

Federal Court



Cour fédérale

Date: 20111214

Docket: T-393-11

Citation: 2011 FC 1472

Ottawa, Ontario, December 14, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

**Applicant
(Responding Party)**

and

CORMARK SECURITIES INC.

**Respondent
(Moving Party)**

REASONS FOR ORDER AND ORDER

[1] Cormark Securities Inc. seeks to set aside an *ex parte* Order of this Court made pursuant to section 231.2 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp) (the “Requirement Order”). The Order authorized the Minister of National Revenue to impose a Requirement on Cormark to provide information and documents relating to one or more unnamed persons involved in a specified form of transaction. In these transactions, companies engaged in one industry were attempting to deduct losses generated by companies that had been engaged in a different industry.

[2] Cormark alleges that the Minister failed to make full and frank disclosure in its *ex parte* application, with the result that the Requirement Order should be set aside. It further asserts that the affidavit evidence provided in support of the motion was vague, confusing and showed a fundamental lack of rigour. As such, Cormark says that it cannot comply with the Order.

[3] Cormark also argues that the evidence provided by the Minister in support of the *ex parte* application did not include the type of information that the Federal Court of Appeal has held to be essential to this type of application.

[4] Cormark further submits that the unnamed person or group of persons is not ascertainable and that the purpose of the Requirement Order is not to verify an unnamed person's or group of persons' compliance with any duty or obligation under the Act.

[5] For the reasons that follow, I have concluded that the Minister did provide full and frank disclosure in support of its *ex parte* application. Cormark has also not persuaded me that the evidence provided in support of the Minister's *ex parte* motion was vague or confusing, or that the group targeted by the Requirement Order is not ascertainable. As a consequence, Cormark's motion will be dismissed.

Background

[6] Cormark Securities Inc. (formerly known as Sprott Securities Inc.) is an investment management company carrying on business in Alberta.

[7] According to the evidence provided by the Minister in support of the *ex parte* application for a Requirement Order, the Canada Revenue Agency [CRA] is currently working on a project known as the “Tech Wreck” project. The Tech Wreck project is focussed on verifying the compliance with the *Income Tax Act* of certain unnamed persons involved in a particular kind of transaction with the assistance of investment management companies in Alberta, including Cormark.

[8] In the transactions in question, investors acquire a minority of shares in a corporation that has become insolvent, bankrupt or otherwise unable to continue, but which has significant pools of tax losses (“Losscos”). The investors then cause a change to the directors of the Lossco to favour the interests of the investors. The new directors cause the Lossco to involve itself in a new business. Income from the new business is then offset against the losses generated by the Lossco’s previous business. For the purpose of these reasons, such transactions will be referred to as “Lossco Transactions”.

[9] The ability of a business to deduct losses may be restricted if there has been a change in control of the business. The CRA is concerned that through these types of transactions, there has been an effective change in control of the Lossco, and that investors are trying to avoid the change of control restrictions in the Act.

[10] The Tech Wreck project started after the CRA's Calgary office noted that businesses with oil and gas assets were trying to deduct losses incurred by businesses engaged in research and development. An investigation revealed that certain investment management companies in Alberta, including Cormark, were promoting or facilitating these transactions.

[11] The unnamed persons who are the targets of the Requirement are clients of Cormark, or are otherwise known to Cormark, who have entered into or promoted, or attempted to enter into or promote Lossco Transactions. According to the CRA, these individuals are thus ascertainable.

[12] The purpose of the Requirement Order was thus to verify compliance by these unnamed persons with the duties and obligations imposed upon them by the *Income Tax Act*, and to determine whether these individuals had correctly computed and reported their taxable income.

The Requirement Order

[13] By Order dated March 21, 2011, Justice Kelen authorized the CRA to impose a Requirement on Cormark to provide information and documents under the authority of subsection 231.2(1) of the Act relating to one or more unnamed persons. A copy of the Requirement Order is attached as Annex A to these reasons.

[14] The Requirement was served on Cormark on July 14, 2011, following which Cormark brought this motion seeking to have the Requirement set aside.

The Relevant Statutory Provisions

[15] These motions relate to section 231.2 of the *Income Tax Act*. The provisions that are relevant to this motion state that:

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 comprehensive tax information exchange agreement between Canada and another country or jurisdiction that is in force and has effect 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 stipulated in the notice,

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

(b) any document.

[...]

(3) On ex parte application by the Minister, a judge may, subject to such conditions as the judge considers appropriate, authorize the Minister to

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 général d'échange de renseignements fiscaux entre le Canada et un autre pays ou territoire qui est en vigueur et s'applique 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.

[...]

(3) Sur requête ex parte du ministre, un juge peut, aux conditions qu'il estime indiquées, autoriser le ministre à exiger d'un tiers la fourniture

<p>impose on a third party a requirement under subsection 231.2(1) relating to an unnamed person or more than one unnamed person (in this section referred to as the “group”) where the judge is satisfied by information on oath that</p>	<p>de renseignements ou production de documents prévue 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 :</p>
<p>(a) the person or group is ascertainable; and</p>	<p>a) cette personne ou ce groupe est identifiable;</p>
<p>(b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.</p>	<p>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;</p>
<p>(c) and (d) [Repealed, 1996, c. 21, s. 58(1)]</p>	<p>c) et d) [Abrogés, 1996, ch. 21, art. 58(1)]</p>
<p>[...]</p>	<p>[...]</p>
<p>(5) Where an authorization is granted under subsection 231.2(3), a third party on whom a notice is served under subsection 231.2(1) may, within 15 days after the service of the notice, apply to the judge who granted the authorization or, where the judge is unable to act, to another judge of the same court for a review of the authorization.</p>	<p>(5) Le tiers à qui un avis est signifié ou envoyé conformément au paragraphe (1) peut, dans les 15 jours suivant la date de signification ou d’envoi, demander au juge qui a accordé l’autorisation prévue au paragraphe (3) ou, en cas d’incapacité de ce juge, à un autre juge du même tribunal de réviser l’autorisation.</p>
<p>(6) On hearing an application under subsection 231.2(5), a judge may cancel the authorization previously granted if the judge is not then</p>	<p>(6) À l’audition de la requête prévue au paragraphe (5), le juge peut annuler l’autorisation accordée antérieurement s’il n’est pas convaincu de</p>

<p>satisfied that the conditions in paragraphs 231.2(3)(a) and 231.2(3)(b) have been met and the judge may confirm or vary the authorization if the judge is satisfied that those conditions have been met.</p>	<p>l'existence des conditions prévues aux alinéas (3)a) et b). Il peut la confirmer ou la modifier s'il est convaincu de leur existence.</p>
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Did the Minister Provide Full and Frank Disclosure?

[16] There is no dispute that the Minister must provide full and frank disclosure of all of the relevant facts when seeking *ex parte* relief from the Court under subsection 231.2(1) of the *Income Tax Act*.

[17] As Justice Sharpe noted in *United States of America v. Friedland*, [1996] O.J. No. 4399 (Q.L.), [*Friedland*] both the judge hearing an *ex parte* motion and the party against whom the order is sought are literally “at the mercy” of the party seeking the relief in issue. As a consequence, the law requires that a party seeking *ex parte* relief must do more than simply present its own case in the best possible light, as would be the case if the other side were present. Rather, the person seeking *ex parte* relief must:

[S]tate its own case fairly and must inform the Court of any points of fact or law known to it which favour the other side. The duty of full and frank disclosure is required to mitigate the obvious risk of injustice inherent in any situation where a Judge is asked to grant an order without hearing from the other side: *Friedland*, above at para. 27.

[18] The Court did, however, observe at paragraph 31 of *Friedland* that the duty to make full and frank disclosure is not to be imposed in a formal or mechanical manner. That is, a party should not be deprived of a remedy because of “mere imperfections in the affidavit or because inconsequential facts have not been disclosed”. Rather, the defects complained of must be relevant and material to

the discretion to be exercised by the Court: see *Friedland*, above at para. 31, and *Canada (Commissioner of Competition) v. Labatt Brewing Co.*, 2008 FC 59, 323 F.T.R. 115 at para. 27.

[19] That being said, court orders - even those made without notice to the opposing party - are not lightly to be set aside. As Justice Reed observed in *Canada (Commissioner of Competition) v. Air Canada*, [2001] 1 F.C. 219, [2000] F.C.J. No. 1177 (Q.L.) at para. 13, “[t]he non-disclosure or errors, in the evidence placed before the issuing judge, must be such as to have caused the issuing judge, had he or she known of them, to have refused to grant the order”.

[20] In seeking to have the Requirement set aside, Cormark’s first argument is that the Minister failed to provide full and frank disclosure of relevant and material information in its *ex parte* application. In particular, Cormark asserts that the Minister failed to disclose that he could have obtained the information being sought by other means.

[21] According to Cormark, the Minister could have obtained the information sought through the Requirement Order by mining its own databases. Each unnamed Lossco is a corporation which would have had to file a T-2 return each year. As a result, each company would have had to disclose whether it was claiming any kind of losses or scientific research and experimental expenditures, and whether it was inactive. Each company would also have to disclose whether its major business activity has changed since it filed its last return, and the nature of the business now carried on by the company.

[22] The Minister could also have obtained information from the System for Electronic Document Analysis and Retrieval [SEDAR]. According to Cormark's affiant, the Minister should have been able use SEDAR to identify any Lossco that was a reporting issuer in Canada without the need for the Requirement Order.

[23] Finally, Cormark points out that the Minister has been able to obtain information with respect to at least one oil and gas company involved in a Lossco-type transaction as evidence that the Requirement Order is not necessary here. In support of this contention, Cormark has produced documents with respect to the reassessment of Fortress Energy Inc. and the CRA's disallowance of non-capital losses claimed by that company.

[24] In support of its argument, Cormark relies on the decision in *R. v. Derakhshani*, 2009 FCA 190, 323 F.T.R. 115. There the Federal Court of Appeal observed that the fact that the Minister may obtain the information sought using other means "does not exclude the possibility that a requirement might be authorized, but that is information that must be provided to the judge. A judge must not be left in the dark on such an important point": at para. 29. See also *Canada (Minister of National Revenue - M.N.R.) v. RBC Life Insurance Co.*, 2011 FC 1249, [2011] F.C.J. No. 1537 (Q.L.) at para. 29.

[25] Having failed to disclose to Justice Kelen that the information being sought was available elsewhere, Cormark says that the Minister failed to make full and frank disclosure with the result that the Requirement Order should be set aside.

[26] I am not persuaded that the information sought by means of the Requirement would be available to the CRA by other means. Cormark has not demonstrated that the CRA would be able to identify a Lossco by reviewing its T-2 and SEDAR filings without first knowing the name of the company in question.

[27] Moreover, it is clear that the type of Lossco Transactions that are of concern to the Minister involve the acquisition of a minority of the shares of the Lossco by investors. In response to questions from the Court, counsel for Cormark conceded that information regarding such acquisitions would not be available to the CRA, either through the company's own tax filings or through SEDAR.

[28] It is also clear from the evidence of Derek Carroll, a Team Leader in the Audit Division of the CRA, that agreements entered into by the minority investors which give them effective control of the Lossco play a central role in the tax schemes in question. Without these agreements, investors acquiring a minority interest in Losscos would not be able to cause a change to the directors of the Lossco to favour the interests of the investors and to involve the Lossco in a new business. In response to questions from the Court, Cormark conceded that neither the existence nor the content of these agreements would be discoverable by the Minister through SEDAR or through the Lossco's T-2 filings.

[29] Finally, the information provided with respect to the Fortress Energy Inc. does not assist Cormark, as there is nothing in the evidence to indicate how the company's potential involvement in a Lossco Transaction came to the attention of the CRA.

[30] As a consequence, I am not persuaded that the Minister breached the duty of full and frank disclosure in this case.

Is the Group Ascertainable?

[31] Cormark submits that the affidavit evidence provided by the Minister in support of the motion was both confusing and misleading and that it showed a fundamental lack of rigour, with the result that the unnamed persons or entities identified in the Requirement Order are not ascertainable.

[32] In particular, Cormark says that the language used in Mr. Carroll's affidavit was imprecise. By way of example, Cormark points to Mr. Carroll's statement in his affidavit that Losscos are not entitled to deduct losses if there has been a change in control of "the *business*", noting that "corporation" and "business" are each defined terms in the *Income Tax Act*. Cormark noted that Mr. Carroll admitted in cross-examination that this statement was imprecise, and that it would have been more precise to say that the ability of a corporation to deduct losses may be restricted if there has been a change in the control of "the *corporation*" and not "the *business*". However, when read in context, it is clear that the two terms were being used interchangeably.

[33] Cormark also points out that Mr. Carroll's affidavit states that in accordance with the *Income Tax Act*, a business can deduct losses for the purposes of computing its taxable income "*in certain circumstances*". Cormark contends that this statement was misleading. In support of this contention, Cormark points out that Mr. Carroll conceded in his cross-examination that *the general rule* under subsection 3(d) of the Act is that a business can deduct losses in calculating its income.

[34] In addition, Cormark takes issue with Mr. Carroll's failure to define various terms used in his affidavit and in the Requirement.

[35] I agree with Cormark that the language used by Mr. Carroll in his affidavit is not as precise as one may have liked. That said, I am not persuaded that the affidavit was misleading or confusing when the statements in issue are read in context.

[36] Indeed, when the affidavit that was provided by Mr. Carroll in support of the Minister's *ex parte* application is read as a whole, it is quite clear which type of transactions were of concern to the CRA, and what kind of information Cormark would need to look for in order to comply with the Requirement Order. This is especially so when regard is had to the step-by-step example of a Lossco Transaction contained in the Requirement letter which is attached as Schedule "A" to the Requirement Order.

[37] Cormark also takes issue with the reference in Mr. Carroll's affidavit and the Requirement letter to the "acquisition of tax attributes" of one taxpayer by another. "Tax attributes" are defined in the Requirement letter as "undepreciated capital cost balances, capital losses, non-capital losses, unused Scientific Research and Experimental Development ("SRED") expenditures, and/or unused SRED tax credits".

[38] Lou D'Souza, Cormark's Chief Compliance officer, deposes that he does not know how a taxpayer can make an "acquisition" of the tax attributes of another taxpayer, with the result that Cormark cannot identify the taxpayers who engaged in the types of transactions in issue.

[39] Cormark further contends that this aspect of Mr. Carroll's evidence was misleading, as Mr. Carroll himself conceded on cross-examination that one taxpayer cannot technically acquire the tax attributes of another taxpayer.

[40] However, as the Minister points out, Mr. Carroll went on to explain that in the course of work done on the Tech Wreck project, the CRA had seen a series of transactions that had been designed to get around the "acquisition of control" rules. These transactions resulted in the effective acquisition of one taxpayer's tax losses by another taxpayer. In light of this, I am not persuaded that there was anything misleading about this aspect of Mr. Carroll's evidence.

[41] Cormark also argues that the Requirement Order is vague, and that the unnamed person or group of persons is not ascertainable.

[42] The Minister submits that the unnamed persons are ascertainable, in that they were made up of clients of Cormark who either participated in one of the Lossco Transactions or attempted to enter into such a transaction. In addition, some members of the group are promoters known to Cormark who promoted or attempted to promote Lossco Transactions.

[43] I agree with the Minister that Cormark would know which of its clients entered into a Lossco Transaction and which of its clients attempted to enter into a Lossco Transaction with the assistance of Cormark. Cormark would also be in a position to advise the CRA as to those entities known to it that had promoted or attempted to promote Lossco Transactions.

[44] Moreover, Cormark is not being required to speculate as to whether specific Lossco Transactions were actually concluded, given that the Minister is only seeking the names of those individuals and companies known to Cormark who attempted to enter into or promote a Lossco Transaction. As a consequence, I am satisfied that the individuals and companies targeted by the Requirement Order constitute an ascertainable group.

Is the Purpose of the Requirement to Verify Compliance with the Act?

[45] Finally, Cormark challenges Mr. Carroll's statement that "the purpose of the Requirement [...] is to verify compliance by the unnamed persons who have entered into or promoted, or attempted to enter into or promote, a Transaction with the duties and obligations imposed under the *Income Tax Act*, and whether they have correctly calculated their taxable income".

[46] Cormark asserts that the Minister has failed to demonstrate that promoting, attempting to promote, or attempting to enter into a Lossco Transaction would avoid a duty or obligation imposed under the Act, as required by paragraph 231.2(3)(b) of the *Income Tax Act*.

[47] Cormark notes that in cross-examination, Mr. Carroll admitted that, other than promoter fees (which are not the subject of the Requirement Order), there is no impact on a taxpayer's tax liability where the taxpayer merely considered a transaction of the type described in Mr. Carroll's affidavit. Similarly, there is no impact on a promoter or intended promoter's tax liability where the promoter or intended promoter merely promoted or considered promoting a Lossco transaction.

[48] It is true the audit powers in section 231.2 of the *Income Tax Act* are an intrusive measure affecting the right to the protection of private information. As a consequence, the statutory provision must be construed restrictively: *M.N.R. v. Sand Exploration Ltd. et al.*, [1995] 3 FC 44 at 52.

[49] That said, in *Canada (Minister of National Revenue - M.N.R.) v. Greater Montréal Real Estate Board*, 2007 FCA 346, [2008] 3 F.C.R. 366 at para. 45 [*Greater Montreal*] the Federal Court of Appeal held that as long as the conditions prescribed by the Act are complied with, the effect of the 1996 amendments to section 231.2 of the *Income Tax Act* is to permit “a type of fishing expedition ... for the purpose of facilitating the MNR's access to information”.

[50] Moreover, the Minister no longer needs to show that the Requirement Order relates to a “genuine and serious inquiry” into the tax liability of a specific person or persons, or, for that matter, each and every person or entity targeted by the Order. Rather, it is appropriate to grant an *ex parte* application for a Requirement Order where the judge is satisfied that the information or documents relating to one or more unnamed persons is required to verify compliance with the *Income Tax Act* through a tax audit that is conducted in good faith: see *Greater Montreal*, above at paras. 21 and 48.

[51] I am satisfied that the Minister has met this test in this case. Mr. Carroll stated under oath that the Minister has reason to believe that promoters of a Lossco Transaction may also have participated in that transaction, thereby affecting the promoter's duties and obligations under the *Income Tax Act*. Moreover, Mr. Carroll believes that entities who attempted to participate in a Lossco Transaction through Cormark may have gone on to conclude the transaction through a

separate investment management company with the attendant consequences for the entities' duties and obligations under the Act.

Conclusion

[52] For these reasons, Cormark's motion to set aside the March 21, 2011 *ex parte* Requirement Order of this Court is dismissed. The Minister is entitled to his costs, which are fixed at \$3,500.

ORDER

THIS COURT ORDERS that Cormark's motion to set aside the Requirement Order issued by this Court on March 21, 2011 is dismissed, with costs fixed in the amount of \$3,500.

"Anne Mactavish"

Judge

Federal Court



Cour fédérale

ANNEX A

Date: 20110321

Docket: T-393-11

Edmonton, Alberta, March 21, 2011

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

Applicant

and

CORMARK SECURITIES INC.

Respondent

ORDER

UPON *EX PARTE* APPLICATION before this Court on Monday, March 21, 2011, on behalf of the Applicant for;

- (a) an order, sought *ex parte* pursuant to subsection 231.2(3) of the *Income Tax Act* (the ITA) authorizing the Minister of National Revenue (the Minister) to impose on the Respondent a Requirement to Provide Information and Documents (the Requirement) under subsection 231.2(1) of the ITA relating to one or more unnamed persons; and

(b) such further and other relief as this court deems appropriate;

AND UPON reviewing the materials filed by the Minister and hearing the submissions of counsel for the Minister;

AND UPON BEING SATISFIED that:

- 1 the person or group is ascertainable; and
- 2 the requirements are made to verify compliance by the person or persons in the group with any duty or obligation under the *Income Tax Act*;

AND UPON the Court imposing the following conditions:

1. a copy of the Order will be served on the Respondent along with the Requirement;
2. the Applicant will bear any cost of copying any documents made available by the Respondent in response to the Requirement; and
3. the Respondent shall be entitled to seek review of the Order, in accordance with subsection 231.2(5) of the *Income Tax Act* as follows:

231.2(5) Where an authorization is granted under subsection 231.2(3), a third party on whom a notice is served under subsection 231.2(1) may, within 15 days after service of the notice, apply to the judge who

granted the authorization or, where the judge is unable to act, to another judge of the same court for a review of the authorization.

THIS COURT ORDERS that the Minister is authorized to impose on the Respondent a Requirement in the form attached as Schedule “A” to this Order.

“Michael A. Kelen”

Judge

SCHEDULE "A"

REQUIREMENT TO PROVIDE INFORMATION AND DOCUMENTS

_____, 2011

Derek Carroll
Team Leader, Aggressive Tax Planning
Canada Revenue Agency
130, 220 - 4th Avenue SE
Calgary, Alberta T2G 0L1

Tel: (403) 231-3050

Cormark Securities Inc.
200, 700 – 2nd Street SW
Calgary, Alberta T2P 4V5

Re: Cormark Securities Inc.

Dear Sir:

Based on information the Canada Revenue Agency has obtained, Cormark Securities Inc. and/or its predecessor corporation Sprott Securities Inc. (collectively "Cormark") has participated in and/or promoted a series of transactions either on its own behalf or on behalf of a group of investors (the "Investors") designed, in part, to avoid tax that is otherwise payable pursuant to the Income Tax Act Part I, Division E, Subdivision b – Computation of Tax – Corporations ("Part I tax"), through the acquisition of undepreciated capital cost balances, capital losses, non-capital losses, unused Scientific Research and Experimental Development ("SRED") expenditures, and/or unused SRED tax credits (the "Tax Attributes").

The acquisition of Tax Attributes may take various forms, including conversion of share classes, acquisition of shares, reverse amalgamations, and mergers (the "Transaction"), with the intent to avoid the Acquisition of Control rules as outlined in sections 37, 111, or 127 of the *Income Tax Act* which restrict the ability to deduct the Tax Attributes. The goal of the Transaction is to have profits of a distinctly different business activity offset by the Tax Attributes in a manner that does not attract Part I tax.

An example of a Transaction is as follows:

- 1) Cormark identifies or has identified to it a corporation with Tax Attributes ("Lossco") engaged in a particular line of business;
- 2) Lossco and Cormark or the Investors appoint members to the Board of Directors of Lossco which constitute a majority of directors;

- 3) The nominees of Cormark or the Investors on the Board of Directors then change the corporate name and business of Lossco. Cormark or the Investors then arrange for the transfer of other profitable business into Lossco; and,
- 4) The new corporation attempts to deduct the Tax Attributes from its income.

For purposes related to the administration or enforcement of the *Income Tax Act*, pursuant to the provisions of paragraph 231.2(1)(a) and (b) of said Act, I hereby require that you provide, within thirty (30) days, the following documents and information relating to any Transactions in which Cormark participated in and/or promoted the use of Lossco's Tax Attributes or any similar transaction as described above for the calendar years 2007 to the present date, including:

1. A list of corporations, persons or entities known to Cormark who participated in a Transaction as defined above, in whatever form, even if the Transaction was not completed.
2. All correspondence received and sent, all telexes received and sent, all facsimile transmissions received and sent, all electronic mail transmissions received and sent, files, agreements, reports, minutes/notes of meetings, internal approval memoranda, other memoranda, schedules, accounting records, invoices, banking information, working papers, minute books, managers' files, business plans, guarantees, closing books, legal opinions, and tax planning documents relating to or pertaining to:
 - a) The participation of Cormark in the conversion or acquisition of shares, transfer of profitable assets, reverse amalgamation, or merger, involving a Lossco as defined above; and,
 - b) The participation of Cormark in the change in share ownership or structure and business of a Lossco as defined above.
3. A list of corporations, persons or entities known to Cormark who were considered to promote a Transaction as defined above even if the Transaction was not completed.
4. All correspondence received and sent, all telexes received and sent, all facsimile transmissions received and sent, all electronic mail transmissions received and sent, files, agreements, reports, minutes/notes of meetings, internal approval memoranda, other memoranda, schedules, accounting records, invoices, banking information, working papers, minute books, managers' files, business plans, guarantees, closing books, legal opinions, and tax planning documents relating to or pertaining to:
 - a) Cormark's promotion or marketing of the sale of the shares of a Lossco as defined above; and,
 - b) Cormark's promotion or marketing of a change in share ownership or structure and business of a Lossco as defined above.

To comply with this requirement, you must provide the information and documents hereby required to an officer or officers of the Canada Revenue Agency who will attend at your office for that purpose. The documents required are originals or certified copies.

When the documents and information are available for pick up, you may contact:

Derek Carroll
Calgary Tax Services Office
130, 220 - 4th Avenue S.E.
Calgary, AB T2G 0L1
(403) 231-3050

Alternatively, compliance with this requirement may be effected by mailing the documents and information hereby required, by registered mail, to Derek Carroll of the Calgary Tax Services Office at the address noted above, to be received by _____.

Your attention is directed to section 238 and 231.7 of the *Income Tax Act* for the consequences of default in complying with this requirement.

Yours truly,

R. Leigh
Director
Calgary Tax Services Office
Canada Revenue Agency

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-393-11

STYLE OF CAUSE: THE MINISTER OF NATIONAL REVENUE v.
CORMARK SECURITIES INC.

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: November 21, 2011

**REASONS FOR ORDER
AND ORDER:** Mactavish J.

DATED: December 14, 2011

APPEARANCES:

Wendy Bridges

FOR THE APPLICANT

Michel Bourque
David de Groot

FOR THE RESPONDENT

SOLICITORS OF RECORD:

MYLES J. KIRVAN
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FOR THE APPLICANT

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FOR THE RESPONDENT