

**Date: 20070912**

**Dockets: A-50-06  
A-174-06**

**Citation: 2007 FCA 280**

**CORAM: RICHARD C.J.  
SHARLOW J.A.  
TRUDEL J.A.**

**A-50-06**

**BETWEEN:**

**BARRY JOHN WALSH, PAUL WALSH, FRANCIS WALSH,  
1327827 ONTARIO LTD. and 1297190 ONTARIO LTD.**

**Appellants**

**and**

**THE MINISTER OF NATIONAL REVENUE,  
HER MAJESTY THE QUEEN**

**Respondents**

**BETWEEN:**

**A-174-06**

**BARRY JOHN WALSH,  
1327827 ONTARIO LTD. and 1297190 ONTARIO LTD.**

**Appellants**

**and**

**THE MINISTER OF NATIONAL REVENUE,  
HER MAJESTY THE QUEEN**

**Respondents**

Heard at Toronto, Ontario, on September 12, 2007.

Judgment delivered from the Bench at Toronto, Ontario, on September 12, 2007.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**SHARLOW J.A.**

**Date: 20070912**

**Dockets: A-50-06  
A-174-06**

**Citation: 2007 FCA 280**

**CORAM: RICHARD C.J.  
SHARLOW J.A.  
TRUDEL J.A.**

**A-50-06**

**BETWEEN:**

**BARRY JOHN WALSH, PAUL WALSH, FRANCIS WALSH,  
1327827 ONTARIO LTD. and 1297190 ONTARIO LTD.**

**Appellants**

**and**

**THE MINISTER OF NATIONAL REVENUE,  
HER MAJESTY THE QUEEN**

**Respondents**

**BETWEEN:**

**BARRY JOHN WALSH,  
1327827 ONTARIO LTD. and 1297190 ONTARIO LTD.**

**A-174-06**

**Appellants**

**and**

**THE MINISTER OF NATIONAL REVENUE,  
HER MAJESTY THE QUEEN**

**Respondents**

**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario, on September 12, 2007)

**SHARLOW J.A.**

[1] These two appeals are from orders of Justice Hugessen. The first order, dated January 19, 2006, allowed the motion of the respondents (who I will refer to collectively as the “Crown”) to strike the application of the appellants Barry John Walsh, Paul Walsh, Francis Walsh, 1327827

Ontario Ltd. and 1297190 Ontario Ltd. (T-990-05) for judicial review of the decision of the Minister of National Revenue to reassess those parties under the *Income Tax Act* (2006 FC 56). The second order, dated April 12, 2006, dismissed the motion of the appellants Barry John Walsh, 1327827 Ontario Ltd. and 1297190 Ontario Ltd. to convert to an action their earlier application (T-733-04) to quash certain “requirements for information” issued by the Minister in reliance on section 231.2 of the *Income Tax Act* (2006 FC 489).

### Facts

[2] The Minister issued the requirements for information on March 10, 2004. The stated purpose of the requirements was to obtain books and records in respect of the tax affairs of the appellants Barry John Walsh, 1327827 Ontario Ltd. and 1297190 Ontario Ltd. (who will be referred to collectively as the “First Three Parties”).

[3] The First Three Parties filed an application for judicial review (T-733-04) on April 8, 2004 to challenge the requirements on constitutional and other grounds. That proceeding is pending and is under case management.

[4] In April and May of 2005, the Minister reassessed the First Three Parties, and also Paul Walsh and Francis Walsh (who will be referred to collectively as the “Other Parties”), for their 2001 and 2002 taxation years. That prompted a second judicial review application filed June 7, 2005 by the First Three Parties and the Other Parties seeking to quash the reassessments on the basis that they were issued in reliance on information obtained pursuant to the challenged requirements.

Notices of objection were filed in relation to those reassessments, which means that they can be put before the Tax Court of Canada in due course.

[5] In August of 2005, the Crown filed a notice of motion for an order to strike the second application for judicial review on the basis that the Federal Court lacked the jurisdiction to grant the relief sought.

[6] In November of 2005, before that motion was dealt with, the First Three Parties and the Other Parties filed a notice of motion for an order joining the two applications and converting the combined proceeding into an action, and in the alternative for an order for the production of certain records that were not produced by the Minister under Rule 317 but which were alleged to have been before the Minister when the decision was made to issue the requirements.

[7] Justice Hugessen dealt first with the Crown's motion to strike. He granted it. That is the subject of the first appeal (A-50-06).

[8] Justice Hugessen then dealt with the motion to convert the remaining application into an action and the motion for the production of documents. He dismissed those motions. That is the subject of the second appeal (A-174-06).

The first appeal (A-50-06) – order striking the second application for judicial review

[9] The relief sought in the second application for judicial review was a declaration that the reassessments are unlawful or improper in a number of respects. Justice Hugessen concluded that the only purpose of such a declaration would be to serve as the foundation for the substantive relief, which is to set aside the reassessments, a remedy that is outside the jurisdiction of the Federal Court.

He said, at paragraph 5 of his reasons (2006 FC 56), that such relief would be “a meaningless exercise when divorced, as it must be, from the substantial question as to the validity of the assessment itself”. We agree with those conclusions, and with the decision of Justice Hugessen to strike the second application for want of jurisdiction.

The second appeal (A-174-06) – refusing to convert the first application into an action

[10] The second appeal is from the decision of Justice Hugessen to dismiss the motion to convert the first application into an action. That is a discretionary decision. We find nothing in the record that warrants the intervention of this Court.

[11] Justice Hugessen also refused the request for further production and expansion of the certified tribunal record on the basis that he was not persuaded that the requested documents were part of the record upon which the Minister made the impugned decision. That is a factual conclusion that was open to Justice Hugessen on the record.

Conclusion

[12] For these reasons, both appeals will be dismissed with costs. A copy of these reasons will be filed in A-50-06 and A-174-06.

“K. Sharlow”

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-50-06

**(APPEAL FROM A DECISION OF JUSTICE HUGESSEN, FEDERAL COURT DATED  
JANUARY 19, 2006 IN FILE T-990-05**

**DOCKET:** A-174-06

**(APPEAL FROM A DECISION OF JUSTICE HUGESSEN, FEDERAL COURT DATED APRIL 12,  
2006 IN FILE T-733-04**

**STYLE OF CAUSE:** A-50-06

BETWEEN:

BARRY JOHN WALSH, PAUL WALSH, FRANCIS WALSH,  
1327827 ONTARIO LTD. and 1297190 ONTARIO LTD.

Appellants

and

THE MINISTER OF NATIONAL REVENUE,  
HER MAJESTY THE QUEEN

Respondents

A-174-06

AND BETWEEN:

BARRY JOHN WALSH,  
1327827 ONTARIO LTD. and 1297190 ONTARIO LTD.

Appellants

and

THE MINISTER OF NATIONAL REVENUE,  
HER MAJESTY THE QUEEN

Respondents

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 12, 2007

**REASONS FOR JUDGMENT**

**OF THE COURT BY:** (RICHARD C.J., SHARLOW J.A. & TRUDEL J.A.)

**DELIVERED FROM  
THE BENCH BY:**

SHARLOW J.A

**APPEARANCES: (Cont'd)**

Rocco Galati

FOR THE APPELLANTS

Pierre Trottier

FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

Galati Law Firm  
Toronto, Ontario

FOR THE APPELLANTS

John H. Sims, Q.C.  
Deputy Attorney General of Canada

FOR THE RESPONDENTS