. v Canada (National Revenue)*, 2008 FCA 348 at paragraph 23:

> [23] It is evident from paragraph 231.2(3)(b) that subsection 231.2(2) is intended to be used when the Minister wishes to verify whether the unnamed persons, not the person on whom the

> requirement is served, are in compliance with their obligations under the Act. See, for example, *Bernick v. Canada (Minster of National Revenue)*, 2002 D.T.C. 7167 at para. 10 (Ont. SCJ).

[42] I too find the *Artistic Ideas* approach to section 231.2 compelling. The Minister's obligation to apply for judicial authorization in subsection 231.2(2) is inextricably linked with the conditions for authorization in subsection 231.2(3). The Minister is required to apply to the Court under subsection 231.2(2) to issue a requirement to a third party not under audit when the requirement requests information relating to unnamed persons to verify their compliance with the ITA.

[43] Subsection 231.2(1) grants the Minister broad powers to obtain information and documents to further the administration and enforcement of the ITA, including the pursuit of an audit. Parliament has recognized the need for limits on those powers to prevent fishing expeditions by enacting subsections 231.2(2) and (3) where the Minister seeks to obtain information from a third party rather than directly from a taxpayer who is subject to audit or investigation. As Justice Décary stated in *TD Bank*, the purpose of the subsections is twofold: they protect the third party by ensuring it has a legal obligation to disclose the information and the right to privacy of the unnamed persons.

[44] Neither aspect of the protection intended by Parliament is dependent on whether the third party is under audit or investigation by the CRA. There is also no suggestion in section 231.2 that the audit status of the third party determines the scope of the Minister's obligation to seek authorization. The state of its compliance with the ITA has no relevance to the application of subsections 231.2(2) and (3). The focus of the subsections is the unnamed persons. If they are

subject to investigation, the Minister is permitted to obtain their information from a third party upon receipt of judicial authorization. If not, the Minister may proceed without authorization under subsection 231.2(1) because the focus of the requirement is the compliance of the named persons. This interpretation was confirmed by the Supreme Court in *Redeemer Foundation v Canada (National Revenue)*, 2008 SCC 46 (*Redeemer*). Although *Redeemer* was not a section 231.2 case, the Supreme Court had occasion to consider the question of judicial authorization and concluded that subsection 231.2(2) "should not apply to situations in which the requested information is required in order to verify the compliance of the taxpayer being audited" (*Redeemer* at para 22).

[45] Zeifmans' position that subsections 231.2(2) and (3) must be read as imposing distinct obligations on the Minister is not persuasive. The cases noted above consistently link the two subsections (*Artistic Ideas* at para 11; *Advantage Credit Union* at para 17). Where there is no evidence that the unnamed persons themselves are subject to audit or investigation by the CRA to verify their compliance with the ITA, there is no reason for the Minister to proceed under subsection 231.2(2). In my view, the removal of any initial consideration by the Minister of the substantive conditions in subsection 231.2(3) would result in a proliferation of unnecessary court applications.

[46] Zeifmans argues that the *Artistic Ideas* approach to section 231.2 means that the Minister can obtain information relating to unknown persons from a third party whether or not the unnamed persons are subject to audit. If they are not, the Minister is permitted to rely on

subsection 231.2(1) and, if they are, the Minister can obtain the information via subsections 231.2(2) and (3) upon receipt of judicial authorization.

[47] There is no doubt Parliament intended the Minister's powers to obtain information in reliance on section 231.2 to be broad. If a Canadian taxpayer organizes their affairs through corporate or other entities, the CRA is entitled to obtain information related to those entities for the purpose of auditing and verifying the taxpayer's compliance with the ITA. If the entities' books and records are placed in the possession of third parties, the Minister is entitled to require the third party to provide the information requested if the unnamed persons are not subject to audit. The information is required to verify the compliance of the taxpayer being audited and no application for judicial authorization is required (*Redeemer* at para 22).

[48] If the purpose of a requirement for information relating to unnamed persons is to investigate the unnamed entities and not the named taxpayer, the Minister may still be able to obtain the information requested but only if a judge is satisfied that the request is not an attempt to identify an amorphous, or unascertainable, set of unnamed persons for a possible investigation. Although the conditions in paragraphs 231.2(3)(a) and (b) may appear straightforward, they are substantive conditions.

[49] The reasonableness of the Minister's decision to proceed without judicial authorization in each case depends on whether the evidence in the record establishes that the unnamed persons are under investigation or audit by the CRA. I address this question in the next section of this judgment.

[50] Finally, Zeifmans refers to two excerpts from the CRA's Audit Manual (Chapter 10 - Conducting the Audit). The first excerpt directs auditors to be diligent if requirements are used under subsection 231.2(2) to obtain information on unnamed persons from third parties who are not under audit. The Manual states that, in this circumstance, judicial authorization must be obtained. Zeifmans relies on a second parallel statement in the section that provides requirement guidelines.

[51] The CRA's guidance to its auditors in the Manual is somewhat circular and the discrete statements are not helpful. For example, the Manual cites *Redeemer* and instructs auditors that:

> There is no need to issue a requirement under subsection 231.2(1) of the ITA, or to obtain judicial authorization under subsection 231.2(2) of the ITA, where the information being sought regarding unnamed persons relates solely to the audit of the named taxpayer.

[52] Similarly, the requirement guidelines in the Manual indicate that a subsection 231.2(2)/(3) application to a judge should be made where both of the subsection (3) conditions are met.

[53] When read in context with other statements in the Manual, I find that the excerpts cited do not contradict Justice Rothstein's interpretation of section 231.2 in *Artistic Ideas*. It is also trite to note that the Manual provides guidance and cannot supersede the legal constraints that define the Minister's powers under section 231.2. Nevertheless, Zeifmans has identified shortcomings in the Manual that may lead to confusion in future cases and I would recommend the CRA consider clarifying the sections of the Manual that describe the interplay of subsections 231.2(2) and (3).

(B) Are the Unnamed Persons targets of an investigation to verify their compliance with the ITA?

[54] Zeifmans argues that there is sufficient evidence in the record to conclude that the Unnamed Persons are themselves investigation targets of the CRA. Accordingly, the Minister's decision to issue the RFI without judicial authorization disregarded subsections 231.2(2) and (3) of the ITA and was unreasonable.

[55] Zeifmans relies on the following evidence from the Information Sheet:

- An initial reference to a questionnaire sent by the "RPI workload development team" to the four Ghermezian brothers prior to the start of the audit. "RPI" is an acronym for 'related party initiative'. The questionnaire requested that the brothers identify all entities they owned or held in trust or in which they were or continued to be directors.
- Under the heading "Reasons for requiring documents/information", one reason given for the RFI was:

> To verify if offshore entities are managed and controlled from Canada (by the Canadian individuals named above) […]

[56] Zeifmans submits that the reference to the management and control of Unnamed Persons is a reference to the principle that the taxation in Canada of a corporation is based on the location of the mind and management of the corporate entity, which in turn is based on the residence or location of its directors. Zeifmans argues that the CRA intends to use information obtained via the RFI regarding the Unnamed Persons and their respective directors to determine if the Unnamed Persons are subject to taxation under the ITA.

[57] The Minister submits that the Information Sheet supports the contrary conclusion as it demonstrates that the CRA is focussed on its audit of the Named Persons. The Information Sheet

establishes the repeated failures by the Named Persons to respond to the CRA's efforts to obtain required information directly from them and justifies the resort to a third party. The Minister states that the Information Sheet reflects the receipt by one or more of the Named Persons of transfers of offshore income during the audit period and that the inclusion of the Unnamed Persons in the RFI is part of the CRA's efforts to properly characterize those transfers for purposes of the ITA and the existing audit.

[58] The Information Sheet begins by listing the names of the taxpayers under audit, the Named Persons, and the tax years under consideration, followed by a brief history of the audit. It continues with a description of the alleged offshore income of the Named Persons and the wire transfers noted by the Minister. After listing the documents and information that were to be requested, the Information Sheet describes the reason for the RFI which, other than the one reason that refers to offshore entities, relate to the named persons. The Information Sheet concludes with a list of the CRA's attempts to obtain information directly from the Named persons, their banks and Zeifmans.

[59] I find that Zeifmans has not established that the CRA was engaged in an investigation of the Unnamed Persons' compliance with the ITA such that the Minister's decision to proceed in reliance on subsection 231.2(1) was unreasonable in light of the record. The one reference in the Information Sheet to the need to verify the location of the mind and management of unidentified offshore entities is consistent with the CRA's efforts to audit the Named Persons and must be read in the context of the remainder of the Information Sheet. The focus of the Information Sheet is the ongoing audit. The possibility the CRA may audit one or more of the Unnamed Persons in

the future in part due to information obtained does not establish a reviewable error by the Minister in relying on subsection 231.2(1) to issue the RFI.

[60] The contrasting fact patterns in *Redeemer* and *Artistic Ideas* highlight the nature of the 'fishing expedition' that subsections 231.2(2) and (3) are designed to prevent. The *Redeemer* Foundation was a registered charity under audit by the CRA due to concerns that many of the contributions it received were not valid charitable donations. The CRA orally requested a list of donors in respect of the 2001-2002 taxation years and the Foundation provided the information. The CRA eventually issued notices of reassessment to certain donors. Subsequently, the CRA requested donor lists for the 2002-2003 taxation years and the Foundation refused, having received advice that the CRA was required to obtain judicial authorization pursuant to subsections 231.2(2) and (3).

[61] The Supreme Court disagreed, stating that "the facts of this case confirm that the CRA needed the list to investigate its suspicions regarding the legitimacy of the [Foundation]. The reassessment of the Foundation's donors is just a logical consequence of the CRA's suspicion that the [Foundation] was not a valid charitable program" (*Redeemer* at para 16).

[62] The Supreme Court concluded that subsection 231.2(2) should not apply if information is required by the Minister to verify the compliance of taxpayers under audit and that (*Redeemer* at para 22):

> [22] […] Regardless of whether or not there is a possibility or probability that the audit will lead to the investigation of other unnamed taxpayers, the CRA should be able to obtain information it would otherwise have the ability to see in the course of an audit.

[63] In *Artistic Ideas*, another case involving a registered charity and a request for information regarding unidentified donors, the FCA observed that "the donors are intended to be the subject of investigations by the Minister" (*Artistic Ideas* at para 10). Justice Rothstein stated that the donors were precisely the persons to whom the protections in subsections 231.2(2) and (3) apply and that the Minister was required to obtain judicial authorization to have access to their information.

[64] In the present case, the record establishes that the information requested in the RFI, including that related to the Unnamed Persons, is required in order to verify the compliance of the Named Persons with their obligations under the ITA. There is no evidence in the record that the Unnamed Persons are a current investigation target. I find that the possibility that one or more of the Unnamed Persons may be subject to audit in the future is not sufficient to require judicial authorization for the RFI and the Minister's reliance on subsection 231.2(1) was justified.

[65] Zeifmans also submits that the Minister's decision to issue the RFI without judicial authorization lacks transparency because there is no discussion in the RFI or the Information Sheet of her rationale for proceeding pursuant to subsection 231.2(1).

[66] The Supreme Court recognized in *Vavilov* that there will be cases in which a decision maker has not included in their reasons an analysis of the statutory provisions that underpin the decision. The omission of such an analysis is not fatal to the reasonableness of an administrative decision where the reviewing court is able to discern the decision maker's implicit interpretation

from the record and the outcome of the decision (*Vavilov* at paras 123, 137-138). I am mindful in this regard of Zeifmans' emphasis on the importance of the Supreme Court's statement that, although a decision maker's interpretation of its statutory authority is entitled to deference, the exercise of that authority must be justified (*Vavilov* at para 109). This caveat is no less relevant when the interpretation must be implied by the reviewing court.

[67] The Minister's decision to issue the RFI must be reviewed against the history of the CRA's audit process as reflected in the Information Sheet (*Vavilov* at paras 94-98, 125-126). At the risk of repetition, the Information Sheet demonstrates that the CRA's reasons for requesting the RFI centred on its audit of the Named Persons. There is no evidence in the Information Sheet that the CRA requested the RFI for any purpose other than to further the ongoing audit (*Vavilov* at para 137). As a result, I find that the Minister's reliance on subsection 231.2(1) was justified on the face of the record and the RFI and consistent with the jurisprudence regarding subsections 231.2(2) and (3). The omission from the Information Sheet and the RFI of a discussion of the subsection(s) of section 231.2 does not render the RFI or the Minister's decision to issue the RFI without judicial authorization unreasonable.

2. *Was the RFI imposed on a "person" as required by subsection 231.2(1)?*

[68] Subsection 231.2(1) permits the Minister to require "any person" to provide information and documents for purposes related to the enforcement of the ITA. The RFI was issued to Zeifmans, a limited liability partnership and was not directed to the attention of a specific partner. Zeifmans submits that a partnership is not a person at law as reflected in section 96 of

the ITA (*Canada v Green*, 2017 FCA 107 at para 5). As such, the RFI was not issued to a person and the Minister acted without jurisdiction.

[69] The Minister submits that, by addressing the RFI to Zeifmans, the Minister in fact addressed the requirement to all of the members of the partnership. She argues that subsection 244(20) of the ITA allows her to issue a notice or other document to a partnership rather than having to direct the notice or document to the individual partners. The Minister argues that it was reasonable to issue the RFI in this manner and that Zeifmans' argument would effectively prevent the Minister from obtaining information and documents from a partnership.

[70] Subsection 244(20) of the ITA provides that:

Members of partnerships	**Associés**
(20) For the purposes of this Act,	**(20)** Les règles suivantes s'appliquent dans le cadre de la présente loi :
(a) a reference in any notice or other document to the firm name of a partnership shall be read as a reference to all the members thereof; and	**a)** la mention de la dénomination d'une société de personnes dans un avis ou autre document vaut mention de tous les associés de la société de personnes;
(b) any notice or other document shall be deemed to have been provided to each member of a partnership if the notice or other document is mailed to, served on or otherwise sent to the partnership	**b)** un avis ou autre document est réputé remis à chaque associé de la société de personnes si l'avis ou le document est posté, signifié ou autrement envoyé à la société de personnes :

(i) at its latest known address or place of business, or	**(i)** à sa dernière adresse connue ou à son dernier lieu d'affaires connu,
(ii) at the latest known address	**(ii)** à la dernière adresse connue :
(A) where it is a limited partnership, of any member thereof whose liability as a member is not limited, or	**(A)** s'il s'agit d'une société de personnes en commandite, de l'un de ses associés dont la responsabilité, à titre d'associé, n'est pas limitée,
(B) in any other case, of any member thereof.	**(B)** dans les autres cas, de l'un de ses associés

[71] I find that the Minister made no reviewable error in issuing the RFI to Zeifmans for two reasons.

[72] First, the language of paragraph 244(20)(a) is straightforward. The reference in the RFI to Zeifmans, the firm name of a partnership, must be read as a reference to all the members thereof. While I agree with Zeifmans that the subsection does not transform a partnership into a person, the effect of subsection 244(20) is that the RFI was addressed to each partner for purposes of the ITA. As the individual partners of Zeifmans are "persons" under the ITA, I find that the Minister acted reasonably in the exercise of her jurisdiction in subsection 231.2(1) in issuing the RFI to Zeifmans. The alternative, an obligation on the Minister to address a requirement for information to each member of a partnership, is unwieldy and focuses on form rather than substance.

[73] Second, the failure by the Minister to include a line directing the RFI to the attention of an individual partner was not material. The RFI was properly addressed to Zeifmans' place of business. Paragraph 244(20)(b) deems the RFI to have been provided to each member of the partnership. The inclusion of the name of a specific partner is an administrative matter only. Its presence or absence does not alter the responsibility for compliance of each of the partners. The Information Sheet demonstrates that Zeifmans has been in contact with the CRA in the course of the audit of the Named Persons. The responsible partner is known to the CRA and to Zeifmans and the firm is able to properly direct the RFI to the responsible partner to ensure compliance and to initiate discussions with the CRA for any required clarification. If that partner has left the firm or has otherwise been reassigned, the RFI remains valid. Zeifmans' concerns regarding enforcement will be addressed in any required compliance action. The Minister acted reasonably in addressing the RFI to Zeifmans and in leaving the partnership to determine the appropriate partner(s) to respond.

3. *Was the RFI issued for a purpose other than the administration or enforcement of the ITA*

[74] Zeifmans submits that the requests for information and documents in the RFI are so broad that they have no apparent connection to the CRA's audit of the Named Persons or any purpose related to the administration or enforcement of the ITA. It is not possible to conclude that the Minister reasonably exercised her power to obtain information within the scope of her authority in section 231.2. Zeifmans relies on the decision in *BP Canada Energy Company v Canada (National Revenue)*, 2017 FCA 61 (*BP Canada*), in which the Chief Justice of the FCA called for some restraint in interpreting the scope of section 231.1 of the ITA when dealing with tax accrual working papers (TAWPs). Zeifmans states that restraint is even more important in a

section 231.2 case in which a request is made to a third party. Zeifmans argues that the Minister denied its legitimate expectation that she would act with restraint in drafting the RFI.

[75] The Minister submits that the RFI and Information Sheet establish that the RFI was issued for a proper purpose as a necessary step in the audit of the Named Persons. She distinguishes *BP Canada* as the Chief Justice's comments regarding restraint were made in the context of a request for TAWPs outside of an audit. The Minister argues that the doctrine of legitimate expectations applies only to the procedural process and cannot give rise to an expectation of substantive outcomes (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 97).

[76] I find that there is no evidence in the record that the RFI was issued for any purpose other than in furtherance of the audit of the Named Persons, a purpose which is squarely within the Minister's obligation to administer and enforce the provisions of the ITA. Zeifmans' description of various paragraphs of the RFI as too broad or unduly vague is not sufficient to undermine the stated purpose of the RFI, the audit context provided in the Information Sheet and the reasons given for requiring the information and documents listed in the RFI. The FCA's comments regarding restraint must be read in the context of the distinction the Chief Justice drew between a ministerial request outside the context of an audit and one made in the context of a specific audit (*BP Canada* at para 67). Also, I agree with the Minister that the doctrine of legitimate expectations does not assist Zeifmans' substantive concerns regarding the RFI.

4. *Was the RFI unreasonable due to lack of clarity or because the Minister did not make enquiries or seek clarification from the CRA audit team prior to its issuance*

[77] Zeifmans submits that the RFI is unclear in many respects, most notably in its definition of the Unnamed Persons as those "entities owned, operated, controlled or otherwise connected" (Zeifmans' emphasis) with the Named Persons. Zeifmans states that the words "otherwise connected" are inherently ambiguous with the result that the RFI poses unreasonable risk. Zeifmans argues that it may face serious consequences for any failure to comply with the RFI, including a section 231.7 compliance order and/or the penalties contemplated by section 238 of the ITA. It follows that the RFI must be clear, precise and capable of meaningful compliance.

[78] I agree with Zeifmans that a requirement for information must be worded with sufficient precision to enable meaningful compliance by the recipient (*Nadler (Estate) v Canada (Attorney General)*, 2005 FC 935 at para 9) but I am not persuaded that the RFI fails to meet this threshold. The Minister has a duty to ensure taxpayers comply with the ITA and must be able to obtain access to their books and records to do so. Neither the CRA nor the Minister can be expected to know the structure of each taxpayer's personal and business holdings. This is one of the reasons Parliament crafted the Minister's authority to collect information under the ITA in broad terms.

[79] The requirements for information that were the subject of a number of the cases cited above are instructive. Examples of the wording of those requirements are:

- *Advantage Credit Union* (at para 6): The requirement requested account information for named individuals and "all joint accounts in the names of any of those persons and another or others and all entries that are known to be or to have been related to the affairs of those persons or any of them, in all other accounts at your branch including casual, manager's sundry and similar accounts". The requirement also requested a statement of particulars of all transactions involving the named persons "either alone or with another

or others, or any person or persons known to be or to have been acting on behalf of those persons or any of them".

- *Amex Canada* (at para 1): The requirement referred to the "business associated with" an individual cardholder.

[80] Entities that are "otherwise connected" to and "operated by" the Named Persons are not as easily defined as those controlled by the Named Persons. However, the knowledge of the group's business structure and the genesis of the offshore income that is a focal point of the CRA's audit lies with the Named Persons and Zeifmans. The Minister knows only that the Named Persons operate through offshore entities and trusts. The Information Sheet sets out the Minister's concerns regarding the Named Persons' operating structure and history and provides context for the references to the Unnamed Persons.

[81] Having regard to the statutory framework of section 231.2 and the Information Sheet, I find that the RFI reasonably describes the entities that fall within the group of Unnamed Persons at issue. I also find that the RFI intelligibly details the information required by the Minister when read in its entirety, including the references highlighted by Zeifmans (*Vavilov* at paras 94, 97).

[82] Finally, Zeifmans submits that the Minister's delegate acted unreasonably in not making any inquiries or seeking clarification from the CRA audit team following his review of the Information Sheet and proposed RFI letter. As such, the Minister did not consider all relevant facts or carry out a reasonable analysis prior to issuing the RFI.

[83] Zeifmans has cited no authority for its submission, whether statutory or jurisprudential, nor has it identified specific facts that were not before the Minister. I agree that the Minister had

a duty to consider all relevant and material facts but find that there is no evidence she failed to do so. The Information Sheet provides comprehensive information regarding the Named Persons and the CRA's concerns of unreported offshore income and unexplained transactions, the history of the audit, the Named Persons' failures to comply with prior requests and the reasons for the RFI. Zeifmans has not pointed to any errors in the Information Sheet.

[84] I find that the Minister made no reviewable error in relying on the information in the record or in proceeding without further inquiry (*Turp v Canada (Foreign Affairs)*, 2018 FCA 133 at para 64).

V. Costs

[85] During the hearing of this application, the parties agreed to discuss the quantum of costs to be awarded. I have since received and reviewed correspondence from the parties and will adopt the proposal negotiated by the parties. Given my decision to dismiss Zeifmans' application, the Minister is entitled to costs from Zeifmans in the amount of $4,000.00, inclusive of disbursements and tax.

JUDGMENT IN T-400-19

THIS COURT'S JUDGMENT is that

1. The Application for Judicial review is dismissed.

2. The Applicant, Zeifmans LLP, shall pay the Respondent, the Minister of National Revenue, costs of this application in the amount of $4,000.00, inclusive of disbursements and tax.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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