

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20130916**

**Docket: A-469-12**

**Citation: 2013 FCA 215**

**CORAM: SHARLOW J.A.  
STRATAS J.A.  
NEAR J.A.**

**BETWEEN:**

**JEAN BREAU**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

Heard at Toronto, Ontario, on September 16, 2013.

Judgment delivered from the Bench at Toronto, Ontario, on September 16, 2013.

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

**STRATAS J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Toronto, Ontario, on September 16, 2013).**

**STRATAS J.A.**

[1] Mr. Breau appeals from the judgment dated October 17, 2012 of the Federal Court (*per* O'Reilly J.): 2012 FC 1207.

[2] In the Federal Court, Mr. Breau applied for judicial review of the respondent Minister's decision under the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1 to require Mr. Breau and others to provide information concerning a particular tax plan. The Federal Court dismissed the application for judicial review.

[3] Before the Federal Court, Mr. Breau submitted that the Minister issued the requirement for the improper purpose of gathering evidence for a criminal investigation, contrary to section 7 of the Charter and the Supreme Court of Canada's decision in *R. v. Jarvis*, 2002 SCC 73, [2002] 3 S.C.R. 757.

[4] Examining the interactions between the Canadian Revenue Agency's audit and enforcement branches and applying *Jarvis* (especially paragraph 97), the Federal Court rejected Mr. Breau's submission. It held that the Minister's predominant purpose in issuing the requirement was civil in nature.

[5] In this Court, Mr. Breau accepts *Jarvis* as the controlling authority. In Mr. Breau's view, the Federal Court mischaracterized certain matters, thereby wrongly concluding the requirement was civil in nature. In particular, Mr. Breau that submitted the audit branch was acting as an agent for the enforcement branch in collecting evidence, the evidence gathered by the audit branch was relevant to penal liability, and the contact between the audit and enforcement branches while the criminal investigation was ongoing was important and significant.

[6] In our view, the Federal Court's rulings on these matters are questions of mixed fact and law suffused by fact. Therefore, in this Court, Mr. Breau must demonstrate palpable and overriding error in order to set them aside.

[7] This he has not done. In our view, the Federal Court examined the particular constellation of evidence before it, which included some isolated incidents of contact between the audit and enforcement branches after the criminal investigation started. Based on this constellation of evidence, it made defensible findings.

[8] In this Court, Mr. Breau also challenged the Federal Court's overall conclusion that the Minister's predominant purpose in issuing the requirement was civil in nature under the *Jarvis* test. We see no reversible error on the part of the Federal Court based on the particular evidence before it.

[9] In rejecting Mr. Breau's submissions, we do not foreclose a court in any later criminal proceedings from reaching a different conclusion if, based on the evidence then available, a different light is cast on the matter.

[10] For the foregoing reasons, we shall dismiss the appeal, with costs.

"David Stratas"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-469-12

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE O'REILLY OF THE FEDERAL COURT, DATED OCTOBER 17, 2012, DOCKET NO. T-1623-09.**

**DOCKET:** A-469-12

**STYLE OF CAUSE:** JEAN BREAU v. THE MINISTER OF NATIONAL REVENUE

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 16, 2013

**REASONS FOR JUDGMENT OF THE COURT BY:** SHARLOW J.A.  
STRATAS J.A.  
NEAR J.A.

**DELIVERED FROM THE BENCH BY:** STRATAS J.A.

**APPEARANCES:**

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