

**Date: 20070914**

**Docket: T-862-06**

**Citation: 2007 FC 917**

**Ottawa, Ontario, September 14, 2007**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**MINISTER OF NATIONAL REVENUE**

**Applicant**

**and**

**BRENDA CHA**

**Respondent**

**REASONS FOR ORDER AND ORDER**

**O'KEEFE J.**

[1] This proceeding is a hearing for the respondent, to hear proof of an act with which she is charged and which is outlined below, and to be prepared to present any defence that she may have.

By order dated December 11, 2006, Justice Gauthier ordered:

1. The respondent appear before a judge of the Federal Court to hear proof of the following acts, purportedly committed by her, with which she is charged herein and to be prepared

to present any defence that she may have to the charge that she is guilty of contempt of Court, more particularly that:

(a) by order of Justice Campbell dated July 31, 2006 (the compliance order), the respondent was ordered to provide a copy of the separation agreement between her and Peter Howard Wardle sought by the applicant pursuant to subsection 231.2(1) of the Income Tax Act (the document);

(b) the compliance order was personally served on the respondent on August 15, 2006; and

(c) the respondent has not provided the document as required by the compliance order.

The Court further ordered that:

2. The applicant personally serve Brenda Cha with the following material no later than 20 days before the hearing date:

(a) a copy of the motion record filed in support of this motion together with this order;

(b) a list of the witnesses that the applicant will call at the hearing; and

(c) a copy of any document that the applicant will adduce at the hearing that has not been included in the motion record referred to in a) above.

### **Background**

[2] On October 4, 2004, the Minister of National Revenue (the Minister) issued a requirement for information to the respondent, pursuant to subsection 231.2(1) of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supplement). The requirement for information requested that the respondent provide

the Minister with a copy of the separation agreement between herself and Peter Howard Wardle.

The requirement for information was served upon the respondent on May 9, 2005.

[3] On July 31, 2006, the applicant applied to the Federal Court for an order requiring the respondent to comply with the requirement for information. The respondent failed to appear at the hearing, although duly served. By order dated July 31, 2006, Justice Campbell ordered the respondent to comply with the requirement for information. Specifically, the Court ordered:

1. Pursuant to section 231.7 of the Income Tax Act the respondent shall comply with the notice issued by the Minister on October 4, 2004, and served on May 9, 2005, and shall forthwith, and in any event not later than 30 days after being served with this order, provide the information and documents to a Canada Revenue Agency officer acting under the authority conferred by the Income Tax Act or other person designated by the Commissioner of Revenue.

2. The Minister is authorized to effect service of this order on the respondent by personal service pursuant to Rule 128 of the Federal Courts Rules.

[4] The respondent was personally served the compliance order on August 15, 2006, but she has not provided the requested document to the Minister.

[5] **Issue**

Is the respondent guilty of contempt of Court and if so, what is the appropriate penalty?

## Analysis and Decision

[6] The respondent did not appear at the contempt hearing held on March 27, 2007, and she was not represented by counsel.

## Onus and Burden of Proof

[7] Rule 466(b) of the *Federal Courts Rules*, S.O.R./98-106, as amended, states:

466. Subject to rule 467, a person is guilty of contempt of Court who	466. Sous réserve de la règle 467, est coupable d'outrage au tribunal quiconque:
...	...
(b) disobeys a process or order of the Court; ...	b) désobéit à un moyen de contrainte ou à une ordonnance de la Cour; ...

Rule 469 of the *Federal Courts Rules* states:

469. A finding of contempt shall be based on proof beyond a reasonable doubt.	469. La déclaration de culpabilité dans le cas d'outrage au tribunal est fondée sur une preuve hors de tout doute raisonnable.
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[8] As required by Rule 470(1) of the *Federal Courts Rules*, oral evidence was given by the applicant's witness at the contempt hearing.

[9] I am satisfied that the applicant had requested by letter dated October 4, 2004 (Exhibit A-1) pursuant to subsection 231.2(1) of the *Income Tax Act*, that the respondent produce a copy of the separation agreement between herself and Peter Howard Wardle. I am satisfied from the evidence that she did not supply a copy of the agreement. I would note that she did reply by letter dated May 16, 2005 (Exhibit A-2), but the Minister found the reply not to be a satisfactory response to the Minister's requirement for information.

[10] The evidence also satisfies me beyond a reasonable doubt that the applicant served a copy of Justice Campbell's compliance order on the respondent on August 15, 2006.

[11] Justice Campbell's order required the applicant to:

**THIS COURT ORDERS THAT:**

Pursuant to section 231.7 of the *Income Tax Act* the Respondent shall comply with the notice issued by the Minister on October 4, 2004 and served on May 9, 2005, and shall forthwith, and in any event not later than 30 days after being served with this Order, provide the Information and Documents to a Canada Revenue Agency officer acting under the authority conferred by the *Income Tax Act* or other person designated by the Commissioner of Revenue.

...

[12] Again, based on the evidence presented at the contempt hearing, I am satisfied beyond a reasonable doubt that the respondent failed to comply with Justice Campbell's order by not providing a copy of the separation agreement.

[13] I am also satisfied on the basis of the evidence presented at the hearing that the requirements of Justice Gauthier's order dated December 11, 2006 were satisfied by the Minister.

[14] I have also considered the contents of the respondent's letter to the Court dated April 9, 2007.

[15] Based on the evidence presented to me, I am satisfied beyond a reasonable doubt that Brenda Cha is guilty of contempt of Court.

[16] The applicant requested the following penalty:

1. A fine of \$3,000 (the fine) be imposed upon the respondent to be paid within 30 days from the date of this order;
2. The respondent is to pay costs on a solicitor-client basis at an amount fixed at \$2,000 (the costs) within 30 days from the date of this order;
3. If the Minister informs the Court by affidavit that payment of either of the fine or the costs has not been made within 30 days from the date of this order, this Court then imposes a sentence of 15 days imprisonment for default on the payment of the costs and a consecutive sentence of imprisonment for default on the payment of the fine to a total of 30 days imprisonment;
4. The respondent provide the following document (the document) sought by the Minister pursuant to section 231.2 of the Income Tax Act within 30 days from the date of this order:
  - (a) a copy of the separation agreement in effect between Brenda L. Cha and Peter Howard Wardle.

5. If the Minister informs the Court by affidavit that the respondent has failed to provide the document to the Minister within 30 days from the date of this order, then this Court imposes a further sentence of 15 days imprisonment upon the respondent to be served consecutively with any sentence of imprisonment in respect of a sentence of imprisonment for a failure by the respondent to pay either the fine or the costs.

[17] I retain jurisdiction to deal with the penalty or sentencing of the respondent so that the parties are afforded the opportunity to make representations on the appropriate penalty to be imposed (see *Winnicki v. Canada (Canada Human Rights Commission)*, 2007 FCA 52).

[18] I direct that this order be served on the respondent by personal service. If personal service cannot be made within two weeks, then this order may be served on the respondent by e-mailing it to the address the respondent provided to the Court and by sending it by ordinary mail to the last address of the respondent.

[19] The sentencing hearing will be held at the Federal Court, 701 West Georgia Street, Vancouver, British Columbia on Friday, October 26, 2007, commencing at 9:30 a.m.

[20] The issue of costs will be dealt with at the sentencing hearing.

**ORDER**

[21] That upon having found the respondent to be in contempt of Court, the Court orders that:

1. A sentencing hearing will take place at the Federal Court, 701 West Georgia Street, Vancouver, British Columbia on Friday, October 26, 2007, commencing at 9:30 a.m., at which time the parties may make representations as to the appropriate sentence to be imposed. A further order will be issued after the sentencing hearing, confirming the finding that the respondent is in contempt of Court.
2. Service of this order is to be made in accordance with paragraph 18 of the reasons for order.
3. Costs may be spoken to at the sentencing hearing.

“John A. O’Keefe”

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Judge



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

**DOCKET:** T-862-06

**STYLE OF CAUSE:** MINISTER OF NATIONAL REVENUE  
- and -  
BRENDA CHA

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** March 27, 2007

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

**DATED:** September 14, 2007

**APPEARANCES:**

Neva Beckie FOR THE APPLICANT

No One Appearing FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

John H. Sims, Q.C.  
Deputy Attorney General of Canada FOR THE APPLICANT

Brenda Cha  
Hornby Island, British Columbia FOR THE RESPONDENT