Federal Court of Appeal  Cour d'appel fédérale

Date: 20210324

Docket: A-241-20

Citation: 2021 FCA 62

[ENGLISH TRANSLATION]

CORAM: **GAUTHIER J.A.**
RIVOALEN J.A.
LOCKE J.A.

BETWEEN:

BLUE BRIDGE TRUST COMPANY INC.

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Online videoconference hearing organized by the Registry on February 9, 2021.

Judgment delivered at Ottawa, Ontario, on March 24, 2021.

REASONS FOR JUDGMENT BY: RIVOALEN J.A.

CONCURRED IN BY: GAUTHIER J.A.
LOCKE J.A.

Federal Court of Appeal  Cour d'appel fédérale

Date: 20210324

Docket: A-241-20

Citation: 2021 FCA 62

CORAM: **GAUTHIER J.A.**
RIVOALEN J.A.
LOCKE J.A.

BETWEEN:

BLUE BRIDGE TRUST COMPANY INC.

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

REASONS FOR JUDGMENT

RIVOALEN J.A.

I. Introduction

[1] Blue Bridge Trust Company Inc. (the appellant) is appealing against a Federal Court decision rendered on September 11, 2020 (2020 FC 893) (the Decision) by Justice Lafrenière (the judge). The judge dismissed the appellant's applications for declaratory relief and judicial review and allowed the applications of the Minister of National Revenue (the Minister) under

subsection 231.7(1) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the Act) and Article 26 of the *Convention Between of the Government of Canada and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital*, Canada and France, May 2, 1975, [1976] CTS No. 30, amended version (the Convention).

[2] This appeal is the culmination of requirements for information and documents (RFIs) sent by the Minister under subsection 231.2(1) of the Act care of the appellant regarding French residents who were being audited by the French tax authorities. France had been seeking to exchange this tax information with Canada since 2012 under an obligation set out in Article 26 of the Convention.

[3] Article 26 of the Convention, reproduced in Appendix A of these reasons, provides for the exchange of information between the two States. According to this article, the information required must be *foreseeably relevant* for carrying out the provisions of the Convention insofar as the *taxation thereunder is not contrary to the Convention*.

[4] This appeal primarily involves the application of Article 26 of the Convention to the facts of the case and the Minister's obligations regarding France's requests for information and documents relating to Trusts of which the appellant is a trustee.

II. Facts and proceedings

[5] At paragraphs 8 to 46 of the Decision, the judge clearly described the relevant facts and the many steps leading to the commencement of several proceedings before the Federal Court. Here, I will simply provide a general description of some essential elements.

[6] Since 1975, Canada and France have been parties to the Convention that is based on the Organization for Economic Co-operation and Development (OECD) Model Tax Convention on Income and on Capital. As a member of the OECD, Canada is party to several international agreements providing for the exchange of tax information between countries. Countries that are signatories to such agreements exchange tax information as extensively and transparently as possible, while complying with the agreements and their domestic laws.

[7] The Minister is responsible for the application of these international agreements. The Minister has established a procedure for examining requests for assistance from requiring States, which he says complies with the principles governing these agreements.

[8] In 2011, France adopted the *Loi n° 2011-900 du 29 juillet 2011 de finances rectificative pour 2011* (*Loi rectificative de 2011*), whose apparent purpose was to reform the taxation of assets by broadly rebalancing wealth taxation methods, in particular by adapting the solidarity tax on wealth (ISF) and by introducing a *sui generis* levy.

[9] The appellant is a trustee of Canadian Trusts that have been the subject of 14 requirements for information sent by France in connection with audits of its tax services involving 11 French residents. After reviewing the requirements, the Minister sent the appellant RFIs pursuant to subsection 231.2(1) of the Act. The information required included: (1) the identity of the beneficiary(ies) of the Trusts; (2) the detailed inventory of the property, rights and capitalized products of the Trusts, their "market value", as well as any amendment, transmission, allocation or disposal; (3) the total amount of the assets of certain Trusts; and (4) a copy of the balance sheets and T3 statements of the Trusts (Appellant's Memorandum of fact and law at paragraph 26). The appellant provided certain information regarding two of the Trusts requested by the Minister, with the exception of information regarding the details of the capital account.

[10] With respect to the appellant's refusal to provide certain information and documents covered by the RFIs, the appellant indicated that if disclosed, such information could lead to taxation contrary to the Convention. Accordingly, the appellant filed applications for declaratory relief and judicial review in the Federal Court pursuant to paragraphs 18(1)(*a*) and 18.1(3)(*b*) of the *Federal Courts Act*, R.S.C., 1985, c. F-7. In addition to the cancellation of the RFIs, the appellant sought an order essentially declaring that it was not subject to French tax law in its capacity as a trustee of the Trusts, and that the Convention does not allow French taxes to be collected on Canadian capital that has no nexus with France (Decision at paragraph 47).

[11] For his part, the Minister applied to the Federal Court for enforcement orders pursuant to subsection 231.7(1) of the Act. Subsection 231.7(1) of the Act is also reproduced in Appendix A of these reasons.

III. Federal Court decision

[12] The judge dismissed the appellant's applications because, in his opinion, the Federal Court does not have jurisdiction to rule on the declarations sought by the appellant. The judge also ruled that even if the Court had jurisdiction, the appellant had not demonstrated that the prescribed conditions for granting declaratory relief had been met. In this regard, he noted that the appellant's questions were moot because the audits by the French authorities had not yet been completed and had not yet given rise to an assessment. In addition, the judge considered that France should have been a party to the proceedings (Decision at paragraphs 68-78).

[13] The judge limited himself to deciding whether the conditions of Article 26 of the Convention and those set out in subsection 231.7(1) of the Act had been satisfied (Decision at paragraph 7). According to the judge, these conditions had been satisfied. He was therefore in a position to dismiss the application to cancel the RFIs and to exercise his discretion to order the appellant to supply the information and documents required by the Minister under subsection 231.7(1) of the Act (Decision at paragraphs 122-125).

[14] The judge ordered the appellant to comply with the RFIs based on subsection 231.2(1) of the Act and Article 26 of the Convention within 30 business days from the date of the decision. He ordered the appellant to provide the Minister with the information and documents described in the RFIs, in particular, (1) any information relating to the identification of the settlors of the Trusts for any persons who contributed property, rights or other assets; (2) with respect to the balance sheets, provide information and documents in the available format, including

information relating to the composition of assets and liabilities as of the dates mentioned on the RFIs; and (3) with respect to the inventories, provide the information and documents in the available format, including information relating to the inventory on the dates mentioned in the RFIs.

[15] By letter dated October 7, 2020, the parties said they had agreed to a temporary stay of the Federal Court judgment until the hearing in this Court. As I understand this, the Minister agreed not to take any action if the information and documents required were not produced by the deadline set by the Federal Court. The Minister therefore did not respond to the motion for a stay brought before this Court under rule 398 of the *Federal Courts Rules*, SOR/98-106 (the Rules), which Justice de Montigny had declared noncompliant with the Rules in a directive dated December 2, 2020.

[16] The appellant is asking this Court to allow this appeal, to set aside the judgment of first instance and to render a judgment allowing the applications for declaratory relief and judicial review. Having thus cancelled the RFIs, the Minister's requirements under subsection 231.7(1) of the Act and Article 26 of the Convention should also be dismissed. If the appeal is dismissed, the appellant is asking this Court to stay execution of the Federal Court's judgment for 60 days, so that it can appeal to the Supreme Court of Canada, if necessary.

[17] For the reasons that follow, I find that this appeal should be dismissed, with costs.

IV. Issues

[18] The issues are as follows: Did the judge err:

A. in dismissing the appellant's applications for declaratory relief and judicial review?

B. in issuing the production orders requested by the Minister on the ground that the conditions prescribed by Article 26 of the Convention and subsection 231.7(1) of the Act were met?

V. Standard of review

[19] The first issue involves the exercise of the judge's discretion to dismiss the applications for declaratory relief and judicial review. As confirmed by *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215, [2017] 1 F.C.R. 331 at paragraphs 66 and 79, the standards of review set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 [*Housen*] apply. The standard of review on a question of law is correctness, and the standard of review on questions of fact or of mixed fact and law is palpable and overriding error, except where a question of law can be isolated and, therefore, examined on the standard of correctness.

[20] The second issue involves subsection 231.7(1) of the Act. Subsection 231.7(5) of the Act provided that an order made by the judge pursuant to subsection 231.7(1) may be appealed against. The application of this provision raises a question of mixed law and fact that requires deference to the extent that it is not possible to isolate a question of law; the standards of review

set out in *Housen* apply here as well. (See also *BP Canada Energy Company v. Canada (National Revenue*), 2017 FCA 61, [2017] 4 F.C.R. 355 at paragraph 56).

VI. Analysis

A. *Did the judge err in dismissing the appellant's applications for declaratory relief and judicial review?*

[21] The appellant raised two errors in the judge's analysis.

[22] It submits that the judge erred in law at paragraph 68 of the Decision by dismissing its applications for declaratory relief and judicial review on the ground that the Federal Court did not have the necessary jurisdiction to decide the issued raised in the applications, whereas the courts' powers of review and supervision in matters of interpretation and application of international treaties are recognized in Canadian case law.

[23] According to the appellant, the judge also erred in law in holding that it was not open to the Federal Court to rule on the declarations sought or decide the issues raised on judicial review because that called for a decision on the merits of a dispute between the appellant and France, rather than the Minister. According to the appellant, the controversy is only between the parties, in Canada, under the Convention and Canadian law.

[24] In my opinion, these arguments cannot be accepted.

[25] Read in context and in the light of the arguments before him, I understand that the judge ruled on the issue of the Federal Court's jurisdiction over the application for declaratory relief, and not on the issue of judicial review. At any rate, this issue cannot be determinative because the judge also held that even if he had jurisdiction, he would not grant the remedies requested.

[26] With respect to the question of the applications for general declaratory relief, the judge found that the appellant's submissions were based on facts that the Minister could not verify and they would force the Minister to decide in advance on the validity of potential assessments of French taxpayers on the basis of incomplete facts and a superficial knowledge of French tax law (Decision at paragraphs 75-76).

[27] In my opinion, the judge did not err in exercising his discretion to dismiss the appellant's applications. Here, there is no expert evidence regarding French law, and there is no doubt that the Court did not have all the relevant facts before it to grant such declaratory relief. I do not agree with the appellant that only Canadian law was involved in its applications and that the controversy did not in any way involve the interests of France.

[28] Both parties cited a Federal Court case, *Hillis v. Canada (Attorney General)*, 2015 FC 1082, [2016] 2 F.C.R. 235 [*Hillis*] because it dealt with an issue similar to the one before this Court. In *Hillis*, the plaintiffs sought a general declaration and a permanent prohibitive injunction preventing the Minister from automatically collecting and disclosing taxpayer information to the United States pursuant to the *Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act*, S.C. 2014, c. 20, s. 99. The Federal Court concluded that, at this

point in time, it was not in a position to make a general declaration having the legal effect of exempting all Canadian citizens from the application of US tax laws on the basis of the double taxation exception. It also noted that the Contracting State was not a party to the proceedings. In addition, the Court noted that the Minister did not have the relevant facts, nor the required expertise in US tax law, to determine the potential US tax liability of US persons residing in Canada – even less so the Court (*Hillis* at paragraphs 26, 44, 76). In my view, this reasoning also applies to the appeal before this Court because we are at the preliminary stage of exchanges of information between the Contracting State (France) and Canada pursuant to a convention, and not the determination of a tax liability.

[29] With respect to the appellant's applications for judicial review, it is true that in general, the Minister's decisions to issue RFIs are subject to judicial review. However, the Court may decline to intervene in the administrative process and may refuse to grant a remedy for reasons other than the merits of the application for judicial review. In my opinion, the judge did not err in choosing not to rule on the merits of these applications, nor in exercising his discretion to dismiss them.

[30] In short, the appellant has not persuaded me that the judge erred in denying the applications for declaratory relief and judicial review.

B. *Did the judge err in issuing the production orders sought by the Minister on the grounds that the conditions prescribed by Article 26 of the Convention and subsection 231.7(1) of the Act were met?*

(1) The appellant's position on the application of Article 26 of the Convention

[31] The judge issued the production orders sought by the Minister on the ground that the conditions prescribed by Article 26 of the Convention and subsection 231.7(1) of the Act were met. Article 26 of the Convention provides that the competent authorities of the Contracting States shall exchange information that is *foreseeably relevant* for carrying out the provisions of the Convention. Based on the fact before him, the judge held that the information requested by France was foreseeably relevant for applying the provisions of the Convention. In addition, the judge accepted the Minister's submission that the primary objective of Article 26 of the Convention is not to restrict the scope of the exchange of information, but rather to encourage it to the maximum extent possible (Decision at paragraphs 20 and 91).

[32] As to the issue of the conditions prescribed by Article 26 of the Convention, the appellant submitted several written arguments. I will reiterate the most important ones.

[33] The appellant submits that the judge erred in law when he identified the legal standards governing the interpretation of Article 26 of the Convention because he limited himself to only one of its objectives, namely to "promote the exchange of information to the maximum extent possible", and because he applied it indiscriminately to the conditions of "foreseeable relevance" and "insofar as taxation is not contrary to the Convention" (Decision at paragraphs 20 and 91). Essentially, it argues that without considering these two important conditions, the judge could not make the orders requested by the Minister under subsection 231.7(1).

[34] The appellant added that the judge erred in law in failing to draw any conclusions with respect to the second condition, and only emphasizing the "foreseeable relevance" standard

(Decision at paragraphs 114-115). The appellant insists that the Minister admitted that the second condition was assessed against an objective standard and that he admitted that he did not perform a thorough analysis of this condition during his review process.

[35] Consequently, the appellant submits that when the Minister receives a request for assistance from a foreign state pursuant to a tax convention, it is his responsibility to verify that the conditions set out in the conventions are met before he sends the requested information. According to the appellant, if the recipient of an RFI considers that the Minister has failed to comply with this obligation, it for the Minister, and if not, the Federal Court, to perform the necessary analysis pertaining to the second condition of Article 26 of the Convention to determine whether taxation under the *Loi rectificative de 2011* is contrary to the Convention, which was not done. The appellant argued that this failure to conduct an analysis pertaining to the second condition constitutes an error of law.

[36] During the hearing in this Court, the appellant emphasized the fact that the judge erred because he did not consider the second condition, *i.e.*, that the taxation could contravene the Convention. I understand from the appellant's arguments that it maintains that the Minister was responsible for ensuring that France not tax the French residents concerned in a manner contrary to the Convention, even before France had the opportunity to complete its review of the French taxpayers' file. It argued that the appellant's assets, the capital of the Trusts, would indirectly be subject to taxation by France and that as a result, the Canadian tax base on property owned by Canadian residents would be eroded. In this case, the Trusts were established in Canada, but some of the beneficiaries were French residents in the relevant taxation years. The appellant

alleged that the entire property of the Trusts could be subject to French tax, pursuant to the *Loi rectificative de 2011*. It argues that the *Loi rectificative de 2011* attaches all the property of foreign Trusts to a French settlor or beneficiary in order to subject them to ISF rules. If the information requested by France is provided by the Minister, there is a possibility of taxation contrary to the Convention.

(2) The appellant's position on the application of subsection 231.7(1) of the Act

[37] With respect to subsection 231.7(1) of the Act, the parties agree that three conditions must be met for the judge to exercise the discretion conferred by this provision. The judge must be satisfied that (1) the appellant is required to provide the information or documents sought by the Minister and that the Minister acted for purposes involving the administration or enforcement of the Convention; (2) the appellant did not provide the information or documents; and (3) the information or documents are not protected by solicitor-client privilege (*Canada (National Revenue) v. Chamandy*, 2014 FC 354, 452 F.T.R. 261, at paragraphs 27-29).

[38] The appellant submits that the judge erred in law in concluding that the Minister's duties with respect to analyzing requests for assistance from France were strictly limited to the time they were received and that it was not open to the Minister, nor the Federal Court, to re-analyze them based on the evidence adduced by the appellant. The appellant further argues that these requests did not undergo a compliance review until the RFIs were issued for the purposes of requesting the order. According to the appellant, requests for assistance must be reviewed on an ongoing basis, in the light of all the evidence presented by Canadian taxpayers.

(3) Analysis pertaining to the application of Article 26 of the Convention

[39] In my opinion, despite the interesting arguments raised by the appellant in its memorandum of fact and law and during the hearing, I cannot accept any of them.

[40] First, considering the application of Article 26 of the Convention, the judge was satisfied that the Minister examined France's RFIs in accordance with the applicable principles, taking into account the file before him, and that they met the conditions of Article 26 of the Convention.

[41] I am not persuaded that the judge erred in law. I am of the view that even if the appellant raised questions as to whether French tax systems conforms with the Convention, at this stage, and on the basis of the appeal case before this Court, I am not in a position to conclude that the potential assessments will be contrary to the Convention. I do not accept the appellant's submissions that there was an error of law because, in my opinion, the judge was not in a position to conclusively determine whether the taxation contemplated by France ran counter to the Convention. In this case, the appellant did not offer expert evidence with respect to French law. That fact had to be supported by satisfactory evidence. It follows that the judge was unable to rule on the effect of the *Loi rectificative de 2011*. Furthermore, we are not at the assessment stage because the required information has still not been disclosed.

[42] The RFIs requested by France are used to determine whether one of the following regimes applies: income tax, ISF tax and a *sui generis* levy, and gift, transfer and/or estate taxes (Appeal Book, Vol. 23, page 4460-1). The Minister insists that the appellant does not question

whether assessments on the income of French residents or on gifts, transfers and/or inheritances would contravene the Convention. The appellant's position with respect to income tax was that no additional information was required to make assessments (Appeal Book, Vol. 3-A, page A-411).

[43] Next, the appellant submits that the judge erred in law by failing to analyze the principles under which France claims to be entitled to levy French taxes on the property held by the Trusts notwithstanding the Convention and that this amounts to an attempt by France to circumvent the Convention. According to the appellant, the legal fiction that France introduced through the *Loi rectificative de 2011,* by attaching all the assets of a foreign trust company to a French settlor or beneficiary in order to submit them to the rules of the ISF would run counter to Article 22(6) of the Convention because, according to this article, only Canada has exclusive jurisdiction to tax the capital of Canadian trusts. There is disagreement on the effect of the application of the envisaged ISF regime and whether this application is contrary to Article 22 of the Convention. The French authority considers that certain assets received or placed by French taxpayers in a foreign trust may be subject to French tax even if they are located in Canada, without contravening the Convention (Appeal Book, Vol. 23-B, page B-4460-1). In addition, France does not deny that international tax treaties prevail over certain rules of territoriality set out in the *Loi rectificative de 2011* (Appeal Book, Vol. 32-B, page B-6282).

[44] In my view, not only is there insufficient evidence relating to French law to rule on this legal issue, but the appellant's argument is based on facts that were not ascertained and could not be ascertained by the Minister at this stage. The Minister did not check the identity of the

constituents of the Trusts nor the location of the assets of the Trusts. Therefore, the appellant's submissions must be rejected. The appellant does not dispute that the persons identified by France and are subject to its audits are indeed French residents.

[45] Similarly, the appellant maintained that the judge committed an error of law by failing to conclude that the taxation contemplated by France is contrary to the Convention when he noted that the French tax authorities had indicated to the Minister that assets placed in a foreign trust may be subject to French tax under its laws, even though he recognized the principle that tax treaties prevail over domestic legislation.

[46] Once again, I do not find any such error. The judge referred to French domestic law in order to respond to the appellant's contention that the RFIs were based on incorrect information and on the assessment of the foreseeable relevance of the requested information. He did not refer to French domestic law to determine whether the contemplated tax is contrary to the Convention (Decision at paragraphs 108-113). I do not see any contradiction in the judge's analysis. Nor does he argue that France can circumvent the Convention under its domestic law.

[47] In addition, in rejecting the appellant's interpretation of the Minister's duties to analyze requests for assistance, the judge's reasoning is not based on the continuity of the duty, but on the depth of analysis required to fulfill such a duty. The judge correctly held that the duty to perform a thorough investigation and analysis of the facts and the law of the requesting State would disrupt the effective and efficient operation of the provisions of the Convention (Decision

at paragraph 89). It was primarily the intensity of the Minister's duty as proposed by the appellant, and not the moment at which it materialized, that the judge rejected.

[48] In any event, it is clear that in ruling that the Minister had correctly applied the standard of foreseeable relevance, the judge considered all the evidence adduced by the appellant and not only the facts before the Minister at the time that the RFIs were issued (Decision at paragraph 94). In my opinion, the judge did not err in failing to analyze the validity of the French tax system in the light of the case before him.

[49] However, the judge acknowledged that once the assessments have been issued, if any, the French taxpayers will be entitled to challenge them before the competent French authorities, and they, or the appellant, will be entitled to file a request for assistance with the competent authorities under Article 25 of the Convention (Decision at paragraph 66). At that time, the Minister will be able to take an informed position on the validity of the tax system.

(4) Analysis pertaining to the application of subsection 231.7(1) of the Act

[50] With respect to the application of subsection 231.7(1) of the Act, the judge was satisfied, on the basis of the appeal case before him, that the facts adduced in evidence met the conditions set out in the subsection on a balance of probabilities (*Roofmart Ontario Inc. v. Canada (National Revenue*), 2020 FCA 85, 448 D.L.R. (4th) 437 at paragraph 21; *Canada (National Revenue) v. Lee*, 2016 FCA 53, 481 N.R. 100, at paragraphs 5-6). In my opinion, the judge did not err in finding that such was the case and in exercising his discretion in favour of the Minister (Decision at paragraphs 82, 121). Here, in view of the facts, the conditions of

subsection 231.7(1) are satisfied because (1) the appellant must provide the information or documents required by the Minister, and the Minister acted for purposes connected with the administration or enforcement of the Convention; (2) the appellant did not provide the information or documents; and (3) the information or documents are not protected by solicitor-client privilege.

[51] Considering the appeal case before him, the judge did not err in exercising his discretion in favour of the Minister pursuant to subsection 231.7(1) of the Act.

VII. Conclusion

[52] In short, the judge did not commit any errors that would warrant our intervention in dismissing the applications for declaratory relief and judicial review. Nor did he err in granting the Minister's requests for orders because the appellant failed to provide the information or documents in accordance with Article 26 of the Convention. The judge interpreted the Convention correctly, and the appellant did not persuade me that, if applicable, any potential assessment by France would run counter to the Convention.

[53] For all these reasons, I would dismiss the appeal with costs.

A. Stay of order

[54] At the conclusion of the hearing in this Court, the appellant applied for a stay of order under Rule 398 of the Rules if its appeal was dismissed. It did not submit any arguments other

than its right to appeal our decision to the Supreme Court. I note that the motion record filed in this Court on October 6, 2020 does not directly address this issue and Rule 398 does not apply to it. In addition, given the irregularities noted by Justice de Montigny and the agreement reached between the parties, the Minister did not file a respondent's motion record. Therefore, I do not propose to grant this application for stay. However, taking into account the agreement between the parties, I recognize that it might be in the interests of justice to give the appellant an opportunity to comply with the judgment of the Federal Court rendered on September 11, 2020. I would therefore give the appellant 30 days from the date of this judgment to comply with the judgment rendered by the Federal Court. This time limit will allow the appellant to file an application for leave to appeal and to choose the appropriate course of action to protect its rights, if any, under the rules of the Supreme Court.

"Marianne Rivoalen"
J.A.

"I agree.
Johanne Gauthier J.A."

"I agree.
George R. Locke J.A."

APPENDIX A

***Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.)**	***Loi de l'impôt sur le revenu*, L.R.C. (1985), ch. 1 (5e suppl.)**
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 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,	**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 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.
…	[…]
Compliance order	**Ordonnance**
231.7(1) On summary application by the Minister, a judge may, notwithstanding subsection 238(2), order a person to provide any access, assistance, information or document sought by the Minister under section	**231.7(1)** Sur demande sommaire du ministre, un juge peut, malgré le paragraphe 238(2), ordonner à une personne de fournir l'accès, l'aide, les renseignements ou les documents que le ministre cherche à obtenir en

231.1 or 231.2 if the judge is satisfied that

(*a*) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document and did not do so; and

(*b*) in the case of information or a document, the information or document is not protected from disclosure by solicitor-client privilege (within the meaning of subsection 232(1)).

…

Appeal

231.7(5) An order by a judge under subsection (1) may be appealed to a court having appellate jurisdiction over decisions of the court to which the judge is appointed. An appeal does not suspend the execution of the order unless it is so ordered by a judge of the court to which the appeal is made.

***Convention Between Canada and France for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*, Canada and France, May 2 1975, [1976] R.T. Can. No. 30**

Article 26 Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to

vertu des articles 231.1 ou 231.2 s'il est convaincu de ce qui suit :

a) la personne n'a pas fourni l'accès, l'aide, les renseignements ou les documents bien qu'elle en soit tenue par les articles 231.1 ou 231.2;

b) s'agissant de renseignements ou de documents, le privilège des communications entre client et avocat, au sens du paragraphe 232(1), ne peut être invoqué à leur égard.

[…]

Appel

231.7(5) L'ordonnance visée au paragraphe (1) est susceptible d'appel devant le tribunal ayant compétence pour entendre les appels des décisions du tribunal ayant rendu l'ordonnance. Toutefois, l'appel n'a pas pour effet de suspendre l'exécution de l'ordonnance, sauf ordonnance contraire d'un juge du tribunal saisi de l'appel.

***Convention entre le Canada et la France tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune*, Canada et France, 2 mai 1975, [1976] R.T. Can. No. 30**

Article 26 Échange de renseignements

1. Les autorités compétentes des États contractants échangent les renseignements vraisemblablement pertinents pour appliquer les dispositions de la présente

the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

Convention ou pour l'administration ou l'application de la législation interne relative aux impôts de toute nature ou dénomination perçus pour le compte des États contractants dans la mesure où l'imposition qu'elles prévoient n'est pas contraire à la Convention. L'échange de renseignements n'est pas restreint par les articles 1 et 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or the prosecution in respect of, the determination of appeals in relation to taxes, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. Les renseignements reçus en vertu du paragraphe 1 par un État contractant sont tenus secrets de la même manière que les renseignements obtenus en application de la législation interne de cet État et ne sont communiqués qu'aux personnes ou autorités (y compris les tribunaux et organes administratifs) concernées par l'établissement ou le recouvrement des impôts, par les procédures ou poursuites concernant les impôts, par les décisions sur les recours relatifs aux impôts, ou par le contrôle de ce qui précède. Ces personnes ou autorités n'utilisent ces renseignements qu'à ces fins. Elles peuvent faire état de ces renseignements au cours d'audiences publiques de tribunaux ou dans des jugements.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

3. Les dispositions des paragraphes 1 et 2 ne peuvent en aucun cas être interprétées comme imposant à un État contractant l'obligation :

a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting State;

a) de prendre des mesures administratives dérogeant à sa législation et à sa pratique administrative ou à celles de l'autre État contractant ;

b) to supply information that is not obtainable under the laws or in the

b) de fournir des renseignements qui ne pourraient être obtenus sur la

normal course of the administration of that or of the other Contracting State; or

base de sa législation ou dans le cadre de sa pratique administrative normale ou de celles de l'autre État contractant ;

c) to supply information that would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

c) de fournir des renseignements qui révéleraient un secret commercial, industriel, professionnel ou un procédé commercial ou des renseignements dont la communication serait contraire à l'ordre public.

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though the other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

4. Si des renseignements sont demandés par un État contractant conformément à cet article, l'autre État contractant utilise les pouvoirs dont il dispose pour obtenir les renseignements demandés, même s‘il n’en a pas besoin à ses propres fins fiscales. L’obligation qui figure dans la phrase précédente est soumise aux limitations prévues au paragraphe 3 sauf si ces limitations sont susceptibles d’empêcher un État contractant de communiquer des renseignements uniquement parce que ceux-ci ne présentent pas d’intérêt pour lui dans le cadre national.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because the information relates to ownership interests in a person.

5. En aucun cas, les dispositions du paragraphe 3 ne peuvent être interprétées comme permettant à un État contractant de refuser de communiquer des renseignements uniquement parce que ceux-ci sont détenus par une banque, un autre établissement financier, un mandataire ou une personne agissant en tant qu’agent ou fiduciaire ou parce que ces renseignements se rattachent aux droits de propriété dans une personne.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-241-20
STYLE OF CAUSE:	BLUE BRIDGE TRUST COMPANY INC. v. MINISTER OF NATIONAL REVENUE
PLACE OF HEARING:	BY ONLINE VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 9, 2021
REASONS FOR JUDGMENT BY:	RIVOALEN J.A.
CONCURRED IN BY:	GAUTHIER J.A. LOCKE J.A.
DATED:	MARCH 24, 2021

APPEARANCES:

Nicolas X. Cloutier Samuel Julien	FOR THE APPELLANT
Pierre Lamothe Chantal Roberge Nancy Azzi	FOR THE RESPONDENT

SOLICITORS OF RECORD:

McCarthy Tétrault L.L.P. Montreal, Quebec	FOR THE APPELLANT
Nathalie G. Drouin Deputy Attorney General of Canada	FOR THE RESPONDENT