Docket: 2015-413(IT)G

BETWEEN:

RONALD BAUER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on September 8, 2015 at Vancouver, British Columbia

Before: The Honourable Justice K. Lyons

Appearances:

Counsel for the Appellant:	Gregory P. DelBigio, Q.C. and S. Natasha Reid
Counsel for the Respondent:	David Everett and Sara Fairbridge

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ORDER

UPON motion by the respondent for an Order striking portions of the appellant's Amended Notice of Appeal;

AND UPON reading the Amended Notice of Appeal filed, reading written submissions and hearing argument from counsel for the parties;

THIS COURT ORDERS that:

1. all pleadings in paragraphs 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 38, 39, 40, 41, 42, 44, 47, 48, 53, 54, 55, 56, 57, 58, 59, 61, 62, 63, 66, 67, 68, 69, 70, 72 and portion of paragraph 52 that reads "sections 8 and 24 of the *Charter*, and" are struck from the Amended Notice of Appeal;

2. the sub-headings above paragraphs 53 and 61 entitled “The Bank Records” should be excluded from evidence under 24(2) of the *Charter*” and “The Appellant is entitled to a s.24(1) remedy”, respectively, are struck from the Amended Notice of Appeal;

3. the pleadings in subparagraph 1(b) under section G are struck from the Amended Notice of Appeal;

4. paragraph 37 shall be moved to the Reasons section of the Amended Notice of Appeal;

5. the appellant is denied leave to file a further amended pleading to his Amended Notice of Appeal;

6. within 60 days of the date of this Order, the respondent shall file and serve a Reply to the pleadings that have not been struck in the Amended Notice of Appeal; and

7. costs are fixed at $1,000 and awarded in favour of the respondent.

Signed at Ottawa, Canada, this 31st day of May 2016.

“K. Lyons”

Lyons J.

Citation: 2016 TCC 136
Date: 20160531
Docket: 2015-413(IT)G

BETWEEN:

RONALD BAUER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Lyons J.

[1] The respondent brought a motion to strike ("Motion") portions of the Amended Notice of Appeal pursuant to section 53 of the *Tax Court of Canada Rules (General Procedure)* (the "*Rules*"). Only the Amended Notice of Appeal, filed in August 2015, will be referenced in these Reasons for Order. The impugned pleadings are reproduced on Appendix I of these reasons.

[2] Generally, the grounds in the Motion are that the appellant pled factual allegations, issues and arguments relating to matters outside this Court's jurisdiction which have no chance of success, are frivolous, abusive and, if retained, would delay the appeal. Specifically, the pleading improperly:

a) focuses on conduct of Canada Revenue Agency officials during the investigation, audit, reassessment and objection processes ("CRA officials" and "CRA conduct"), the disclosure of documents under the *Privacy Act* and the legality of the requirements for information ("requirements");

b) raises the Minister of National Revenue's motivation and predominant purpose in issuing the requirements and obtaining from the banks the appellant's bank records, and documents and information derivative of such records, used to issue the reassessments ("records");

c) contends that the Minister abused her audit powers to issue unlawful requirements in the course of an alleged criminal investigation ("investigation");

d) asserts that there has been a violation of his section 8 *Canadian Charter of Rights and Freedoms* (the *"Charter"*) in issuing the requirements and reassessments;

e) seeks *Charter* relief to exclude evidence (records) and vacate the reassessments under subsections 24(2) and 24(1), respectively;

f) challenges the net worth method that CRA officials adopted including the manner of its application; and

g) pleads net worth as a material fact, not as argument.

Historical background

[3] The appellant appealed reassessments made by the Minister relating to his 2007 and 2008 taxation years ("relevant years"). The Minister determined that the appellant had made misrepresentations attributable to neglect, carelessness or wilful default, that he had unreported business income in the amounts of $5,855,773 and $4,815,601, respectively, and is liable for gross negligence penalties thereon ("reassessments").

[4] Prior to moving to and becoming a resident of Canada in 2004, he earned significant sums from various sources outside Canada. During the relevant years, his income consisted of office or employment income from a company controlled by him. During the relevant years, he repaid a portion of disgorged amounts of $840,000 USD. That amount, plus post-judgment interest, was established by a judgment issued February 10, 2006 in respect of a civil complaint by the U.S. Securities and Exchange Commission. The appellant claims the disgorged amounts are deductible under subsection 9(1) and paragraph 20(1)(*c*) of the *Income Tax Act* (the "*ITA*"). At the time of the hearing, the appellant is no longer a resident of Canada.

[5] On December 1, 2010, the CRA Special Investigations division commenced an investigation arising from a referral from a law enforcement agency which alleged that he was engaged in criminal activities. CRA conducted searches for

information on the internet and the BC Assessment Authority's electronic records relating to the appellant.

[6] Before December 6, 2010, the CRA had information and documentation, prepared and provided by his accounting firm on his behalf, including his personal and corporate tax returns. Around December 6-7, 2010, the Minister issued two requirements relating to the appellant, pursuant to subsection 231.2(1) of the *ITA*, to two banks. The banks provided the CRA with records that was mostly relied on by the CRA to perform net worth calculations prepared between December 2010 and were substantially complete by June 1, 2011.

[7] On June 1, 2011, an audit case was opened in the CRA computer system, a CRA official was assigned to the audit, an audit plan was prepared and a letter was sent to the appellant indicating that he had been selected for audit in respect of his 2007 to 2010 taxation years. His representative contacted the CRA. On November 15, 2011, the CRA sent a follow up letter to the appellant followed by a proposal letter in January 2012 relating to the relevant years and 2009. Subsequently, he made submissions, adjustments ensued and reassessments were issued on October 19, 2012 for the relevant years. Allegedly, no "factual audit" was undertaken of his personal tax returns relating to the relevant years.

Principles in Striking Pleadings

[8] The Supreme Court of Canada in *R v Imperial Tobacco Canada Ltd.*,[1] confirmed the principle that a pleading, or portions, will only be struck if it is "plain and obvious", that the pleading discloses "no reasonable cause of action", has "no reasonable prospect of success" or has "no reasonable possibility of success". A high standard must be met. For the pleading to be struck, it must be plain and obvious it will not succeed.[2]

[9] In considering this Motion, I am to presume that the allegations in the impugned pleadings are correct (assuming these are properly pled).

Jurisdiction of the Tax Court

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1 *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 SCR 45.

2 At paragraph 17. See also *Kinglon Investments Inc. v Canada*, 2015 FCA 134, 2015 DTC 5064 (FCA) at paragraph 16 and *Hardtke v The Queen*, 2005 TCC 263, [2005] 3 CTC 2203 [*Hardtke*] at paragraphs 10, 16 and 28, Test - a reasonable possibility of success.

[10] As a statutory Court, this Court has been granted exclusive original jurisdiction to determine references and appeals from assessments (or reassessments) made under the *ITA*.[3] That authority, combined with subsections 169(1) and 171(1) of the *ITA*, limits the Court's statutory jurisdiction to determining the validity and correctness of an assessment as to a taxpayer's liability for the amount of tax assessed and enables the Court to dismiss an appeal or allow an appeal by vacating, varying or referring the assessment back to the Minister for reconsideration and reassessment.

Jurisdiction to strike a pleading under section 53 of the *Rules*

[11] Under the *Rules*, an appellant must articulate in his/her pleading a concise statement of relevant and material facts, the issue(s),[4] the statutory provisions, the reasons relied on and relief sought. All of which defines the dispute and necessarily the scope of documentary production, examination for discovery and trial. The appellant indicated his pleadings were crafted not only to define the issue but to set out the scope of discovery.

[12] Whilst the appellant correctly asserts that subsection 53(1) does not reference jurisdiction, this Court has the jurisdiction to enforce its own *Rules*.[5] strike portions of a pleading "that may prejudice or delay the fair hearing of an action, that is frivolous or vexatious or that is an abuse of the process of this Court".[6] This Court may, on its own volition or on application by a party under subsection 53(1) of the *Rules*, strike out or expunge all or part of a pleading, with or without leave to amend, on the ground that the pleading:

> (a) may prejudice or delay the fair hearing of the appeal;
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> (b) is scandalous, frivolous or vexatious;
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> (c) is an abuse of the process of the Court; or

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3 Section 12 of the *Tax Court of Canada Act*. The Tax Court is a superior Court.

4 Section 48 of the *Rules*. *Luciano v Canada*, 2007 TCC 230, 2007 DTC 706, at paragraphs 2 and 3. Affirmed in 2008 FCA 26.

5 *Hardtke* affirms this Court has jurisdiction under section 53. Also, paragraph 53(3)(*a*) of the *Rules* provides an appeal may be quashed if the court does not have jurisdiction over the subject matter in an appeal.

6 In *Gauthier v Canada*, 2006 TCC 290, 2006 DTC 3050, C. Miller J. notes the similarity of the test in sections 53 and 58 of the *Rules* that pleadings will be struck if it is plain and obvious it will not succeed.

> (d) discloses no reasonable grounds for appeal or opposing the appeal.

[13] Jurisdiction and subsection 53(1) are encapsulated in the recent decision of *Cheikhezzein v Canada*,[7] in which Bocock J. states:

> 15 … Simply put, if a pleading relates to a matter which cannot succeed because the Court lacks jurisdiction, then it is the retention of those "impossibly successful" pleadings which causes the delay (rule 53(*a*), is frivolous (rule 53(*b*)) or is abusive (rule 53(*c*)).

[14] The question on this Motion is: Is it plain and obvious that the arguments to be advanced relating to the impugned pleadings will have no reasonable possibility of success at trial? Broadly, these comprise of:

a) CRA misconduct, the manner/method in which the amount assessed was determined and the processes by which it was established;

b) the exercise of the Minister's powers in issuing the requirements during an investigation resulted in records illegally obtained and used for the reassessments;

c) the issuance of the requirements and reassessments violated his section 8 *Charter* rights; and

d) relief that:

   i) the requirements be "found unlawful";

   ii) the records be excluded under subsection 24(2) of the *Charter*; and

   iii) the reassessments be vacated under subsection 24(1).

Parties' positions

[15] The respondent's position is that the proper issues arising from the reassessments under appeal are those set out in paragraph 3 of these reasons. It is plain and obvious, therefore, that there is no reasonable possibility of success on the matters pled. These matters fall outside this Court's jurisdiction and/or are

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7 *Cheikhezzein v Canada*, 2013 TCC 348, [2013] TCJ No. 310 (QL) [*Cheikhezzein*].

irrelevant to the validity and correctness of the reassessments. Advancing matters that engages areas of documentary and oral discovery involving CRA conduct at various junctures; CRA's selection and implementation of the net worth methodology; the alleged investigation of the appellant; the purpose and legality of the requirements and exercise of the Minister's powers; and disclosure under the *Privacy Act* are frivolous, abusive and if retained would delay the conduct of the appeal within the meaning of subsection 53(1) of the *Rules* and should be struck.

[16] The appellant's position is that this Court has the jurisdiction to consider the matters in the impugned pleadings. He mainly alleges that the Minister abused her powers in issuing unlawful requirements to procure the records from the banks, to further an investigation and not as a serious and genuine inquiry as to his tax liability, thus the records were illegally obtained and relied on by the CRA to issue the reassessments. Therefore his section 8 *Charter* rights were violated in the issuance of the requirements and then the reassessments warranting *Charter*-based relief ("principle argument"). Instead of striking any of his pleadings, he requests that the Court permit his Amended Notice of Appeal to be amended further to more clearly articulate matters over which this Court has jurisdiction.

[17] For the reasons below, I would allow the respondent's Motion to strike all the impugned pleadings on Appendix I to the Reasons for Order except paragraph 37. Paragraph 37 is to be moved to the Reasons section of the Amended Notice of Appeal.

Conduct

[18] The respondent asks that pleadings relating to alleged CRA misconduct, challenges to the choice of the net worth method and its manner of implementation, the processes which established the reassessments and motivation (collectively "CRA conduct and other elements") should be struck because this Court lacks jurisdiction and/or such pleadings are irrelevant to the validity and correctness of the reassessments.[8]

[19] The appellant argues that CRA conduct and other elements are within the purview of this Court's jurisdiction if those relate to "evidence collection conduct" and the determination of the amounts reassessed where the evidence was "obtained in a manner" that infringed section 8 *Charter* rights such that it has application to

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[8] Paragraphs 11, 12, 14 to 26, 44, 47, 53 to 59 and 61 to 63 of Appendix I.

the *Charter* and is relevant to onus[9]. In raising the allegations as to CRA conduct and other elements, he seeks relief that the requirements be found unlawful, the records be excluded and the reassessments be vacated. He relies on the following comment by Sharlow J.A. in *Ereiser v Canada:*

> [40] … The fact that a seizure of documents is unlawful may affect the admissibility of evidence obtained as a result of the seizure, but wrongful conduct unrelated to an evidentiary matter generally is not relevant to the admissibility of evidence.[10]

[20] This, he says, acknowledges that conduct can be material to a tax appeal and in his case wrongful conduct is related to an evidentiary matter and material to his appeal. He was under investigation and the records were obtained by misconduct and this goes to admissibility of evidence. Examples of conduct he highlighted encompass the Minister's exercise of her powers and legality of the requirements issued during an investigation which resulted in obtaining the evidence (records) collection; the issuance of arbitrary reassessments based on incomplete information previously supplied; the selection of the net worth method without contacting him in advance; the flawed application of that method and no factual audit, or concurrent audit, was conducted. All of which derogated, he says, from reaching the appellant's correct tax liability. This goes to onus and the Minister should not benefit from the factual assumptions.

[21] Ostensibly the comment in *Ereiser* is restricted to a seizure context but it is unclear as to what "may" be a factor and it is apparent from other remarks in that case that it involved "unusual circumstances." It is also an obiter comment.

[22] The appellant submits that the evidence collection conduct approach would require the Court to parse problematic conduct, that relates to evidence collection and how the amount assessed was determined, from the rest of the conduct and review the problematic conduct to aid in determining tax liability. In his case, that would entail this Court delving into CRA conduct and the other elements in the examples highlighted which would demonstrate the existence of an investigation. I have concerns about the approach and about the references to the investigation. I will return to the investigation aspect later in my reasons.

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9 Transcript of Motion Hearing, page 80.

10 *Ereiser v Canada*, 2013 FCA 20, 2013 DTC 5036, leave to appeal to SCC refused, 3529 (April 5, 2013) [*Ereiser*], *Ibid* at paragraph 40. See also J.P. Morgan, paragraph 82.

[23] With respect to the approach, the examples of conduct that he focussed on involve areas over which this Court has no jurisdiction. Generally, these relate to the exercise and propriety of the Minister's use of her powers in issuing the requirements (abuse of power) and the processes leading up to the reassessments (abuse of process), not admissibility of evidence. In my view, the approach goes beyond the scope of the comments in Ereiser, is untenable and I fail to see how it would aid in, or link to, the correction of the amount of tax liability.

[24] Significantly, the jurisdictional limits of this Court are not only circumscribed by section 169 of the ITA, but have been consistently reaffirmed by the findings of the Federal Court of Appeal in *Main Rehabilitation Co. v Canada*, *Ereiser*, *Canada (Minister of National Revenue - MNR) v JP Morgan Asset Management (Canada) Inc.* [11] and other jurisprudence. That is, the Tax Court's jurisdiction in a tax appeal is limited to determining if an assessment is valid and correct, but does not include challenges to the processes by which the reassessments and tax liability were established, the manner/method in which the amount was determined, the exercise of ministerial powers nor CRA conduct generally (the "*Main* principle).

[25] In *Main*, Rothstein J.A., as he then was, stated that:

> [8] This is because what is in issue in an appeal pursuant to section 169 is the validity of the assessment and not the process by which it is established […] Put another way, the question is not whether the CCRA officials exercised their powers properly, but whether the amounts assessed can be shown to be properly owing under the Act […][12]

[26] After reaffirming the *Main* principle, the Court in *Ereiser* held that "it is plain and obvious that this Court will not vacate the reassessments under appeal on the basis of the wrongful conduct of a tax official in authorizing them". Sharlow J.A. stated:

> [31] […] the role of the Tax Court of Canada in an appeal of an income tax assessment is to determine the validity and correctness of the assessment based on the relevant provisions of the *Income Tax Act* and the facts giving rise to the taxpayer's statutory liability. Logically, the conduct of a tax official who

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11 *Main Rehabilitation Co. v Canada*, 2004 FCA 403, 2004 DTC 6762 (FCA) [*Main]*; *Ereiser, supra,* at paragraph 21; *Canada (Minister of National Revenue – MNR) v JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, 2014 DTC 5001 [*JP Morgan*].

12 *Main, supra,* at paragraphs 3 and 8.

> authorizes an assessment is not relevant to the determination of that statutory liability. It is axiomatic, the wrongful conduct of an official is not relevant to the determination of the validity or correctness of an assessment. …
>
> > [21] It is also settled law that the Tax Court of Canada does not have jurisdiction to set aside an assessment on the basis of abuse of process or abuse of power (see Main Rehabilitation Co. Ltd. v. The Queen, [2004] F.C.J. No. 2030, 2004 FCA 403, at paragraph 6;…
>
> [Emphasis added]

[27] Even where CRA conduct leading up to an assessment is reprehensible, this Court does not have jurisdiction. As stated by Stratas J.A. in *J.P. Morgan*:

> [83] The Tax Court does not have jurisdiction on an appeal to set aside an assessment on the basis of reprehensible conduct by the Minister leading up to the assessment, such as abuse of power or unfairness[…] If an assessment is correct on the facts and the law, the taxpayer is liable for the tax.[13]

[28] To the extent that the Minister has engaged in reprehensible conduct, the Court in *Ereiser and J.P. Morgan*, noted that other adequate and effective recourses exist outside of the Tax Court appeal process.

[29] In *Johnson v Canada (Minister of National Revenue – MNR)*, 2015 FCA 52, [2015] FCJ No. 216 (FCA), Webb J.A. indicated that "The motivation of the Minister or delay in issuing such assessments are not relevant to" the determination of the validity and correctness of an assessment.[14]

[30] It is plain and obvious that the matters pled and the arguments to be advanced at trial relating to CRA conduct and other elements would have no reasonable possibility of success at trial.

Requirements

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13 *Ibid* at paragraph 83. In *Ereiser*, see paragraphs 36 and 37. *Leroux v Canada (Revenue Agency)*, 2012 BCCA 63, example of tort action in the British Columbia Superior Court. In *J.P. Morgan*, various causes of action are detailed at paragraph 89 noting recourse is available in the provincial superior courts or possibly the Federal Court's judicial review process depending on the issue.

14 At paragraph 4. See also *Addison & Leyen Ltd. v Canada*, 2006 FCA 107, 2006 DTC 6248 (FCA) at paragraph 43.

[31] The appellant claims that his pleadings relating to the requirements are being used in support of his principle argument. He submits that the Supreme Court of Canada decision in *R v Jarvis*, 2002 SCC 73, [2002] 3 SCR 757 [*Jarvis*], and other authorities cited by the respondent, do not cover all the aspects in his appeal.

Jarvis

[32] In *Jarvis*, the Court discussed the regulatory nature of the *ITA*, the supervisory powers and how those are utilized in the self-assessing and self-reporting system. It involved CRA officials' actions in the context of the inspection and requirement powers conferred on the Minister to inspect, audit or examine records and obtain documents and information under subsections 231.1(1) and 231.2(1) of the *ITA* ("inspection and requirement powers", respectively). These are designed to facilitate the Minister's fulfillment of her statutory duty to assess the amount of tax payable in administering or enforcing the *ITA* by verifying the accuracy of a taxpayer's self-assessment of the amount of tax payable reported in the tax return filed.[15]

[33] The decision reached in *Jarvis* safeguards taxpayers against self-incrimination when facing prosecution. Once the predominant purpose of an inquiry is a penal liability that relates to the investigation and prosecution of an offence under section 239 of the *ITA*, CRA officials must relinquish the authority to use the inspection and requirement powers to gather information or documents that may be used for the purpose of advancing the investigation and prosecution as captured in the following summary of the Court's conclusions:[16]

> 2. … While taxpayers are statutorily bound to co-operate with CCRA auditors for tax assessment purposes (which may result in the application of regulatory penalties), there is an adversarial relationship that crystallizes between the taxpayer and the tax officials when the predominant purpose of an official's inquiry is the determination of penal liability. When the officials exercise this authority, constitutional protections against self-incrimination prohibit CCRA officials who are investigating ITA offences from having recourse to the powerful inspection and requirement tools in ss. 231.1(1) and 231.2(1). Rather, CCRA officials who exercise the authority to conduct such investigations must seek search warrants in furtherance of their investigation.

[34] The Court further recognized that whilst barred from using documents and information from the inspection and requirement powers to further an

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15 Paragraphs 49, 50 and 51.

16 *Jarvis*, *supra,* at paragraphs 88 and 97.

investigation, the CRA could use the documents and information for administrative matters, such as a reassessment, based on the distinction between an audit inquiry in administering the *ITA* and an investigation that could lead to criminal charges under section 239.

[35] The Federal Court of Appeal in *Piersanti*, referring to *Romanuk*, followed that approach and stated:

> [7] In dismissing the appellant's motion, the Judge relied on this Court's recent decision in *Romanuk v. R.*, 2013 FCA 133, 445 N.R. 353 (F.C.A.) (leave to appeal to SCC refused, 35480 (November 21, 2013) [2013 CarswellNat 4317 (S.C.C.)]) and held that the CRA could use documents obtained under its audit powers to further an administrative matter, such as a reassessment.
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> [8] *Romanuk* is dispositive of this ground of appeal. In *Romanuk*, Webb J.A. noted paragraph 103 of *Jarvis* and concluded that "… the results [of an audit] can be used in relation to an administrative matter, such as a reassessment".[17]
>
> [Emphasis added]

[36] In *Klundert v Her Majesty the Queen*, 2014 FCA 155, the Court, in referring to *Jarvis*, said "…the Supreme Court of Canada expressly confirmed that although an investigation has been commenced, audit and administration powers may continue to be used in relation to the administration of the *ITA* including in relation to a reassessment."

[37] The respondent submits that *Jarvis*, *Piersanti* and *Romanuk* applies to the appellant's situation since requirements issued during an ongoing investigation permits the CRA to use the records obtained from those requirements provided these are used only for reassessment purposes in determining tax liability. Even if the CRA only contemplated an investigation before issuing requirements, its right to issue requirements continues, provided the information and documents obtained in response to the requirements are used for the purposes of administering the *ITA*, such as a reassessment, to the determine tax liability.

[38] The appellant's stance is that the issuance of the "unlawful" requirements culminated in a seizure of records obtained during or arising from an investigation. His starting point is that the Minister abused her powers in issuing the

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17 *Piersanti*, *supra*, at paragraphs 7-8.

requirements and ultimately places emphasis on the investigation involving penal liability, instead of the determination of tax liability.

[39] Ultimately, the difficulty the appellant faces is that the Tax Court does not have the jurisdiction to set aside an assessment relating to CRA conduct and other elements nor declare that the requirements be "found unlawful". I will expand on these points later in these reasons.

Charter issues

Section 8

[40] Section 8 of the *Charter* has been pled and reads "[e]veryone has the right to be secure against unreasonable search or seizure." Taxpayers are protected by the *Charter* when the predominant purpose of an official's inquiry is the determination of penal liability.[18] It must be apparent that the predominant purpose of an official's inquiry is an investigation relating to the determination of penal liability before section 8 of the *Charter* will be breached if evidence is "illegally obtained."[19]

(a) Requirements

[41] The respondent argues that section 8 of the *Charter* has no application to subsection 231.2(1) of the *ITA* when using requirements relied upon by the Minister to obtain bank records which have a low expectation of privacy when raising an assessment unlike an investigation context. Even if requirements were issued and records obtained in the course of an investigation, CRA conduct relating to the issuance of the requirements and reassessments cannot violate the appellant's rights nor provide a basis for *Charter* based relief.

[42] Integral to the factual allegations pled are that the CRA commenced an investigation against the appellant prior to issuing the requirements, yet the CRA did not attempt to perform a factual audit or a genuine and serious inquiry into the appellant's tax liability. He contends that the Minister's purpose and motivation in issuing requirements was to advance an investigation. Therefore she illegally exercised her authority under subsection 231.2(1) of the *ITA* in issuing the

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18 *R v. Tiffin*, 2008 ONCA 306, at paragraphs 119 and 125 [*Tiffin*].

19 See *R v Ling*, 2002 SCC 74, [2002] 3 SCR 814 at paragraph 5.

requirements in the course of a investigation and the records that were seized, and used in the reassessments, were illegally obtained. Issuance of the requirements and reassessments violates his section 8 *Charter* rights.

[43] Relying on paragraphs 46 and 88 of the Supreme Court of Canada's decision in *Jarvis,*[20] the Federal Court of Appeal in *Romanuk v Canada* held that if information or documents were to be used in the investigation or prosecution of an offence, it would be the particular court presiding over the prosecution of the offence that would be tasked with determining the predominant purpose of the inquiry, and whether the information and documents could also be used for an offence, is not a matter for the Tax Court as the focus of the Tax Court is on determining tax liability. He stated:

> 6. Once the "predominant purpose" of an inquiry is related to the investigation and prosecution of an offence under section 239 of the *Act*, the CRA can no longer use its inspection and requirement powers under subsections 231.1(1) and 231.2(1) of the *Act* to gather information or documents that may be used in such investigation and prosecution.
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> …
>
> 8. … If the information or documents are to be used in an investigation or prosecution of an offence under section 239 of the *Act*, the issue for the particular court dealing with the prosecution of the offence … will be whether the predominant purpose of the exercise of such powers was to gather information or documents for such investigation or prosecution.
>
> [10] … Whether such information and documents could also be used for the purpose of an investigation of an offence under section 239 or the prosecution of such offence is not a matter for the Tax Court of Canada. The only issue before the Tax Court of Canada is the validity of the reassessment, …[21]

[44] In *Romanuk,* the Court found that it was "plain and obvious" that the taxpayer could not succeed as the Minister could use any information or documents obtained using her civil inspection and audit powers to reassess the taxpayer. The CRA's use of information and documents did not violate the appellant's rights as the "CRA has the right to continue to use its audit powers provided that the information or documents are only used for the purposes of administering the Act."

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20 *Jarvis, supra,* at paragraph 88.

21 *Romanuk v Canada*, 2013 FCA 133 [*Romanuk*] at paragraphs 6, 8 and 10.

[45] The Federal Court of Appeal in *Piersanti v R* upheld the Tax Court decision on the basis that *Jarvis* and *Romanuk* was dispositive of the appeal and held that the appellant's sections 7 and 8 rights were not violated when the CRA used information gathered in the course of the investigation to reassess the appellant's tax liability. Before dismissing the appellant's appeal, the Court indicated that the Tax Court had correctly stated that the issue before the Tax Court was the determination of her income tax liability, not penal liability.[22]

[46] In the present appeal, the Tax Court will be tasked with the determination of his income tax liability arising from the reassessments that he appealed. Yet, his pleading is replete with references to an investigation, but also pleads that approximately five days after the investigation commenced, the Minister issued requirements pursuant to subsection 231.2(1) of the *ITA*. He also pleads that records were then obtained pursuant to the requirements and relied on those in reassessing. He claims the Minister's motivation/purpose in issuing the requirements was to procure records to advance the investigation. It does appear, however, from the pleadings that different purposes were at play but it is not obvious what those were. It may well be that the CRA was interested, as pled, in information or documents pertaining to years outside the relevant years under appeal and there may be other explanations in its administration of the *ITA*. It appears that the appellant's situation is similar to *Romanuk* and *Piersanti*. The appellant's focus on the investigation involving penal liability has nothing to do with the determination of tax liability and the correctness of the reassessments. This Court is not concerned with nor tasked with the determination of penal liability, it is concerned with tax liability.

[47] As to the relief sought, the impugned pleading states:

> G. RELIEF SOUGHT
>
> 1. The Appellant asked this Honourable Court to order that:
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> …
>
> (b) the issuance of the Requirements be found unlawful and the Bank Records be excluded from the evidence;

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22 *Piersanti v R*, 2014 FCA 243 [*Piersanti*]. A search warrant was issued at her spouse's law office resulting in criminal charges against both. During the investigation, the CRA also issued third party requirements, under section 289 of the ETA, to banks and others for information which was relied on to reassess both individuals.

[48] Regardless of how the appellant frames his arguments, it is apparent from the relief that the quintessential challenge he makes is first and foremost a foundational challenge to the legality of the requirements in asking that these be "found unlawful". Recognizing that the appellant is claiming such relief in his *Charter* argument, as pled it can also be construed as in the nature of declaratory relief directed against the exercise of the Minister's powers and her decision to issue the requirements under subsection 231.2(1) *ITA*.[23] Challenging the legality of the requirements or her powers is within the domain of the Federal Court.

[49] Subsection 18(3) and section 18.1 of the *Federal Courts Act*, set out the powers and remedies of that Court and provides that proceedings for declaratory relief against the Minister's must be pursued by judicial review application in the Federal Court [24] Subsection 18.1(3) provides:

> 18.1 (3) On an application for judicial review, the Federal Court may
>
> > (*a*) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or
> >
> > (*b*) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

[50] The Federal Court, not the Tax Court, has the jurisdiction to determine the legality of the requirements and declare that the requirements be "found unlawful" as contemplated in paragraph 18.1(3)(*b*) of the *Federal Courts Act*, such that the relief sought from this Court is unattainable.

[51] Inextricably linked to that is the related request for evidence to be excluded. Ultimately, the remedy sought is that the reassessments be vacated under subsection 24(1) of the *Charter*.

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23 The Minister, for the purpose of exercising such powers, is a "federal board, commission or other tribunal" within the meaning of section and paragraph 18(1)(a) of the *Federal Courts Act*. The definition of "judge" in section 231 of the *ITA* means a judge of the Federal Court or a superior court having jurisdiction in the province where the matter arises.

24 See also subsections 2(1), 18.1(1) and (2) of the *Federal Courts Act*, RSC, 1985, c F-7.

[52] It is plain and obvious that questioning the propriety and legality of the issuance of the requirements for records and using those in support of the reassessments while an investigation was ongoing has been decided. Advancing such arguments at trial would have no possibility of success.

(b) Reassessments

[53] The appellant submits that a search and seizure occurred when the illegally obtained records and reassessments arose out of an investigation and violated his section 8 *Charter* rights.

[54] The Court noted in *Smith v Canada*, 2006 BCCA 237 (QL), in referencing other jurisprudence, that taxation does not amount to seizure. I agree with the respondent that the issuance of the reassessments do not constitute a search and seizure within the meaning of section 8 of the *Charter* and is irrelevant to the validity and correctness of the reassessments.[25]

Section 24

[55] If a section 8 *Charter* breach was found at trial because of the issuance of the requirements or the reassessments, a determination is necessary as to whether relief should be granted and the form of that relief under section 24 of the *Charter*. It is undisputed between the parties that as a general proposition this Court has the jurisdiction to grant *Charter* remedies in relation to *Charter* issues. The parties disagree with respect to the applicability of section 24 of the *Charter* in this case and the interpretation and application of *O'Neill Motors Ltd. v R*.

[56] Subsection 24(2) provides for the exclusion of evidence and subsection 24(1) contains a broad discretion to grant "such a remedy as the court considers appropriate and just in the circumstances."[26] The appellant seeks both forms of relief. Specifically, he asks this Court to vacate the reassessments under subsection 24(1) of the *Charter* based on his interpretation of *O'Neill*. He contends that the Federal Court of Appeal in *Main* misinterpreted the same Court's decision in *O'Neill*.

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25 *R v Colarusso,* [1994] 1 SCR 20.

26 *Mills v The Queen*, [1986] 1 SCR 863 at pages 890 and 960. Under subsection 24(1) a court has the power to grant a remedy when its jurisdiction is conferred by statute, over the person and the subject matter and, also has authority to make the order sought.

[57] The respondent says the Court's interpretation in *Main* of *O'Neill*, that a reassessment would only be vacated if the Minister has no evidence available upon which to support the correctness or validity of the reassessment, should be followed. In *Main* the Court stated:[27]

> O'Neil [*sic*] merely stands for the proposition that an assessment may be vacated in an appeal pursuant to section 169 if it is not supported by reason of the exclusion of the evidence which led to its issuance.[28]

[58] The Federal Court of Appeal in *Romanuk* distinguished *O'Neill* as follows:

> [T]his case can be easily distinguished from *O'Neill Motors Ltd.* In *O'Neill Motors Ltd.* the documents had been seized under an illegal search as the search warrant had been issued under a section of the *Act* that was subsequently held to be unconstitutional. There is no allegation here that any documents had been seized under any invalidly issued search warrant. The information and documents in this case were either voluntarily submitted or were obtained by CRA using its audit powers.[29] [Emphasis added]

[59] Webb J.A. remarked that in *Romanuk* there was no allegation of an invalidly issued search warrant and the Minister relied on a constitutionally valid provision in exercising her powers.[30] At the hearing in the present appeal, the appellant suggested that the search warrant feature differentiates *Romanuk* from his situation. However, the appellant's pleading does not refer to an illegally issued search warrant, albeit he suggests the Minister should have obtained a warrant and contends there could have only been an investigation and argues the records were seized. All of which deal with penal liability aspects and irrelevant to his income tax appeal. As well, the appellant's pleadings indicate that requirements were issued after an investigation had commenced and the records were used for the reassessments. Unlike *O'Neill*, subsection 231.2(1) of the *ITA* is constitutionally valid and the appellant was not prosecuted.

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27 *Main Rehabilitation*, *supra,* note 17.

28 *Ibid* at paragraph 13.

29 *Romanuk*, *supra*, at paragraph 9.

30 In *McKinlay,* the Supreme Court of Canada provided the constitutional validation to the predecessor provision to subsection 231.2(1). The Court also described the purpose of the provision as being the least intrusive means by which effective monitoring of compliance can be effected which simply calls for the production of records such that the privacy interest with regard to such documents is relatively low. See paragraphs 23 and 38.

[60] In *O'Neill* the impugned evidence was used for dual purposes: prosecution of an offence and reassessment of income tax. The *Charter* breach resulted in evidence characterized as "illegally obtained" and could not be used against the taxpayer in the penal context. The reassessments were vacated because they had no evidentiary basis because section 231.1 was relied on to obtain such evidence and was declared unconstitutional. Therefore, the same evidence relied upon could be characterized as "illegally obtained" in the reassessment context too but for a different reason. Of note, the trial and appellate Courts in *O'Neill* cautioned that section 24 is an extreme remedy reserved for egregious violations where other remedies are insuffice. To be clear, I agree with *Main's* interpretation and *O'Neill* is distinguishable such that the present appeal aligns with *Romanuk*.[31]

[61] In *Klundert*, the taxpayers alleged that the CRA had used its audit powers to gather information for an ongoing investigation and sought a declaration that the requirements be found unlawful and the records gathering, using the CRA audit powers while such investigation was ongoing, infringed his rights guaranteed under the *Charter*. An exclusion of records was sought under subsection 24(2) of the *Charter* on the basis these had been gathered illegally, were inadmissible and asked that the reassessments be quashed. The Federal Court of Appeal rejected the appellant's arguments and upheld the Tax Court decision.

[62] Similarly, in *Cheikhezzein*, Bocock J. Court considered a motion to strike pleadings involving allegations of ministerial conduct relating to an arbitrary seizure of evidence and section 8 *Charter* violations and abuses during the investigation, audit and assessment processes.[32] He held that this Court lacks jurisdiction to vacate an assessment based on ministerial conduct in the context of section 8, and subsection 24(1) of the *Charter* would not provide a remedy. He stated:

> 14. … This Court cannot begin the legal and factual inquiry into such an issue since it is a means without end; it is a potential right without a statutory remedy in this forum. … Moreover, this Court lacks inherent jurisdiction and has not been given statutory jurisdiction to conduct an analysis into, assess evidence of or invalidate an assessment upon Ministerial Conduct because it is irrelevant to the

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31 *O'Neill Motors Ltd. v R*, [1995] TCJ No 1435 (TCC), aff'd [1998] 4 FC 180 (FCA). Documents were initially seized under a section 231.3 search warrant and later under an improper re-seizure. In a subsequent case, section 231.3 was held to be unconstitutional.

32 *Olumide v The Queen*, 2015 TCC 125 at paragraph 32 and *Bachmann v The Queen*, 2015 TCC 51 at paragraph 47. Misconduct was held not to be a ground for relief in the Tax Court and even if proven is irrelevant in the Tax Court appeal process.

> validity and correctness of the assessment: *Ronald Ereiser v Canada*, 2013 FCA 20, [2013] 3 C.T.C. 49 (FCA) at paragraphs 31 to 33.

[63] Whatever the rationale in the present case as to why the records were obtained through the use of the requirements, in *Jarvis* and *Ling* and the more recent pronouncements in *Piersanti, Romanuk, Klundert* and *Cheikhezzein*, the Courts have firmly rejected the contention that the Minister's issuance of requirements and reassessments based on such documents obtained in response to the requirements could lead to a section 8 *Charter* violation and *Charter* based relief in the Tax Court even when the taxpayer is or was the subject of an ongoing or prior investigation as these are irrelevant considerations to his income tax appeal. Ultimately, the pre-existing records from banks obtained under the requirements, and consistent with *Jarvis*, were used to reassess the appellant's income tax liability and related penalties. I conclude that this Court lacks jurisdiction based on CRA conduct and other elements.

Section 7

[64] The appellant pled that his section 7 *Charter* rights were violated as to "the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice". This occurred when the CRA penalized him by reassessing a large amount of tax payable and subjecting him to choosing between a prejudicial litigation process or paying an arbitrary penal sum.

[65] Section 7 is not broad enough to encompass economic rights or assessments of income tax. As such, this has no bearing on the correctness or validity of the reassessments.[33]

[66] Based on the foregoing reasons, it is plain and obvious that there is no reasonable possibility that the appellant's arguments can succeed at trial in his arguments that the Minister's issuance of the requirements or reassessments violated his section 8 *Charter* rights nor is there any basis for the Court to grant the remedies as to the exclusion of the records and/or vacate the reassessments under section 24 of the *Charter*. It is also plain and obvious that the arguments relating to Section 7 *Charter* rights cannot succeed.

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[33] *Luciano v The Queen*, 2007 TCC 230, 2007 DTC 706.

Privacy Act

[67] The respondent submits that the pleadings relating to the Minister's decision on disclosure under the *Privacy Act* are outside this Court's jurisdiction and irrelevant to the validity and correctness of the reassessments and should be struck.[34]

[68] The appellant asserts that his pleading is to demonstrate alleged criminal investigatory conduct during the *Privacy Act*.

[69] Notwithstanding the appellant's assertion, it appears that the pleadings attempt to place in issue CRA conduct or by pleading allegations relating to the *Privacy Act*, potentially seek disclosure of information denied under the privacy process relating to redactions and communications with law enforcement officials. In either event, such considerations are irrelevant to the correctness of the reassessments. Disclosure under the *Privacy Act* is to be sought by a complaint mechanism with the Privacy Commissioner.[35] If unresolved, a judicial review application can be initiated in the Federal Court which has the jurisdiction.

[70] In *Taylor v The Queen*, the taxpayer had claimed that the respondent had breached the *Privacy Act* and the *Income Tax Act*. The Tax Court noted its jurisdiction is limited to determining whether the tax assessed was properly determined in accordance with the provisions of the *Income Tax Act*.[36]

[71] It is plain and obvious that the appellant could not succeed at trial relating to the pleadings involving the *Privacy Act*.

Net Worth Method

[72] I agree with the respondent's submission that paragraph 37 of the Amended Notice of Appeal is bereft of any material allegations, contains principally argument and is improperly placed under the subheading "Material Facts to be Relied on". It is to be moved to the Reasons (section F).

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34 *Tax Court of Canada Act*, RSC 1985, c T-2, as amended. Section 12 of the *Tax Court of Canada Act*, does not reference the *Privacy Act* as an area of jurisdiction.

35 *Privacy Act*, RSC 1985, c P-21. "Court" in section 3 means the Federal Court. Section 41 sets out the complaint procedure.

36 *Taylor v The Queen*, 2008 TCC 664.

Conclusion

[73] I conclude that based on the foregoing reasons, it is plain and obvious that the factual allegations, issues and reasons pled in support of arguments to be advanced at trial would have no reasonable possibility of success, are abusive and if retained would delay the hearing of the appeal.

[74] The respondent's Motion is granted and the following pleadings are struck from the Amended Notice of Appeal:

a. paragraphs 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 38, 39, 40, 41, 42, 44, 47, 48, 53, 54, 55, 56, 57, 58, 59, 61, 62, 63, 66, 67, 68, 69, 70, 72 and the portion of paragraph 52 that reads "sections 8 and 24 of the *Charter*, and";

b. the sub-headings above paragraphs 53 and 61 entitled "The Bank Records" should be excluded from evidence under 24(2) of the *Charter*" and "The Appellant is entitled to a s.24(1) remedy", respectively; and

c. subparagraph 1(b) under section G.

[75] Paragraph 37 shall be moved to the Reasons section of the Amended Notice of Appeal. Since the appellant seeks to amend by elaborating on the relief, which cannot be granted, this would not cure the pleading and leave is denied to the appellant further amendments his existing Amended Notice of Appeal.

[76] Within 60 days of the date of this Order, the respondent shall file and serve a Reply to the pleadings that have not been struck from the Amended Notice of Appeal.

[77] Costs are fixed at $1,000 and awarded in favour of the respondent.

Signed at Ottawa, Canada, this 31st day of May 2016.

"K. Lyons"

Lyons J.

APPENDIX I

Impugned Paragraphs

11. On or about December 1, 2010, the CRA Special Investigations division commenced investigating the Appellant, further to a referral received from another law enforcement agency which alleged that there were reasonable grounds to believe that the Appellant was engaged in financial criminal activities.

12. The Investigator's first and immediate actions were to:

    (a) On or about December 1, 2010, search the internet for online information relating to the Appellant;

    (b) On or about December 1, 2010, search BC Assessment Authority electronic records for information relating to real properties held in the name of the Appellant; and

    (c) On or about December 6-7, 2010, issue two demands for information and documents relating to the Appellant, purportedly pursuant to subsection 231.2(1) of the *Income Tax Act* (the "Act"), to the Bank of Montreal and to HSBC (the "Requirements").

…

14. Despite being in possession of the information described in paragraph 10, the Investigator relied solely on the Bank Records, and to a very limited extent on the electronic BCAA information referred to in paragraph 12, to perform net worth calculations in respect of the Appellant's 2007 and 2008 taxation years.

15. The net worth method was chosen by the Investigator prior to contacting the Appellant and prior to attempting to undertake a factual audit of the Appellant's T1 income tax returns for the 2007 and 2008 taxation years.

16. The CRA did not attempt to perform a factual audit of the Appellant at any material time.

17. The Investigator's net worth calculations were prepared between December 2010 and June 2011.

18. The Investigator's net worth calculations were substantially completed on or before June 1, 2011.

19. An audit case was first opened in the CRA computer system on June 1, 2011.

20. The screener's comments for the opening of the audit case refer to the Investigations file by file number.

21. The Investigator was first assigned to audit the Appellant on June 1, 2011.

22. The Investigator prepared an audit plan dated June 1, 2011.

23. The Investigator first charged the audit file on June 24, 2011.

24. The Investigator first contacted the Appellant by a standard-form initial contact letter dated June 1, 2011. The letter of June 1, 2011 states that the Appellant has been selected for audit in respect of his 2007 to 2010 taxation years, and states that the Appellant should contact the Investigator within 30 days to schedule a date, time and place for the audit to begin.

25. In response to the June 1, 2011 letter, the Appellant's representative contacted the Investigator as requested, on or about June 30, 2011.

26. The Investigator sent a further letter to the Appellant dated November 15, 2011. The letter states:

    (a) that the Appellant has been selected for audit in respect of his 2007 to 2010 taxation years;

    (b) that the Investigator received no response to his June 1, 2011 letter;

    (c) that the Appellant should contact the Investigator within 15 days to arrange a date for the audit to begin; and

    (d) that the audit *may* involve the preparation of net worth statements.

…

The Net Worth Method

37. The net worth method is, and is known by the Minister to be, a method of determining a taxpayer's income that is:

    (a) arbitrary,

    (b) imprecise,

    (c) inaccurate with a range of indeterminate magnitude, and

(d) a method of last resort.

…

The *Privacy Act* Request

38. The Appellant made a request to the CRA under the *Privacy Act* for all records relating to his 2007 and 2008 taxation years.

39. The materials provided to the Appellant in response to that request included redactions made pursuant to subparagraph 22(1)(a)(i), paragraph 22(1)(b) and section 25 of the *Privacy Act*.

40. In making the redactions referred to in paragraph 39 above, the CRA implemented decisions made by a third party, whom the CRA consulted in respect of the Appellant's *Privacy Act* request.

41. The CRA stated to the Appellant that it was unable to explain the bases for the redactions it implemented on behalf of the third party.

42. The CRA refused to identify the third party to the Appellant but implied that the third party was a law enforcement agency.

…

The Objection Stage

…

44. The Objections process was initially hampered by the Investigations Division's refusal to provide the Appellant's file in respect of the Reassessments to the Appeals Division on the basis that it was "protected".

…

D. ISSUES TO BE DECIDED

47. Whether the Bank Records were obtained illegally and in violation of the Appellant's rights under section 8 [of] the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), because:

(a) The Investigator issued the Requirements in the course of a criminal investigation; and/or

(b) The Investigator issued the Requirements otherwise than in furtherance of a genuine and serious inquiry into the Appellant's tax liability,

and if so,

(c) whether the Bank Records should be excluded from evidence pursuant to subsection 24(2) of the *Charter*,

and if so,

(d) Whether the Reassessments must be vacated as invalid because the Minister is unable to meet her onus under subsection 152(4) of the Act in respect of the issuance of the Reassessments beyond the expiry of the "normal reassessment period";

...

48. Whether the Appellant's s.8 *Charter* rights were breached by the issuance of the Reassessments, by virtue of the Reassessments relying on illegally-obtained information and being issued for an arbitrary amount and for an *ultra vires* purpose, and if so,

(a) whether the Appellant is entitled to a remedy under s. 24(1) of the *Charter*,

and if so,

(b) whether vacating the Reassessments is a just and appropriate remedy.

…

E. STATUTORY PROVISIONS ON WHICH THE APPELLANT RELIES

52. … sections 8 and 24 of the *Charter*, …

…

F. REASONS ON WHICH THE APPELLANT RELIES

The Bank Records should be excluded from evidence under 24(2) of the *Charter*

53. The Investigator was conducting a criminal investigation at the time he issued the Requirements (purportedly) under section 231.2 of the Act.

54. Section 231.2 does not authorize the compelling of information and documents in the context of a criminal investigation.

55. Section 231.2 of the Act authorizes the issuance of a requirement for the purpose of administering and enforcing the Act. This purpose, in relation to the assessment function as opposed to the collection function of the CRA, has also been expressed as a genuine and serious inquiry into the tax liability of a named person. The Investigator did not issue the Requirements for the purpose of administering and enforcing the Act. The Investigator did not issue the Requirements in furtherance of a genuine and serious inquiry into the Appellant's correct tax liability pursuant to the Act.

56. The Requirements were unlawfully (and invalidly) issued, and the Bank Records were thereby unlawfully obtained.

57. The unlawful issuance of the Requirements violated the Appellant's right to be free from unreasonable search and seizure under section 8 of the *Charter*.

58. The Bank Records, and any evidence derivative thereof, should be excluded pursuant to subsection 24(2) of the *Charter*.

59. The Bank Records are essential to the Minister's case. In the absence of the Bank Records, the net worth calculations that underpin the Reassessments have no evidentiary basis and the Minister cannot meet her onus under subsection 152(4) of the Act.

…

The Appellant is entitled to a s. 24(1) remedy

61. The Minister relied upon illegally-obtained information in computing the amount to be assessed against the Appellant.

62. The Minister adopted the net worth method without:

(a) attempting to contact the Appellant;

(b) attempting to contact a "factual audit" of the Appellant's 2007 and 2008 taxation years and/or;

(c) considering the documents and information in CRA's possession as described in paragraph 10 of this Amended Notice of Appeal.

63. There was no examination or review in respect of the Appellant's returns or the information supplied with those returns prior to adopting the net worth method to compute the amounts to be assessed to the Appellant.

…

66. The procedure by which the Reassessments were raised was arbitrary, was carried out without regard to the information in the Minister's possession, without application of the provisions of the Act to that information and by making unreasonable, baseless assumptions (none of which were made, and none of which would be insufficient in any event, to justify reassessing beyond the statutory limitation period).

67. The arbitrary procedure by which the Reassessments were raised demonstrates disregard for the Appellant's correct tax liability.

68. The CRA's purposes in issuing the Requirements and the Reassessments were twofold:

(a) to investigate for or on behalf of the CRA with a view to an offence-related proceeding pursuant to the Act or to assist another law enforcement agency towards an offence-related proceeding pursuant to another enactment; and

(b) to use the CRA's ostensible authority to issue assessments for the purpose of penalizing the Appellant by contriving a large amount payable.

69. As such, the issuance of the Reassessments breached the Appellant's s.8 *Charter* rights.

70. By the Reassessments, the Minister has further placed the Appellant in the position of choosing between subjecting himself to a prejudicial litigation process or paying the arbitrary and penal sum assessed against him. To the extent the Appellant chooses to dispute the Reassessments through the litigation process, the state is positioned to conscript the Appellant into assisting the state with an investigation in respect of another proceeding and providing evidence to be used in such proceeding, which would violate the Appellant's section 7 *Charter* rights.

…

72. The Appellant says that a just and appropriate remedy pursuant to s. 24(1) is the vacating of the Reassessments.

…

G. RELIEF SOUGHT

1. The Appellant asked this Honourable Court to order that:

...

(b) the issuance of the Requirements be found unlawful and the Bank Records be excluded from the evidence;

CITATION:	2016 TCC 136
COURT FILE NO.:	2015-413(IT)G
STYLE OF CAUSE:	RONALD BAUER AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	September 8, 2015
REASONS FOR ORDER BY:	The Honourable Justice K. Lyons
DATE OF ORDER:	May 31, 2016

APPEARANCES:

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