

**Date: 20090422**

**Docket: T-1074-08**

**Citation: 2009 FC 395**

**Ottawa, Ontario, April 22, 2009**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**STANLEY DINGMAN**

**Applicant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**O'KEEFE J.**

[1] This is an application for judicial review of the decision of Canada Revenue Agency (CRA) in relation to requirements to pay received by the applicant. These requirements to pay were issued to 1094238 Alberta Ltd. and 870413 Alberta Ltd. for tax arrears of Stanley Dingman (the applicant) dated June 17, 2008.

[2] The applicant requested that the following relief be granted:

1. An order declaring that the above mentioned requirements to pay are invalid and unlawful as there were no legal warnings received by Stanley Dingman as is required per Taxation Operations Manual, section 2253.4(2)(B);
2. An order declaring that the above mentioned requirements to pay are invalid and unlawful as there was no provisions for statutory right of appeal as per section 18.1 of the *Federal Courts Act*;
3. An order or orders quashing or setting aside the requirements to pay as per section 18.1 of the *Federal Courts Act*;
4. An order that the applicant should not be required to pay costs to the respondent of this application, pursuant to Rule 400 of the *Federal Court Rules*, in the event that this application is dismissed; and
5. Such further and other relief as this Honourable Court may deem just.

### **Background**

[3] On November 27, 2001, the applicant was reassessed for the 2000 taxation year in the amount of \$5,484.64 and issued a notice of assessment indicating an amount then owing of \$5,687.79. The applicant did not file a notice of objection in response to this reassessment.

[4] The applicant is a director and sole voting shareholder of 1094238 Ltd. (the applicant's corporation). Canada Revenue Agency obtained bank records of the applicant for the purpose of collecting the applicant's tax debt.

[5] The applicant was found to be receiving cheques from 870413 Alberta Ltd. (Graham's Backhoe Service) and depositing these cheques into his corporation. Two requirements to pay naming the applicant as the tax debtor were issued to Graham's Backhoe Service and the applicant's corporation. On July 10, 2008, the applicant filed a notice of application seeking judicial review of the decisions to issue the requirements to pay.

### **Minister's Decision**

[6] The Minister issued a requirement to pay on June 17, 2008 to 1094238 Alberta Ltd. and 870413 Alberta Ltd. after conducting a review of bank records which showed that the applicant had been receiving cheques from 870413 Alberta Ltd. and depositing the cheques into a bank account belonging to the applicant's corporation, 1094238 Alberta Ltd.

### **Issues**

[7] The applicant has submitted the following issues for consideration:

1. There were no legal warnings sent to the applicant prior to the requirement to pay.
2. There were no provisions for a statutory right of appeal in the requirement to pay.
3. The applicant did have contractual agreements contrary to the respondent.

[8] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Did the Minister commit a reviewable error in not providing warning to the applicant that a requirement to pay would be sent to 1094238 Alberta Ltd. and 870413 Alberta Ltd.?

3. Did the Minister commit a reviewable error in not providing the opportunity for an appeal?

4. Did the Minister commit a reviewable error when he issued a requirement to pay to 1094238 Alberta Ltd. and 870413 Alberta Ltd.?

### **Applicant's Submissions**

[9] The applicant alleges that he is not an employee of 870413 Alberta Ltd. and has suffered damages through breach of privacy and confidentiality and defamation of character, from this requirement to pay. He also submits that he has never received a response from his November 6, 2002 letter requesting all information pertaining to the tax assessment so as to dispute and/or disprove tax arrears.

[10] The applicant alleges that according to the Tax Payer Bill of Rights #7, "You have the right, as an individual, not to pay income tax amounts in dispute before you have had an impartial review." The applicant alleges that he did have a contractual agreement contrary to the respondent's "Exhibit B" ruling, therefore solid grounds for an impartial review exists.

[11] The applicant submits that in the event that a review does not concur with the applicant's position, then the Taxpayer's Bill of Rights #12 should come into force which states, "You have the

right to relief from penalties and interest under tax legislation because of extraordinary circumstances.”

### **Respondent’s Submissions**

[12] The respondent submits that there are three issues in this application for judicial review. First, the respondent submits that unless the applicant submits a motion pursuant to Rule 302 of the *Federal Court Rules*, S.O.R./98-106 (the Rules), permitting him to seek judicial review of both requirements to pay within a single application, the application is “technically invalid”.

[13] Second, the respondent submits that the applicant has named the wrong respondent to the application. The respondent submits that the “Minister of National Revenue” is the proper respondent because of subsections 244(1) and 248(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (ITA), and states that it is the Minister of National Revenue who has the statutory right to issue a requirement to pay. The respondent also submits that CRA and the collections officer, G. Gregory Roy, act on behalf of the Minister and perform functions in the Minister’s name. Therefore, the respondents will make a motion to remove the respondents named in the style of cause and substitute “The Minister of National Revenue” as the sole respondent to this application for judicial review.

[14] Third, the respondent argues that decisions by the Minister to issue requirements to pay were reasonable which the respondent argues, is the standard of review to be applied in this case. It is

argued that the decision by the Minister is a discretionary one under subsection 224(1) of the ITA which states:

Where the Minister has knowledge or suspects that a person is, or will be within one year, liable to make a payment to another person who is liable to make a payment under this Act (in this subsection and subsections 224(1.1) and 224(3) referred to as the “tax debtor”), the Minister may in writing require the person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor’s liability under this Act.

[15] The purpose of the provisions, the respondent submits, is to “effectively intercept” the debt owed to the tax debtor and that this is one of many tools used by the Minister in collecting tax debts.

[16] The respondent states that the evidence shows that the Minister was reasonable in issuing a requirement to pay to Graham’s Backhoe Service because numerous cheques were payable to the applicant in 2007 and 2008, and these were in turn deposited into the applicant’s corporation.

[17] The respondent submits that requirements to pay were a “proper attempt” to collect the applicant’s outstanding tax debt and within the power and discretion of the Minister as conferred under the ITA.

[18] The respondent rejects the applicant’s argument that the requirements to pay were issued “with no legal warning”. The respondent states that this argument could “be construed as a complaint that absent advance notice he was denied a right to be heard by the decision maker”. The respondent submits that there is no requirement to issue a legal warning in the ITA. The respondent

argues that even if there was a requirement to issue a legal warning, the evidence shows that this would have been “generously met” by the notice of assessment dated June 13, 2002; at least six letters between October 2002 and February 2006 requesting payment, of which at least five warned that legal action might be taken without further notice; and a letter dated October 31, 2002 requesting payment with an explicit warning that legal action may be taken without further notice.

[19] The respondent submits that the Federal Court does not have jurisdiction to review the employment insurance ruling referred to in the letter dated October 30, 2000 which led to the notice of assessment because it is barred by operation of sections 91 and 103 of the *Employment Insurance Act*, R.S.C. 1996, c. 23 (EIA), which states that an employment insurance ruling would have to be appealed to the Tax Court of Canada within the prescribed period. Further, when applying section 18.5 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (FCA), this Court has said that when attacking a requirement to pay, it cannot be an attack on the underlying assessment where the appeal goes to the Tax Court of Canada. In any case, the respondent argues that the applicant is barred because it was not argued in the notice of application.

[20] Relief from interest and penalties is also barred because it was not argued in the notice of application and there is no evidence that the applicant applied to the Minister of National Revenue for such relief pursuant to subsection 220(3.1) of the ITA.

[21] The respondent submits that this judicial review should be dismissed with costs after allowing the applicant’s single application for judicial review to address both requirements to pay, and after amending the style of cause.

## **Analysis and Decision**

[22] There are two preliminary issues to address: the motion to amend the style of cause naming the Minister of National Revenue rather than the collections officer, G Gregory Roy and CRA and whether the two requirements to pay that were issued are judicially reviewable under a single application. The Federal Court of Appeal in *Stevens v. Canada (Commissioner, Commission of Inquiry)* 1998 CanLii 9074 (F.C.A.) noted the legal principle from an English case, that dealt with joinder of a party: *Amon v. Raphael Tuck & Sons Ltd.*, [1956] 1 Q.B. 357 which stated that a party named in an action should be bound by the result of that action. In this case the collections officer exercises his discretion in collection activities on behalf of the Minister and would not personally be bound by the Court's order in this case, pursuant to subsections 244(1) and 248(1) of the ITA. Therefore, the style of cause should be amended naming the Minister of National Revenue and deleting G Gregory Roy, Collection Enforcement Officer and the Canada Revenue Agency as respondents.

[23] At the hearing of this matter, the parties agreed that pursuant to Rule 302 of the *Federal Court Rules*, I could order that both requirements to pay could be dealt with in the same judicial review application.

[24] **Issue 1**

What is the appropriate standard of review?



The questions under review involve questions of mixed law and fact and questions of law. Last year in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the Supreme Court of Canada reviewed the standard of review analysis in Canada and eliminated the standard of patent unreasonableness. In doing so, the Supreme Court stated the following about the reformed standard of review analysis at paragraph 62:

In summary, the process of judicial review involves two steps. First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.

[25] In *Beaulieu v. Canada (Attorney General)*, 2008 FC 1236, Mr. Justice Shore examined the case law on discretionary decisions made by the Canada Revenue Agency:

18. In *Barron v. Canada (Minister of National Revenue - M.N.R.)*, 97 D.T.C. 5121, [1997] F.C.J. No. 175 (QL), the Federal Court of Appeal states the reasons serving as the basis for reviewing the exercise of the discretionary power by the Minister's delegate. Indeed, the judge flags and reiterates the comments of Mr. Justice Louis Pratte:

[79] ... when an application for judicial review is directed against a decision made in the exercise of discretion, the reviewing Court is not called upon to exercise the discretion conferred upon the person who made the decision and "the Court may intervene and set aside the discretionary decision upon review only if that decision was made in bad faith, if its author clearly ignored some relevant facts or took into account irrelevant facts or if the decision is contrary to law.

(As quoted by Mr. Justice J. François Lemieux in *Wyse v. Canada (Minister of National Revenue - M.N.R.)*, 2007 FC 535, 313 F.T.R.

161; also, *Plattig v. Canada (Attorney General)*, 2003 FC 1074, 239 F.T.R. 290 at paragraph 22.)

19. In a similar case, Mr. Justice Michel Beaudry stated: "The Court will intervene only where the decision is based on an unreasonable explanation. The Court must assess whether the reasons for the decision are tenable." (*Gagné v. Canada (Attorney General)*, 2006 FC 1523, 2007 D.T.C. 5087 at paragraph 15.)

[26] Therefore, although jurisprudence has not determined what standard of review to apply on requirement to pay decisions specifically, I find that the case law on discretionary decisions of CRA point to a reasonableness standard. This is in accordance with *Dunsmuir* above, where discretionary decisions are to be afforded a high degree of deference. For a decision to be unreasonable, it must be also determined to be improper within the meaning of subsection 18.1(4) of the FCA.

[27] **Issue 2**

Did the Minister commit a reviewable error in not providing warning to the applicant that a requirement to pay would be sent to 1094238 Alberta Ltd. and 870413 Alberta Ltd.?

The applicant alleges that he is not an employee of 870413 Alberta Ltd. and has suffered damages through breach of privacy and confidentiality and defamation of character from this requirement to pay and that he has never received a response from the November 6, 2002 letter requesting all information pertaining to the tax assessment so as to dispute and/or disprove tax arrears.

[28] I find, however, that the applicant received ample warning that legal action may be taken to collect the debt owing to the Crown. It was incumbent on the applicant to pursue an appeal on his

reassessment for the 2000 taxation year and he chose not to. Since then the applicant received multiple letters requesting payment. These letters stated:

If you fail to pay the full amount within 14 days, we may have to take appropriate legal action without further notice.

[29] In any case, I agree with the respondent that there is no legal requirement to issue a warning. I would not allow the judicial review on this ground.

[30] **Issue 3**

Did the Minister commit a reviewable error in not providing the opportunity for an appeal?

The jurisprudence on the jurisdiction of the Federal Court to review tax assessments is clear: there is no jurisdiction according to section 18.5 of the *Federal Courts Act* and sections 91 and 103 of the *Employment Insurance Act*. The applicant would have had to appeal through the Tax Court of Canada. I would not allow the judicial review on this ground.

[31] **Issue 4**

Did the Minister commit a reviewable error when he issued a requirement to pay to 1094238 Alberta Ltd. and 870413 Alberta Ltd.?

The Minister of National Revenue has a statutory duty to collect debts owing to the Crown under subsection 224(1) of the *Income Tax Act*. I cannot accept that this decision was made in bad faith, that the Minister “clearly ignored some relevant facts or took into account irrelevant facts or that the decision is contrary to law” (see *Barron* above). The applicant was given ample opportunity to pay the debt over six years.

[32] The applicant argues that it was not reasonable to issue a requirement to pay to 870413

Alberta Ltd. because he was not an employee. Subsection 224(1) of the ITA states in part:

Where the Minister has knowledge or suspects that a person is, or will be within one year, liable to make payment to another person who is liable to make payment under this Act...

[33] The section does not stipulate that the applicant would have had to be an employee only that “another person” would be liable to him for payment. The decision of the Minister to issue requirements to pay was therefore reasonable. I would not allow the judicial review on this ground.

[34] The application for judicial review is therefore dismissed.

**JUDGMENT**

[35] **IT IS ORDERED that:**

1. G. Gregory Roy, Collection Enforcement Officer and Canada Revenue Agency are deleted as respondents in the style of cause and The Minister of National Revenue is added as the respondent.

2. Both requirements to pay decisions or orders can be dealt with in the one judicial review application.

3. The application for judicial review is dismissed.

“John A. O’Keefe”

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Judge

## ANNEX

**Relevant Statutory Provisions**

The relevant statutory provisions are set out in this section.

*Federal Courts Rules (SOR/98-106):*

302. Unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought.

302. Sauf ordonnance contraire de la Cour, la demande de contrôle judiciaire ne peut porter que sur une seule ordonnance pour laquelle une réparation est demandée.

*The Income Tax Act, R.S.C. 1985, c. 1 (5th Suppl.):*

222.(1) The following definitions apply in this section.

222.(1) Les définitions qui suivent s'appliquent au présent article.

"action"

«action »

"action" means an action to collect a tax debt of a taxpayer and includes a proceeding in a court and anything done by the Minister under subsection 129(2), 131(3), 132(2) or 164(2), section 203 or any provision of this Part.

«action » Toute action en recouvrement d'une dette fiscale d'un contribuable, y compris les procédures judiciaires et toute mesure prise par le ministre en vertu des paragraphes 129(2), 131(3), 132(2) ou 164(2), de l'article 203 ou d'une disposition de la présente partie.

"tax debt"

«dette fiscale »

"tax debt" means any amount payable by a taxpayer under this Act.

«dette fiscale » Toute somme payable par un contribuable sous le régime de la présente loi.

(2) A tax debt is a debt due to Her Majesty and is recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided by this Act.

(2) La dette fiscale est une créance de Sa Majesté et est recouvrable à ce titre devant la Cour fédérale ou devant tout autre tribunal compétent ou de toute autre manière prévue par la présente loi.

224.(1) Where the Minister has knowledge or suspects that a person is, or will be within one year, liable to make a payment to another person who is liable to make a payment under this Act (in this subsection and subsections 224(1.1) and 224(3) referred to as the “tax debtor”), the Minister may in writing require the person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor’s liability under this Act.

224.(1) S’il sait ou soupçonne qu’une personne est ou sera, dans les douze mois, tenue de faire un paiement à une autre personne qui, elle-même, est tenue de faire un paiement en vertu de la présente loi (appelée « débiteur fiscal » au présent paragraphe et aux paragraphes (1.1) et (3)), le ministre peut exiger par écrit de cette personne que les fonds autrement payables au débiteur fiscal soient en totalité ou en partie versés, sans délai si les fonds sont immédiatement payables, sinon au fur et à mesure qu’ils deviennent payables, au receveur général au titre de l’obligation du débiteur fiscal en vertu de la présente loi.

...

...

(3) Where the Minister has, under this section, required a person to pay to the Receiver General on account of a liability under this Act of a tax debtor moneys otherwise payable by the person to the tax debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the

(3) Lorsque le ministre a, sous le régime du présent article, exigé d’une personne qu’elle verse au receveur général, à l’égard d’une obligation imposée à un débiteur fiscal en vertu de la présente loi, des fonds payables par ailleurs par cette personne au débiteur fiscal à titre d’intérêt, de loyer, de

requirement applies to all such payments to be made by the person to the tax debtor until the liability under this Act is satisfied and operates to require payments to the Receiver General out of each such payment of such amount as is stipulated by the Minister in the requirement.

rémunération, de dividende, de rente ou autre paiement périodique, cette exigence s'applique à tous les versements de ce genre à faire par la personne au débiteur fiscal tant qu'il n'a pas été satisfait à l'obligation imposée par la présente loi, et porte que des paiements soient faits au receveur général sur chacun des versements, selon le montant que le ministre fixe dans l'avis de l'exigence.



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1074-08

**STYLE OF CAUSE:** STANLEY DINGMAN  
- and -  
MINISTER OF NATIONAL REVENUE

**PLACE OF HEARING:** Calgary, Alberta

**DATE OF HEARING:** March 10, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT OF:** O'KEEFE J.

**DATED:** April 22, 2009

**APPEARANCES:**

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