

Date: 20070306

Docket: T-473-06

Citation: 2007 FC 253

Ottawa, Ontario, March 6, 2007

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

ALLAN JAY GORDON

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

Docket: T-474-06

BETWEEN:

**JAMES A. DEACUR & ASSOCIATES LTD. and
JAMES ALLAN DEACUR**

Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

REASONS FOR ORDER AND ORDER

O'KEEFE J.

[1] This is a motion by Her Majesty the Queen in right of Canada (the defendant) for:

1. An order declaring that any taxpayer information – as defined in subsection 241(10) of the *Income Tax Act* (the Act)– in the possession of the Canada Revenue Agency (CRA), the Department of Justice Federal Prosecution Services (FPS) and their respective agents, relevant to the within action, may be released by CRA officials, Department of Justice FPS officials and their agents, to counsel for the defendant in the within action, as may be necessary to defend the action, to permit the Crown to make full answer and defence on the merits of the action, and for the purposes of preparing a statement of defence, affidavit of documents, and examinations for discovery as the *Federal Court Rules* require, and that disclosing such taxpayer information (by CRA officials, Department of Justice FPS officials and their agents) to inform counsel for the defendant, is not a violation of subsection 241(1) of the Act and is permitted by paragraph 241(3)(b) of the Act and/or authorized in these circumstances by paragraph 8(2)(b) and/or paragraph 8(2)(d) of the *Privacy Act*.
2. An order declaring that the within action constitutes, under paragraph 241(3)(b) of the Act, a “legal proceeding related to the administration and enforcement” of the Act.
3. An order declaring that any taxpayer information to be received by counsel for the defendant for the purpose of defending this action may subsequently be released by counsel for the defendant to counsel for the plaintiffs or this Honourable Court, as may be required to comply with the *Federal Court Rules*, and that such release is not prohibited, as such release fits within the exception to the prohibition on the release of taxpayer information under paragraph 241 (3)(b) of the Act and would thereby not be in violation of the Act.

4. An order declaring that CRA officials, Department of Justice FPS officials and their respective agents are authorized to release taxpayer information, as required, to inform counsel for the defendant, and to permit counsel for the defendant to fully defend the action on the merits, by virtue of paragraph 8(2)(d) of the *Privacy Act*, since the release of such taxpayer information is required for the purpose of defending an action involving the Crown in right of Canada, or by virtue of paragraph 8(2)(b) of the *Privacy Act*, which permits disclosure for any purpose in accordance with any act of Parliament or any regulation thereunder which authorizes its disclosure.
5. An order declaring that the release of any taxpayer information by CRA and Department of Justice FPS officials and their respective agents:
 - (a) to permit counsel to prepare a statement of defence as required by Rule 204 of the *Federal Court Rules*, and to deliver an affidavit of documents as required by Rule 223 of the *Federal Court Rules*;
 - (b) to answer questions at examination for discovery as required by Rule 236 of the *Federal Court Rules*; and
 - (c) otherwise in the conduct of the litigation,is not a violation of law, and in particular, but not limited to , is not a violation of section 241 of the Act, as the release of such information comes within the exception under paragraph 241(3)(b) of the Act, and is, if necessary, authorized by paragraphs 8(2)(b) and/or 8(2)(d) of the *Privacy Act*.
6. In the alternative, an order adjourning this motion to permit notice of this motion to be given

to each of the relevant taxpayers, the identities of whom are to be provided by the plaintiffs, as this is within the knowledge of the plaintiffs, and/or such further order as this Honourable Court may consider just, in order to facilitate the seeking of the consent of the said taxpayers, or to permit them an opportunity to make submissions in this motion without violating the law.

7. An order extending the time to deliver the statement of defence until such time as counsel for the defendant is able to obtain, review and consider the necessary information to fully defend on the merits.
8. Such further order or direction as this Honourable Court deems appropriate.
9. Such further and other relief as requested and as this Court deems just.

The Parties

[2] The corporate plaintiff, James A. Deacur & Associates Ltd. (hereinafter JAD) is a company incorporated pursuant to the laws of Canada, carrying on business as principally an accounting firm specializing in tax consulting, with its principal place of business in the city of Concord, in the province of Ontario, with additional offices in Georgetown and Orangeville.

[3] The plaintiff, James Allan Deacur (hereinafter Deacur) resides in the town of King City and is the majority shareholder of JAD.

[4] The plaintiff, Allan Jay Gordon (hereinafter Gordon) resides in the City of Vaughan and is a shareholder of JAD. He is a chartered accountant and has been in practice since 1979. Gordon has

been with JAD for approximately 18 years. Gordon specializes in accounting and tax consulting in reference to scientific research and experimental development.

[5] The defendant, Her Majesty the Queen in Right of Canada is vicariously liable for the actions of Revenue Canada and its employees and agents. For all matters forming the subject matter of this dispute, the Canada Revenue Agency is the successor federal department of Revenue Canada and retains liability for all tortious actions of its predecessor federal department. Either or both of these federal departments may hereinafter be referred to as CRA.

[6] The plaintiffs have issued statements of claim against the defendant. The plaintiff , Allan Jay Gordon, claims the following:

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|-----|-----------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| (a) | Intentional interference with economic relations | \$ 3,650,000 |
| (b) | Pecuniary damages for | |
| | (i) lost billable hours | \$ 1,000,000 |
| | (ii) legal fees incurred for criminal defence | \$ 90,000 |
| (c) | Non-pecuniary damages for | |
| | (i) defamation | \$ 1,000,000 |
| | (ii) fraud <i>male fide</i> | \$ 1,000,000 |
| | (iii) pain and suffering | \$ 1,000,000 |
| (d) | Punitive, aggravated and exemplary damages for: | |
| | (i) gross abuse of public office | \$10,000,000 |
| | (ii) Charter violations by government officials | \$ 3,000,000 |
| | (iii) abuse of process | \$ 3,000,000 |
| | (iv) wrongful summons | \$ 2,000,000 |
| (e) | Pre- and post-judgment interest in accordance with the provisions of the <i>Federal Courts Act</i> , R.S. 1985, c. F-7 and amendments thereto | |
| (f) | The costs of this action on a substantial indemnity scale | |
| (g) | Such further and other relief as this Honourable Court may deem just | |

[7] The plaintiffs, James A. Deacur & Associates Ltd. and James Allan Deacur claim the following:

(a)	Intentional interference with economic relations	\$ 15,000,000
(b)	Pecuniary damages for	
	(i) decreased asset value of goodwill	\$ 4,000,000
	(i) lost billable hours	\$ 1,000,000
	(ii) legal fees incurred for criminal defence	\$ 620,000
(c)	Non-pecuniary damages for	
	(i) defamation	\$ 2,000,000
	(ii) fraud <i>male fide</i>	\$ 2,000,000
	(iii) pain and suffering	\$ 2,000,000
(d)	Punitive, aggravated and exemplary damages for:	
	(i) gross abuse of public office	\$20,000,000
	(ii) Charter violations by government officials	\$ 6,000,000
	(iii) abuse of process	\$ 3,000,000
	(iv) wrongful summons	\$ 3,000,000
(e)	Pre- and post-judgment interest in accordance with the provisions of the <i>Federal Courts Act</i> , R.S. 1985, c. F-7 and amendments thereto	
(f)	The costs of this action on a substantial indemnity scale	
(g)	Such further and other relief as this Honourable Court may deem just	

[8] As noted, the defendant is seeking a declaration essentially stating that the relevant taxpayer information can be released pursuant to paragraph 241(3)(b) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supplement) and paragraph 8(2)(b) or 8(2)(d) of the *Privacy Act*, R.S.C. 1985, c. P-21. The plaintiffs do not disagree that these sections apply to the taxpayer information in this case.

[9] The underlying actions arise out of the alleged handling of claims filed for clients by the plaintiffs relating to claims for tax credits under the federal government's Scientific Research and Experimental Development Program.

[10] The defendant submits that it needs materials from the Department of Justice files, which include taxpayer information, in order to file a statement of defence. The Department of Justice will not release the information in light of section 241 of the *Income Tax Act*.

[11] There is no doubt that taxpayer information is at issue in this case. Consequently, it will be necessary to determine whether paragraph 241(3)(b) applies so as to make subsections 241(1) and 241(2) inapplicable. If paragraph 241(3)(b) does not apply, the information cannot be released.

[12] Paragraph 241(3)(b) states that subsections 241(1) and (2) (the confidentiality provisions) do not apply “. . . in respect of any legal proceedings relating to the administration or enforcement of this Act. . . .” What meaning is to be given to these words? Is the exemption only to apply when the proceedings taken are proceedings specifically provided for under the *Income Tax Act*? Justice Iacobucci of the Supreme Court of Canada in *Slattery (Trustee of) v. Slattery*, [1993] 3 S.C.R. 430 stated at pages 445 to 447:

3. The Text and Context of s. 241(3)

20. As already noted, s. 241(3) provides, *inter alia*, that the confidentiality provisions in s. 241(1) and (2) do not apply "in respect of proceedings relating to the administration or enforcement of" the *Income Tax Act*. The appellant argues that the only proceedings covered by this exception are those which are expressly provided for in Part XV of the Act, entitled "Administration and Enforcement". The appellant's argument would require the words in s. 241(3) to be read as meaning that the confidentiality provisions do not apply "in respect of proceedings taken pursuant to the administration or enforcement provisions" of the *Income Tax Act*. Neither the text nor context of s. 241 supports this argument.

21. The connecting phrases used by Parliament in s. 241(3) are very broad. The confidentiality provisions are stated not to apply in respect of proceedings relating to the administration or enforcement of the *Income Tax Act*.

22. The phrase "in respect of" was considered by this Court in *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at p. 39:

The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters. [Emphasis added.]

In my view, these comments are equally applicable to the phrase "relating to". *The Pocket Oxford Dictionary* (1984) defines the word "relation" as follows:

. . . what one person or thing has to do with another, way in which one stands or is related to another, kind of connection or correspondence or contrast or feeling that prevails between persons or things; . . .

So, both the connecting phrases of s. 241(3) suggest that a wide rather than narrow view should be taken when considering whether a proposed disclosure is in respect of proceedings relating to the administration or enforcement of the *Income Tax Act*.

...

25. The next question to ask considers what type of administration or enforcement proceedings are contemplated by s. 241(3): only proceedings brought under the *Income Tax Act* itself, or both such proceedings and others? To answer this question, one must look first to the wording of s. 241(3). That provision contains no language which confines the concept of proceedings relating to administration or enforcement to the boundaries of the *Income Tax Act*. This conclusion is buttressed when one considers the context of s. 241.

[13] The Supreme Court of Canada has indicated that a wide view should be taken when determining whether a proposed disclosure is in respect of a proceeding relating to the enforcement or administration of the *Income Tax Act*. The Court went further and ruled that it not only

encompassed administration or enforcement proceedings taken under the *Income Tax Act* itself, but also other proceedings taken relating to the enforcement or administration of the *Income Tax Act*.

[14] Justice Sharlow of the Federal Court of Appeal in *Harris v. R.*, [2001] 2 C.T.C. 148 (F.C.A.), when dealing with subsection 241(3) of the *Income Tax Act* stated at page 153:

15. The identity of the taxpayer that obtained the 1991 ruling is clearly "taxpayer information" within the meaning of section 241 of the *Income Tax Act*. The question is whether the action commenced by Mr. Harris is a legal proceeding "relating to the administration or enforcement" of the *Income Tax Act*.

16. As explained above, the subject matter of the action is an advance income tax ruling. The Minister issued that ruling as part of the administration of the *Income Tax Act*. Mr. Harris commenced this proceeding to establish that the issuance of that ruling was not a proper administrative act. In that sense this proceeding "relates to" the administration of the *Income Tax Act*. Therefore, the words of paragraph 241(3)(b) are broad enough to cover this proceeding.

17. However, counsel for the Crown argues for a narrower interpretation of paragraph 241(3)(b). He argues that because the Minister is the only person who is authorized to administer and enforce the *Income Tax Act*, only a legal proceeding undertaken by or on behalf of the Minister for the purpose of the administration or enforcement of the *Income Tax Act* can be within the scope of paragraph 241(3)(b). The Minister is arguing, in essence, that a legal proceeding that seeks to uncover improper administration of the *Income Tax Act* cannot be said to be related to its administration. This argument seems to me illogical and I am unable to accept it.

This jurisprudence also shows that a broad meaning should be given to what is encompassed by the phrase "relating to the administration or enforcement" of the *Income Tax Act*.

[15] I am of the view that subsection 241(3) of the *Income Tax Act* applies to these proceedings and as a result, the confidentiality provisions of subsections 241(1) and (2) do not apply.

[16] Paragraphs 8(2)(b) and (d) of the *Privacy Act*, R.S.C. 1985, c. P-21

The *Privacy Act* applies to both the CRA and the Department of Justice FPS. Section 3 of the *Privacy Act* gives a wide meaning to personal information and states that personal information is “information about an identified individual that is recorded in any form” (see *Canada (Information Commissioner) v. Canada (Commissioner of the R.C.M.P.)*, [2003] 1 S.C.R. 66 at pages 81 and 82). I am satisfied that at least some of the information in question is personal information.

[17] Subsection 8(1) of the *Privacy Act* states that personal information under the control of a government institution shall not be released without the consent of the person to whom it relates unless allowed to be released under section 8.

[18] I am of the view that paragraphs 8(2)(b) and (d) of the *Privacy Act* clearly allow the release of the information in question, as the actions taken by the plaintiffs are clearly legal actions involving the Crown in the Right of Canada. Also, paragraph 8(2)(b) contemplates the release of information allowed by subsection 241(3) of the *Income Tax Act*.

[19] Notice to Third Parties Whose Taxpayer Information is being Released

There is no requirement under the *Income Tax Act* that third parties be given notice that their tax information will be released. However, this does not mean that some type of advance notice should not be given to the taxpayer. I am of the opinion that some type of advance notice should be

given to the taxpayer. Based on the information available to me on this hearing, I am not prepared to dictate the form of notice. I would, however, direct the parties to the statements of Justice Phelan in *Scott Slipp Nissan Ltd v. Canada (Attorney General)*, [2005] G.S.T.C. 70, 2005 FC 1479 at paragraphs 15 and 16 where he stated:

15. It was appropriate for the Minister to give notice to third parties and to provide them respectively with their confidential information that was to be released. The principles of fairness generally would require this procedure as these third parties may have rights or interests affected by the Minister's decision to disclose.

16. The Minister has provided no justification for disclosing the Applicant's name and the existence of the tax dispute. A notice of intended release could simply state that the Minister has concluded that it was reasonably necessary for purposes of the Act to make the disclosure and provide the third party with copies of the intended disclosure.

[20] The defendant indicated at the hearing that it is not pursuing a stay of proceedings.

[21] I find that:

1. Subject to the defendant giving notice to any affected taxpayer of the intended release of their taxpayer information, an order shall issue declaring any taxpayer information – as defined in subsection 241(1) of the *Income Tax Act* – in the possession of the CRA, the Department of Justice FPS and their respective agents, relevant to the within action, may be released by CRA officials, Department of Justice FPS officials and their agents, to counsel for the defendant in the within action, as may be necessary to defend the action, to permit the Crown to make full answer and defence on the merits of the action, and for the purposes of preparing a statement of defence, affidavit of documents, and examinations for discovery as the *Federal Courts Rules* require, and that disclosing such taxpayer information (by CRA officials, Department of Justice FPS officials

and their agents) to inform counsel for the defendant, is not a violation of subsection 241(1) of the *Income Tax Act* and is permitted by paragraph 241(3)(b) of the *Income Tax Act*, and/or authorized in these circumstances by paragraph 8(2)(b) and/or paragraph 8(2)(d) of the *Privacy Act*.

2. The defendant should be granted an order declaring that the within action constitutes, under paragraph 241(3)(b) of the *Income Tax Act*, a “legal proceeding related to the administration and enforcement” of the *Income Tax Act*.

3. The defendant should be granted an order declaring that any taxpayer information to be received by counsel for the defendant for the purpose of defending this action may subsequently be released by counsel for the defendant to counsel for the plaintiffs or this Honourable Court, as may be required to comply with the *Federal Courts Rules* and that such release is not prohibited, as such release fits within the exception to the prohibition on the release of taxpayer information under paragraph 241(3)(b), and would thereby not be in violation of the *Income Tax Act*.

4. Subject to the defendant giving notice to any affected taxpayer of the intended release of their taxpayer information, an order shall issue declaring that CRA officials, Department of Justice FPS officials and their respective agents are authorized to release taxpayer information, as required, to inform counsel for the defendant, and to permit counsel for the defendant to fully defend the action on the merits, by virtue of paragraph 8(2)(d) of the *Privacy Act*, since the release of such taxpayer information is required for the purpose of defending an action involving the Crown in right of Canada, or by virtue of paragraph 8(2)(b) of the *Privacy Act*, which permits disclosure for any purpose in accordance with any Act of Parliament or any Regulation thereunder which authorizes its disclosure.

5. The defendant should be granted an order declaring that the release of any taxpayer information by CRA and Department of Justice FPS officials and their respective agents:

(a) to permit counsel to prepare a statement of defence as required by Rule 204 of the *Federal Courts Rules*, and to deliver an affidavit of documents as required by Rule 223 of the *Federal Courts Rules*;

(b) to answer questions at examination for discovery as required by Rule 236 of the *Federal Courts Rules*; and

(c) otherwise in the conduct of the litigation,

is not a violation of law, and in particular, but not limited to, is not a violation of section 241 of the *Income Tax Act*, as the release of such information comes within the exception under paragraph 241(3)(b) of the *Income Tax Act*, and is, if necessary, authorized by paragraphs 8(2)(b) and/or 8(2)(d) of the *Privacy Act*.

[22] The defendant shall also be granted an extension, extending the time to deliver the statement of defence until such time as counsel for the defendant is able to obtain, review and consider the necessary information to fully defend on the merits. Either party may apply to the Court to set a time frame for the delivery of the defence.

[23] The parties shall be allowed to make submissions to me with respect to the issue of costs.

ORDER

[24] **IT IS ORDERED that:**

1. Subject to the defendant giving notice to any affected taxpayer of the intended release of their taxpayer information, an order shall issue declaring any taxpayer information – as defined in subsection 241(1) of the *Income Tax Act* – in the possession of the CRA, the Department of Justice FPS and their respective agents, relevant to the within action, may be released by CRA officials, Department of Justice FPS officials and their agents, to counsel for the defendant in the within action, as may be necessary to defend the action, to permit the Crown to make full answer and defence on the merits of the action, and for the purposes of preparing a statement of defence, affidavit of documents, and examinations for discovery as the *Federal Courts Rules* require, and that disclosing such taxpayer information (by CRA officials, Department of Justice FPS officials and their agents) to inform counsel for the defendant is not a violation of subsection 241(1) of the *Income Tax Act*, and is permitted by paragraph 241(3)(b) of the *Income Tax Act* and/or authorized in these circumstances by paragraph 8(2)(b) and/or paragraph 8(2)(d) of the *Privacy Act*.

2. An order declaring that the within action constitutes, under paragraph 241(3)(b) of the *Income Tax Act*, a “legal proceeding related to the administration and enforcement” of the *Income Tax Act*.

3. An order declaring that any taxpayer information to be received by counsel for the defendant for the purpose of defending this action may subsequently be released by counsel for the defendant to counsel for the plaintiffs or this Honourable Court, as may be required to comply with the *Federal Courts Rules* and that such release is not prohibited, as such release fits within the

exception to the prohibition on the release of taxpayer information under paragraph 241(3)(b), and would thereby not be in violation of the *Income Tax Act*.

4. Subject to the defendant giving notice to any affected taxpayer of the intended release of their taxpayer information, an order shall issue declaring that CRA officials, Department of Justice FPS officials and their respective agents are authorized to release taxpayer information, as required, to inform counsel for the defendant, and to permit counsel for the defendant to fully defend the action on the merits, by virtue of paragraph 8(2)(d) of the *Privacy Act*, since the release of such taxpayer information is required for the purpose of defending an action involving the Crown in right of Canada, or by virtue of paragraph 8(2)(b) of the *Privacy Act*, which permits disclosure for any purpose in accordance with any Act of Parliament or any Regulation thereunder which authorizes its disclosure.

5. An order declaring that the release of any taxpayer information by CRA and Department of Justice FPS officials and their respective agents:

(a) to permit counsel to prepare a statement of defence as required by Rule 204 of the *Federal Courts Rules*, and to deliver an affidavit of documents as required by Rule 223 of the *Federal Courts Rules*;

(b) to answer questions at examination for discovery as required by Rule 236 of the *Federal Courts Rules*; and

(c) otherwise in the conduct of the litigation, is not a violation of law, and in particular, but not limited to, is not a violation of section 241 of the *Income Tax Act*, as the release of such information comes within the exception under paragraph 241(3)(b) of the *Income Tax Act*, and is, if necessary, authorized by paragraphs 8(2)(b) and/or 8(2)(d) of the *Privacy Act*.

6. An order extending the time to deliver the statement of defence until such time as counsel for the defendant is able to obtain, review and consider the necessary information to fully defend on the merits. Either party may apply to the Court to set a time frame for the delivery of the defence.

7. The parties may make submissions with respect to costs to me and I retain jurisdiction to make a ruling on costs.

“John A. O’Keefe”

Judge

ANNEX**Relevant Statutory Provisions**

The following provisions of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) are relevant to this motion.

239.(2.2) Every person who	239.(2.2) Commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 5 000 \$ et un emprisonnement maximal de 12 mois, ou l'une de ces peines, toute personne:
(a) contravenes subsection 241(1), or	a) soit qui contrevient au paragraphe 241(1);
(b) knowingly contravenes an order made under subsection 241(4.1)	b) soit qui, sciemment, contrevient à une ordonnance rendue en application du paragraphe 241(4.1).
is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months, or to both.	
241.(1) Except as authorized by this section, no official shall	241.(1) Sauf autorisation prévue au présent article, il est interdit à un fonctionnaire:
(a) knowingly provide, or knowingly allow to be provided, to any person any taxpayer information;	a) de fournir sciemment à quiconque un renseignement confidentiel ou d'en permettre sciemment la prestation;
(b) knowingly allow any person to have access to any taxpayer information; or	b) de permettre sciemment à quiconque d'avoir accès à un renseignement confidentiel;

<p>(c) knowingly use any taxpayer information otherwise than in the course of the administration or enforcement of this Act, the Canada Pension Plan, the Unemployment Insurance Act or the Employment Insurance Act or for the purpose for which it was provided under this section.</p>	<p>c) d'utiliser sciemment un renseignement confidentiel en dehors du cadre de l'application ou de l'exécution de la présente loi, du Régime de pensions du Canada, de la Loi sur l'assurance-chômage ou de la Loi sur l'assurance-emploi, ou à une autre fin que celle pour laquelle il a été fourni en application du présent article.</p>
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<p>241.(2) Notwithstanding any other Act of Parliament or other law, no official shall be required, in connection with any legal proceedings, to give or produce evidence relating to any taxpayer information.</p>	<p>241.(2) Malgré toute autre loi ou règle de droit, nul fonctionnaire ne peut être requis, dans le cadre d'une procédure judiciaire, de témoigner, ou de produire quoi que ce soit, relativement à un renseignement confidentiel.</p>
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<p>241.(3) Subsections 241(1) and 241(2) do not apply in respect of</p>	<p>241.(3) Les paragraphes (1) et (2) ne s'appliquent:</p>
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<p>(a) criminal proceedings, either by indictment or on summary conviction, that have been commenced by the laying of an information or the preferring of an indictment, under an Act of Parliament; or</p>	<p>a) ni aux poursuites criminelles, sur déclaration de culpabilité par procédure sommaire ou sur acte d'accusation, engagées par le dépôt d'une dénonciation ou d'un acte d'accusation, en vertu d'une loi fédérale;</p>
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<p>(b) any legal proceedings relating to the administration or enforcement of this Act, the Canada Pension Plan, the Unemployment Insurance Act or the Employment Insurance Act or any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty.</p>	<p>b) ni aux procédures judiciaires ayant trait à l'application ou à l'exécution de la présente loi, du Régime de pensions du Canada, de la Loi sur l'assurance-chômage ou de la Loi sur l'assurance-emploi ou de toute autre loi fédérale ou provinciale qui prévoit l'imposition ou la perception d'un impôt, d'une taxe ou d'un droit.</p>
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...

241.(4) An official may

(a) provide to any person taxpayer information that can reasonably be regarded as necessary for the purposes of the administration or enforcement of this Act, the Canada Pension Plan, the Unemployment Insurance Act or the Employment Insurance Act, solely for that purpose;

241.(10) . . .

"official" means any person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of,

(a) Her Majesty in right of Canada or a province, or

(b) an authority engaged in administering a law of a province similar to the Pension Benefits Standards Act, 1985,

or any person who was formerly so employed, who formerly occupied such a position or who was formerly so engaged and, for the purposes of subsection 239(2.21), subsections 241(1) and 241(2), the portion of subsection 241(4) before paragraph (a), and subsections

241.(4) Un fonctionnaire peut:

a) fournir à une personne un renseignement confidentiel qu'il est raisonnable de considérer comme nécessaire à l'application ou à l'exécution de la présente loi, du Régime de pensions du Canada, de la Loi sur l'assurance-chômage ou de la Loi sur l'assurance-emploi, mais uniquement à cette fin;

241.(10) . . .

"fonctionnaire" Personne qui est ou a été employée par la personne ou l'administration suivante, qui occupe ou a occupé une fonction de responsabilité au service d'une telle personne ou administration ou qui est ou a été engagée par une telle personne ou administration ou en son nom:

a) Sa Majesté du chef du Canada ou d'une province;

b) une administration chargée de l'application d'une loi provinciale semblable à la Loi de 1985 sur les normes de prestation de pension.

Pour l'application du paragraphe 239(2.21), des paragraphes (1) et (2), du passage du paragraphe (4) précédant l'alinéa a) et des paragraphes (5) et (6), une personne déterminée est assimilée à un fonctionnaire.

241(5) and 241(6), includes a designated person;

"taxpayer information" means information of any kind and in any form relating to one or more taxpayers that is

(a) obtained by or on behalf of the Minister for the purposes of this Act, or

(b) prepared from information referred to in paragraph 241(10) taxpayer information (a),

but does not include information that does not directly or indirectly reveal the identity of the taxpayer to whom it relates.

"renseignement confidentiel" Renseignement de toute nature et sous toute forme concernant un ou plusieurs contribuables et qui, selon le cas:

a) est obtenu par le ministre ou en son nom pour l'application de la présente loi;

b) est tiré d'un renseignement visé à l'alinéa a).

N'est pas un renseignement confidentiel le renseignement qui ne révèle pas, même indirectement, l'identité du contribuable en cause.

The following provisions of the *Privacy Act*, R.S.C. 1985, c. P-21 are relevant to this motion.

3. In this Act,

"personal information" means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,

(a) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual,

(b) information relating to the education or the medical,

3. Les définitions qui suivent s'appliquent à la présente loi.

«renseignements personnels »
Les renseignements, quels que soient leur forme et leur support, concernant un individu identifiable, notamment:

a) les renseignements relatifs à sa race, à son origine nationale ou ethnique, à sa couleur, à sa religion, à son âge ou à sa situation de famille;

b) les renseignements relatifs à son éducation, à son dossier médical, à son casier judiciaire,

- criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,
- (f) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual,
- (h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a
- à ses antécédents professionnels ou à des opérations financières auxquelles il a participé;
- c) tout numéro ou symbole, ou toute autre indication identificatrice, qui lui est propre;
- d) son adresse, ses empreintes digitales ou son groupe sanguin;
- e) ses opinions ou ses idées personnelles, à l'exclusion de celles qui portent sur un autre individu ou sur une proposition de subvention, de récompense ou de prix à octroyer à un autre individu par une institution fédérale, ou subdivision de celle-ci visée par règlement;
- f) toute correspondance de nature, implicitement ou explicitement, privée ou confidentielle envoyée par lui à une institution fédérale, ainsi que les réponses de l'institution dans la mesure où elles révèlent le contenu de la correspondance de l'expéditeur;
- g) les idées ou opinions d'autrui sur lui;
- h) les idées ou opinions d'un autre individu qui portent sur une proposition de subvention, de récompense ou de prix à lui octroyer par une institution, ou subdivision de celle-ci, visée à l'alinéa e), à l'exclusion du nom de cet autre individu si ce nom

part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and

(i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual,

but, for the purposes of sections 7, 8 and 26 and section 19 of the Access to Information Act, does not include

(j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,

(i) the fact that the individual is or was an officer or employee of the government institution,

(ii) the title, business address and telephone number of the individual,

(iii) the classification, salary range and responsibilities of the position held by the individual,

(iv) the name of the individual on a document prepared by the individual in the course of

est mentionné avec les idées ou opinions;

i) son nom lorsque celui-ci est mentionné avec d'autres renseignements personnels le concernant ou lorsque la seule divulgation du nom révélerait des renseignements à son sujet;

toutefois, il demeure entendu que, pour l'application des articles 7, 8 et 26, et de l'article 19 de la Loi sur l'accès à l'information, les renseignements personnels ne comprennent pas les renseignements concernant:

j) un cadre ou employé, actuel ou ancien, d'une institution fédérale et portant sur son poste ou ses fonctions, notamment:

(i) le fait même qu'il est ou a été employé par l'institution,

(ii) son titre et les adresse et numéro de téléphone de son lieu de travail,

(iii) la classification, l'éventail des salaires et les attributions de son poste,

(iv) son nom lorsque celui-ci figure sur un document qu'il a établi au cours de son emploi,

employment, and

(v) the personal opinions or views of the individual given in the course of employment,

(k) information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,

(l) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and

(m) information about an individual who has been dead for more than twenty years.

8.(1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

8.(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

(v) les idées et opinions personnelles qu'il a exprimées au cours de son emploi;

k) un individu qui, au titre d'un contrat, assure ou a assuré la prestation de services à une institution fédérale et portant sur la nature de la prestation, notamment les conditions du contrat, le nom de l'individu ainsi que les idées et opinions personnelles qu'il a exprimées au cours de la prestation;

l) des avantages financiers facultatifs, notamment la délivrance d'un permis ou d'une licence accordés à un individu, y compris le nom de celui-ci et la nature précise de ces avantages;

m) un individu décédé depuis plus de vingt ans.

8.(1) Les renseignements personnels qui relèvent d'une institution fédérale ne peuvent être communiqués, à défaut du consentement de l'individu qu'ils concernent, que conformément au présent article.

8.(2) Sous réserve d'autres lois fédérales, la communication des renseignements personnels qui relèvent d'une institution fédérale est autorisée dans les

cas suivants:

...

(b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;

...

(d) to the Attorney General of Canada for use in legal proceedings involving the Crown in right of Canada or the Government of Canada;

...

b) communication aux fins qui sont conformes avec les lois fédérales ou ceux de leurs règlements qui autorisent cette communication;

...

d) communication au procureur général du Canada pour usage dans des poursuites judiciaires intéressant la Couronne du chef du Canada ou le gouvernement fédéral;

The following provisions of the *Federal Courts Rules*, S.O.R./98-106, as amended, are relevant to this motion.

204. A defendant shall defend an action by serving and filing a statement of defence within

(a) 30 days after service of the statement of claim, if the defendant is served in Canada;

(b) 40 days after service of the statement of claim, if the defendant is served in the United States; and

(c) 60 days after service of the statement of claim, if the defendant is served outside Canada and the United States.

204. Le défendeur conteste l'action en signifiant et en déposant sa défense:

a) dans les 30 jours après avoir reçu signification de la déclaration, si cette signification a été faite au Canada;

b) dans les 40 jours après avoir reçu signification de la déclaration, si cette signification a été faite aux États-Unis;

c) dans les 60 jours après avoir reçu signification de la déclaration, si cette signification a été faite à l'extérieur du Canada et des États-Unis.

223.(1) Every party shall serve an affidavit of documents on every other party within 30 days after the close of pleadings.

(2) An affidavit of documents shall be in Form 223 and shall contain

(a) separate lists and descriptions of all relevant documents that

(i) are in the possession, power or control of the party and for which no privilege is claimed,

(ii) are or were in the possession, power or control of the party and for which privilege is claimed,

(iii) were but are no longer in the possession, power or control of the party and for which no privilege is claimed, and

(iv) the party believes are in the possession, power or control of a person who is not a party to the action;

(b) a statement of the grounds for each claim of privilege in respect of a document;

(c) a description of how the

223.(1) Chaque partie signifie un affidavit de documents aux autres parties dans les 30 jours suivant la clôture des actes de procédure.

(2) L'affidavit de documents est établi selon la formule 223 et contient:

a) des listes séparées et des descriptions de tous les documents pertinents:

(i) qui sont en la possession, sous l'autorité ou sous la garde de la partie et à l'égard desquels aucun privilège de non-divulgence n'est revendiqué,

(ii) qui sont ou étaient en la possession, sous l'autorité ou sous la garde de la partie et à l'égard desquels un privilège de non-divulgence est revendiqué,

(iii) qui étaient mais ne sont plus en la possession, sous l'autorité ou sous la garde de la partie et à l'égard desquels aucun privilège de non-divulgence n'est revendiqué,

(iv) que la partie croit être en la possession, sous l'autorité ou sous la garde d'une personne qui n'est pas partie à l'action;

b) un exposé des motifs de chaque revendication de privilège de non-divulgence à l'égard d'un document;

c) un énoncé expliquant comment un document a cessé

party lost possession, power or control of any document and its current location, as far as the party can determine;

d'être en la possession, sous l'autorité ou sous la garde de la partie et indiquant où le document se trouve actuellement, dans la mesure où il lui est possible de le déterminer;

(d) the identity of each person referred to in subparagraph (a)(iv), including the person's name and address, if known;

d) les renseignements permettant d'identifier toute personne visée au sous-alinéa a)(iv), y compris ses nom et adresse s'ils sont connus;

(e) a statement that the party is not aware of any relevant document, other than those that are listed in the affidavit or are or were in the possession, power or control of another party to the action; and

e) une déclaration attestant que la partie n'a pas connaissance de l'existence de documents pertinents autres que ceux qui sont énumérés dans l'affidavit ou ceux qui sont ou étaient en la possession, sous l'autorité ou sous la garde d'une autre partie à l'action;

(f) an indication of the time and place at which the documents referred to in subparagraph (a)(i) may be inspected.

f) une mention précisant les dates, heures et lieux où les documents visés au sous-alinéa a)(i) peuvent être examinés.

(3) For the purposes of subsection (2), a document shall be considered to be within a party's power or control if

(3) Pour l'application du paragraphe (2), un document est considéré comme étant sous l'autorité ou sous la garde d'une partie si:

(a) the party is entitled to obtain the original document or a copy of it; and

a) d'une part, celle-ci a le droit d'en obtenir l'original ou une copie;

(b) no adverse party is so entitled.

b) d'autre part, aucune partie adverse ne jouit de ce droit.

(4) A party may treat a bundle of documents as a single

(4) Aux fins de l'établissement de l'affidavit de documents, une partie peut répertorier une liasse

document for the purposes of an affidavit of documents if	de documents comme un seul document si:
(a) the documents are all of the same nature; and	a) d'une part, les documents sont tous de même nature;
(b) the bundle is described in sufficient detail to enable another party to clearly ascertain its contents.	b) d'autre part, la description de la liasse est suffisamment détaillée pour qu'une autre partie puisse avoir une idée juste de son contenu.
236.(1) Subject to subsection (2), a party may examine an adverse party for discovery only if	236.(1) Sous réserve du paragraphe (2), une partie ne peut interroger au préalable une partie adverse que si, selon le cas:
(a) the pleadings are closed and the examining party has served its affidavit of documents;	a) les actes de procédure sont clos et la partie qui interroge a signifié son affidavit de documents;
(b) the pleadings are closed and the adverse party consents to the examination being conducted before the examining party has served its affidavit of documents; or	b) les actes de procédure sont clos et la partie adverse consent à ce que l'interrogatoire préalable soit tenu avant que la partie qui interroge ait signifié son affidavit de documents;
(c) the adverse party is in default of serving and filing its pleadings and leave of the Court has been obtained.	c) la partie adverse n'a signifié ni déposé aucun acte de procédure et la Cour a donné son autorisation.
(2) Subject to subsection (3), a defendant may examine a plaintiff at any time after the statement of claim is filed.	(2) Sous réserve du paragraphe (3), un défendeur peut interroger le demandeur à tout moment après le dépôt de la déclaration.
(3) Where two or more defendants are represented by the same solicitor, none of them	(3) Lorsque deux ou plusieurs défendeurs sont représentés par le même avocat, aucun d'eux ne peut interroger le demandeur

may examine the plaintiff
before filing a defence unless
all of them examine the plaintiff
at the same time.

avant d'avoir déposé une
défense, à moins qu'ils
n'interrogent le demandeur tous
en même temps.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-473-06 & T-474-06

STYLE OF CAUSE: ALLAN JAY GORDON

- and -

HER MAJESTY THE QUEEN IN RIGHT
OF CANADA

JAMES A. DEACUR & ASSOCIATES LTD.
and JAMES ALLAN DEACUR

- and -

HER MAJESTY THE QUEEN IN
RIGHT OF CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 30, 2006

**REASONS FOR ORDER
AND ORDER OF:** O'KEEFE J.

DATED: March 6, 2007

APPEARANCES:

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