

Date: 20020422

Docket: T-643-02

Toronto, Ontario, Monday the 22nd day of April, 2002

PRESENT: Roger R. Lafrenière, Esquire
Prothonotary

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

- and -

NEIL T. NORRIS

Respondent

DIRECTIONS

[1] By letter dated April 18, 2002, counsel for the Applicant seeks directions from the Court pursuant to Rules 54 and 55 of the *Federal Court Rules, 1998* authorizing the Applicant to institute proceedings under subsection 231.7 of the *Income Tax Act* by way of motion under Rule

358 *et seq.* rather than by way of application under Rule 300 *et seq.* Counsel attaches to her letter a Notice of Motion and supporting affidavit and requests that a court file number be assigned. The matter was referred to the Court for directions pursuant to Rule 72.

[2] Subsections 231.1 to 231.6 of the *Income Tax Act* set out the rules relating to the powers of the Canada Customs and Revenue Agency to audit and examine taxpayer's books and records. Subsection 231.7, which was recently enacted, allows the Minister of National Revenue to seek an order from the Court, requiring a person to provide access, assistance, information or documents sought under sections 231.1 or 231.2, by way of summary application to a judge. Such relief can be obtained by the Minister upon service of a "notice of application" and upon providing five clear days notice to the person against whom the order is sought.

[3] Counsel for the Applicant submits that the procedure which governs applications in the *Rules* is incompatible with the summary proceedings brought pursuant to subsection 231.7, which are meant to be heard on five days notice. She further submits that the procedure for motions under Rule 358 *et seq.* should apply, thereby providing an expedited hearing while at the same time affording adequate procedural safeguards.

[4] Rule 62(1) of the *Federal Court Rules, 1998* provides that all proceedings before this Court must be commenced by the issuance of an originating document. According to Rule 63(1), an application must be commenced by notice of application, unless otherwise provided by or

under an Act of Parliament. Subsection 231.7 explicitly states that compliance orders be obtained by “notice of application” and does not prescribe any other method to institute such proceedings. In the absence of an underlying proceeding, a notice of motion cannot subsist independently and must therefore be rejected.

[5] Although a proceeding under subsection 231.7 of the *Income Tax Act* must be brought by way of notice of application, the procedure set out in the *Federal Court Rules, 1998* which governs applications appears ill-suited for summary disposition of such matters. Consequently, in this particular case and subject to any further directions or order of the Court, the following procedure should be followed in the proposed proceeding under subsection 231.7.

[6] The Applicant shall file a Notice of Application in Form 301, to be treated by the Registry as both an originating document and notice of motion, which shall:

- (a) set out the day, time and place at which the application will be heard, either at a General Sittings of the Court or such special sitting date as may have been appointed by the Judicial Administrator upon informal request by the Applicant;
- (b) be amended by deleting any references to Rule 300 *et seq.*;
- (c) contain a notice in capital and bold characters which reads as follows: “The Respondent who wishes to oppose the application shall serve a Respondent’s

Record and file three copies of it not later than 2:00 p.m. on the last business day before the hearing of the application.”; and

(d) be accompanied by the appropriate filing fee.

[7] Once the Notice of Application has been filed, the Applicant shall personally serve the Respondent with an Application Record containing a table of contents, the notice of application, each supporting affidavit and documentary exhibit and the Applicant's memorandum of fact and law. The Applicant shall file three copies of the Application Record, and proof of service thereof in accordance with ss. 237.1 of the *Income Tax Act*, forthwith and in any event no later than two clear days before the return date of the hearing of the application.

“Roger R. Lafrenière”

Prothonotary