

Federal Court



Cour fédérale

**Date: 20190424**

**Docket: T-1587-18**

**Citation: 2019 FC 506**

**BETWEEN:**

**MINISTER OF NATIONAL REVENUE**

**Applicant**

**and**

**ROOFMART ONTARIO INC.**

**Respondent**

**REASONS FOR ORDER**

**CAMPBELL J.**

[1] This application is brought by the Minister of National Revenue [the Minister] under subsection 231.2(3) of the *Income Tax Act*, RSC 1985 c 1 (5<sup>th</sup> Supp) [ITA] and subsection 289(3) of the *Excise Tax Act*, RSC 1985, c E-15 [ETA] for judicial authorization to impose on Roofmart Ontario Inc. [Roofmart] a requirement to provide information and documents relating to certain unnamed persons [Unnamed Persons Requirement].

[2] The Minister is seeking information about residential and commercial construction contractors who have an account with the Respondent. Namely, the Minister asks for authorization to issue the Unnamed Persons Requirement seeking the following information and documents:

- (a) The Customers' legal name, business or operating name, contact person, business address, postal code, and all telephone numbers on file;
- (b) The Customers' business number, if known;
- (c) The Customers' itemized transaction details including invoice date, invoice number, total sales amount, method of payment, and address of delivery, and
- (d) All bank account information for the Customers (including transit, institution, and account numbers) from credit applications and/or otherwise maintained by Roofmart in its records.

[3] For the period January 1, 2015 to June 30, 2018, the information sought is for those customers whose total annual purchase and/or billed amount is \$20,000 or greater. For the period from January 1, 2018 to June 30, 2018, the data sought is for customers whose total annual purchase and/or billed amount is \$10,000 or greater. The Minister intends to give Roofmart 60 days to comply with the Requirement.

[4] In support of her application, the Minister has provided an affidavit by Mark Blackmore, an Analyst in the Workload Development Section of the Canada Revenue Agency [the Blackmore Affidavit]. The Blackmore Affidavit states that the Minister seeks to verify whether the Customers, who purchased roofing and building supplies and materials from Roofmart, have complied with their duties and obligations under the *ITA* and the *ETA*. The Affidavit states that the application is brought in the context of studies which have found that an estimated 28% of the residential construction industry's business is unreported or under-reported.

[5] Subsections 231.2(1), 231.2(2) and 231.2(3) of the *ITA* provide as follows:

**Requirement to provide documents or information**

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,

(a) any information or additional information, including a return of income or a supplementary return; or

(b) any document.

**Marginal note: Unnamed persons**

(2) The Minister shall not impose on any person (in this section referred to as a “third party”) a requirement under subsection 231.2(1) to provide information or any document relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection

**Production de documents ou fourniture de renseignements**

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) qu’elle fournisse tout renseignement ou tout renseignement supplémentaire, y compris une déclaration de revenu ou une déclaration supplémentaire;

b) qu’elle produise des documents.

**Note marginale : Personnes non désignées nommément**

(2) Le ministre ne peut exiger de quiconque — appelé « tiers » au présent article — la fourniture de renseignements ou production de documents prévue au paragraphe (1) concernant une ou plusieurs personnes non désignées nommément, sans y être au préalable autorisé par un juge

231.2(3).

**Marginal note: Judicial authorization**

(3) A judge of the Federal Court may, on application by the Minister and subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person or more than one unnamed person (in this section referred to as the “group”) if the judge is satisfied by information on oath that

(a) the person or group is ascertainable; and

(b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.

en vertu du paragraphe (3).

**Note marginale : Autorisation judiciaire**

(3) Sur requête du ministre, un juge de la Cour fédérale peut, aux conditions qu’il estime indiquées, autoriser le ministre à exiger d’un tiers la fourniture de renseignements ou la production de documents prévues au paragraphe (1) concernant une personne non désignée nommément ou plus d’une personne non désignée nommément — appelée « groupe » au présent article —, s’il est convaincu, sur dénonciation sous serment, de ce qui suit :

a) cette personne ou ce groupe est identifiable;

b) la fourniture ou la production est exigée pour vérifier si cette personne ou les personnes de ce groupe ont respecté quelque devoir ou obligation prévu par la présente loi;

(See Appendix “A” for the relevant *ETA* provisions.)

[6] Counsel for the Respondent argues that there are five separate conditions that must be satisfied by the Minister:

1. The Application must be initiated by someone with appropriate delegated authority under s. 220(2.01) of the *ITA*;
2. The group must be ascertainable;
3. The Unnamed Persons Requirement is made to verify tax compliance with the unnamed persons in the group;

4. The Minister must be engaged in a tax audit conducted in good faith and on a genuine factual basis; and
5. The Minister must make full and frank disclosure of the information relevant to this Court's exercise of discretion.

[7] Counsel for the Respondent relies on this Court's decision in *Murphy v Canada (National Revenue)*, 2009 FC 1226 for the argument that this application was not initiated by someone with appropriate delegated authority under the *ITA*. However, because *Murphy* was an application for judicial review of a decision of a member of the CRA to issue Requirements for Information under s. 231.2(1) of the *ITA*, I find that it is not relevant to an application to the Court to authorize the Minister to impose a requirement on a third party under s. 231.2(3).

[8] Further, the Federal Court of Appeal in *MNR v Greater Montréal Real Estate Board (GMREB)*, 2007 FCA 346 cautioned against interpreting s. 231.2(3) in a manner that adds requirements to the provisions of the *ITA* (paragraph 38). Rather, as set out in the statute, there are only two requirements that must be met:

- a) Whether the unnamed persons are ascertainable and,
- b) Whether, the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.

[9] The Court in *MNR v GMREB* interpreted the requirement under subsection (b) to include where "the information ... [is] required for a tax audit conducted in good faith" (paragraph 48).

[10] The Respondent argues that the unnamed persons are not ascertainable within the meaning of s. 231.2(3)(a) of the *ITA*. It submits that the Minister has failed to adduce convincing

evidence to establish that the target group of residential and commercial roofing contractors can be delineated from Roofmart's other customers. The Minister argues that the unnamed persons are well within the scope of the definition of ascertainable group applied by this Court and the Federal Court of Appeal on previous occasions, such as in *Minister of National Revenue v Paypal Canada Co*, 2017 CarswellNat 6671 and *Canada (Minister of National Revenue) v Rona Inc*, 2017 FCA 118.

[11] I am satisfied that the unnamed persons in this instance are an ascertainable group. In my view, the total annual purchase requirement set out in the Unnamed Persons Requirement is sufficient to establish the target group of residential and commercial contractors among Roofmart's customers. Further, Roofmart maintains records for its customers and their identities are known to Roofmart.

[12] The Respondent further argues that the Minister has not met the requirement set out in s. 231.2(3)(b) of the *ITA*. It argues that the Minister has not established, nor even alleged, that she is engaged in a tax audit of the target group of unnamed persons. However, the Federal Court of Appeal in *MNR v GMREB* is clear that a good faith tax audit could include a "tax audit project", as opposed to a tax audit of particular individuals already underway (paragraphs 19, 42 - 43).

[13] Based on the information provided in the Blackmore Affidavit, I am satisfied that the Unnamed Persons Requirement is made to verify compliance by the person or persons in the group with any duty or obligation under the *ITA* and *ETA*. The evidence provided establishes that the Minister seeks the Unnamed Persons Requirement in order to verify whether Roofmart's

commercial customers are compliant with their duties and obligations under the *ITA* and *ETA*, namely to: 1) use the requested data to verify whether the Unnamed Persons have filed all of their required income tax returns, payroll remittances and GST/HST returns and 2) to determine whether the Unnamed Persons have properly (a) reported all or any of the income earned on the sale or supply of roofing and building supplies/materials, (b) claimed amounts as business expenses, (c) collected and remitted payroll tax, and, (d) calculated and remitted GST/HST.

[14] In conclusion, in the circumstances of this case and in light of the fact that the requirements of the *ITA* and the *ETA* are satisfied, in my view, it is appropriate and in the interests of justice to exercise my discretion in favour of the Minister and to authorize the Minister to impose the Unnamed Persons Requirement on Roofmart.

“Douglas R. Campbell”

---

Judge

Toronto, Ontario  
April 24, 2019

## APPENDIX “A”

*Excise Tax Act, RSC 1985, c E-15**Loi sur la taxe d'accise (L.R.C. (1985), ch. E-15)***Requirement to provide documents or information****Présentation de documents ou de renseignements**

**289 (1)** Despite any other provision of this Part, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of a listed international agreement or this Part, including the collection of any amount payable or remittable under this Part by any person, by notice served personally or by registered or certified mail, require that any person provide the Minister, within any reasonable time that is stipulated in the notice, with

**289 (1)** Malgré les autres dispositions de la présente partie, le ministre peut, sous réserve du paragraphe (2) et, pour l'application ou l'exécution d'un accord international désigné ou de la présente partie, notamment la perception d'un montant à payer ou à verser par une personne en vertu de la présente partie, 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 under this Part; or

a) qu'elle lui livre tout renseignement ou tout renseignement supplémentaire, y compris une déclaration selon la présente partie;

(b) any document.

b) qu'elle lui livre des documents.

**Marginal note: Unnamed persons****Note marginale : Personnes non désignées nommément**

(2) The Minister shall not impose on any person (in this section referred to as a “third party”) a requirement under subsection (1) to provide information or any document relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection (3).

(2) Le ministre ne peut exiger de quiconque — appelé « tiers » au présent article — la livraison de renseignements ou de documents prévue au paragraphe (1) concernant une ou plusieurs personnes non désignées nommément, sans y être au préalable autorisé par un juge en vertu du paragraphe (3).

**Marginal note: Judicial authorization****Note marginale : Autorisation judiciaire**

(3) A judge of the Federal Court may, on application by the Minister and subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person or more than one unnamed person (in this

(3) Sur requête du ministre, un juge de la Cour fédérale peut, aux conditions qu'il estime indiquées, autoriser le ministre à exiger d'un tiers la livraison de renseignements ou de documents prévue au paragraphe (1) concernant une personne non désignée nommément ou plus d'une personne



subsection referred to as the “group”) if the judge is satisfied by information on oath that

**(a)** the person or group is ascertainable; and

**(b)** the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Part.

non désignée nommément — appelée « groupe » au présent paragraphe —, s’il est convaincu, sur dénonciation sous serment, de ce qui suit :

**a)** cette personne ou ce groupe est identifiable;

**b)** la livraison est exigée pour vérifier si cette personne ou les personnes de ce groupe ont respecté quelque devoir ou obligation prévu par la présente partie.

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

**DOCKET:** T-1587-18

**STYLE OF CAUSE:** MINISTER OF NATIONAL REVENUE v ROOFMART  
ONTARIO INC.

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 15, 2019

**REASONS FOR ORDER:** CAMPBELL J.

**DATED:** APRIL 24, 2019

**APPEARANCES:**

Alisa Apostle FOR THE APPLICANT

Bobby J. Sood FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada FOR THE APPLICANT  
Toronto, Ontario

Davies Ward Phillips & Vineberg LLP FOR THE RESPONDENT  
Barristers and Solicitors  
Toronto, Ontario