

Federal Court



Cour fédérale

**Date: 20131114**

**Docket: T-2183-12**

**Citation: 2013 FC 1154**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 14, 2013

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**THE MINISTER OF NATIONAL  
REVENUE**

**Applicant**

**and**

**ALBIN MARANGONI**

**Respondent**

**REASONS FOR ORDER AND ORDER**

**I. Introduction**

[1] The Minister of National Revenue (the applicant) seeks an order under sections 466 and 467 of the *Federal Courts Rules*, SOR/98-106, (the Rules) finding Albin Marangoni (the respondent) in contempt of court.

[2] This is a hearing to allow the respondent to hear proof of contempt alleged against him, described in this decision, and be prepared to present a defence against these allegations.

## **II. Facts**

[3] On February 20, 2012, the applicant served on the respondent a requirement to obtain disclosure and the production of documents with respect to his income tax return for the 2009 taxation year (the requirement) under subsection 231.2(1) of the *Income Tax Act*, RSC (1985), c 1 (5th suppl) (the ITA). The respondent had 30 days to send the following documents to the applicant:

1. the statements of all the bank accounts used both for business and personal purposes;
2. deposit slips and/or books;
3. Mr. Marangoni's existing contracts, such as short-, medium-, or long-term loan(s), loan sharking, car loan(s), hypothecary loan(s), etc.;
4. documents relating to insurance policies;
5. a list of all the assets and liabilities for the years 2007 to 2009 (January 1, 2007, to December 31, 2009);
6. a list of all the acquisitions and disposals for the years 2007 to 2009 (January 1, 2007, to December 31, 2009);
7. all supporting documentation regarding business expenses.

[4] The respondent refused to identify himself at the time that the requirement was served.

[5] The respondent did not follow up on the requirement and was served with a formal demand by the applicant on July 18, 2012.

[6] The respondent refused to identify himself at the time of the service of the formal demand.

[7] The respondent failed to comply with the requirement following the formal demand and the applicant prepared an applicant's record under section 231.7 of the ITA. The respondent was served the record in his mailbox on December 13, 2012.

[8] On January 22, 2013, under section 231.7 of the ITA, Justice Beaudry issued an order (compliance order) requiring Albin Marangoni to comply with the requirement within 15 days following the service of the compliance order, which provided the following:

[TRANSLATION]

**THIS COURT ORDERS**

1. the respondent to respond to the requirement to produce information and documents, dated January 23, 2012, and issued under subsection 231.2(1) of the ITA, by providing the following information and documents:

- the statements of all the bank accounts used both for business and personal purposes;
- deposit slips and/or books;
- Mr. Marangoni's existing contracts, such as short-, medium-, or long-term loan(s), loan sharking, car loan(s), hypothecary loan(s), etc.;
- the documents relating to insurance policies;

- a list of all the assets and liabilities for the years 2007 to 2009 (January 1, 2007, at December 31, 2009);
  - a list of all the acquisitions and disposals for the years 2007 to 2009 (January 1, 2007, to December 31, 2009);
  - all supporting documentation regarding business expenses;
2. the respondent to provide the said information and documents to The Canada Revenue Agency, in care of Pierre-Marc Fréchette, by sending them to his office, located at 305 René-Lévesque Boulevard West, Montréal, H2Z 1A6, within 15 days following the service of this order;
3. WITH costs against the respondent.

[9] The compliance order was served personally on the respondent on January 30, 2013.

[10] The respondent did not communicate the information and produce the documents required in the time set by Justice Beaudry in his compliance order.

[11] On May 8, 2013, on the applicant's motion, Prothonotary Richard Morneau rendered an *ex parte* order directing the respondent to appear before this Court to hear the proof of contempt alleged against him, i.e. the non-compliance with the compliance order of Justice Beaudry and be ready to present a defence against these allegations (the show cause order). The show cause order ordered the following:

[TRANSLATION]

**THE COURT ORDERS THAT:**

1. Albin Marangoni appear before a judge of this Court, at 30 McGill Street, Montréal, at a special hearing of which the maximum duration will be one hour and will be conducted in French;

The date of the special hearing will be set by a subsequent order of the Court Administrator.

2. Albin Marangoni be then ready to hear the proof of the alleged act, i.e. failing to comply with the order of this Court of January 22, 2013, which was served to him personally on January 30, 2013;
3. Albin Marangoni be also ready to present his defence to the alleged act, i.e. failing to comply with the order of this Court of January 22, 2013;
4. The applicant personally serve on Albin Marangoni the following documents:
  - (a) a copy of this order and the applicant's motion record; and
  - (b) a list of the witnesses that the applicant proposes to call, at the date to be set under paragraph 1 above, to prove the alleged act.

[12] The applicant was not able to serve the order and the motion record on the respondent because he did not answer the door and seemed to avoid service.

[13] On June 11, 2013, the hearing for contempt was set for November 4, 2013, by the Court Administrator and the applicant served the applicant's record, the witness list, the show cause order and the order setting the date of the hearing in the respondent's mailbox.

### **III. Issue**

[14] Is the respondent guilty of contempt for not complying with the compliance order of Justice Beaudry and what, if any, is the applicable sentence?

**IV. Relevant statutory provisions**

[15] Contempt of court proceedings before this court are governed by sections 466 to 472 of the Rules and the statutory provisions applicable in this case are reproduced in Annex A of this decision.

**V. The evidence submitted**

[16] In accordance with subsection 470(1) of the Rules, the evidence was delivered orally to the Court at the time of the hearing.

A. The applicant

[17] The applicant examined Pierre-Marc Fréchette, Canada Revenue Agency auditor responsible for auditing the small and medium businesses in the country. He has also been responsible for the respondent's file since May 26, 2011, because the respondent has operated since 1995, a sole proprietorship in the field of nutrition. In addition, the applicant submitted into evidence, in support of his claims, various exhibits that refer to the different facts in this matter and set out in the facts section of this decision.

[18] The applicant argued that the respondent had knowledge of the compliance order of Justice Beaudry dated January 22, 2013, because this order was served on him in person on January 30, 2013. This order granted the respondent a period of 15 days to comply with the requirement, which he did not do. Further, the respondent was given formal notice to comply with the requirement and he was served the show cause order of May 8, 2013, at the same time as the order of the Court Administrator setting the hearing date.

[19] Therefore, according to the applicant, the respondent had knowledge of the requirement that was addressed to him, the formal notice that he was the subject of and the compliance order he was issued. In conclusion, the applicant stated that despite her efforts she still received nothing from the respondent and, consequently, that the respondent did not comply with the compliance order of Justice Beaudry which, at the same time, made him guilty of contempt of court.

B. The respondent

[20] The respondent stated during his testimony that he experienced some computer problems that resulted in the loss of documents required by the applicant. He added that because of his busy schedule, he was unable to recover the requested documents before now. Questioned about this, the respondent simply stated that he had not thought about contacting the applicant for more time so as to comply with the requirement. Also during his cross-examination, the respondent acknowledged being personally served the compliance order of Justice Beaudry and not complying with it in the time period specified.

[21] In addition, the respondent had in his possession, at the hearing, a series of documents that he provided to the applicant. In his view, these documents meet the requirements of the compliance order of Justice Beaudry. The applicant accepted the respondent's documents, but she stated that she would need to verify them before concluding that they comply with the compliance order.

## **VI. Analysis**

[22] Paragraph 466(b) of the Rules provides that a person is in contempt if he or she disobeys a court order. Further, section 469 of the Rules specifies that a finding of contempt shall be based on proof beyond a reasonable doubt. Therefore, it falls on the applicant to establish beyond a reasonable doubt that the respondent acted in contempt.

[23] To render a guilty verdict, the Court must be satisfied that the respondent received notice of the order that he is accused of failing to comply with and that he truly failed to comply with said order.

[24] First, as regards the compliance order issued by Justice Beaudry, the service summary of Marc Landreville, bailiff, stated that this order was personally served on the respondent on January 30, 2013. He was thus informed of the order that he is accused of not having complied with.

[25] Afterward, another service summary by Marc Landreville indicated that the respondent attempted to serve the show cause order on the respondent on May 27, 2013, but that the service could not have taken place since he did not respond and he seemed to avoid service. However, the show cause order was served on the respondent on July 24, 2013, by leaving the documentation in his mailbox, when the applicant served on him the applicant's record in compliance with the order of the Court Administrator of June 11, 2013, setting the hearing date.



[26] This type of service presents a problem in that subsection 467(4) of the Rules provides that the show cause order must be served personally. Meanwhile, section 128 of the Rules sets out what constitutes personal service:

**128. (1)** Personal service of a document on an individual, other than an individual under a legal disability, is effected:

(a) by leaving the document with the individual;

(b) by leaving the document with an adult person residing at the individual's place of residence, and mailing a copy of the document to the individual at that address;

(c) where the individual is carrying on a business in Canada, other than a partnership, in a name or style other than the individual's own name, by leaving the document with the person apparently having control or management of the business at any place where the business is carried on in Canada;

(d) by mailing the document to the individual's last known address, accompanied by an acknowledgement of receipt form in Form 128, if the individual signs and returns the acknowledgement of receipt card or signs a post office receipt;

(e) by mailing the document by registered mail to the individual's last known address, if the individual signs a post office receipt; or

(f) in any other manner provided by an Act of Parliament applicable to the proceeding.

[27] It appears from the record that the show cause order was not served in accordance with the terms provided by section 128. Indeed, the bailiff attempted to serve the order, but he was not able to do so. This show cause order was only served later, with the applicant's record and the method of service used—the delivery of the document to the mailbox—is not in accordance with these terms. The applicant had the opportunity to use section 136 of the Rules to ask the Court to

make an order authorizing substitutional service, but everything leads to believe that she did not avail herself of that opportunity.

[28] Further, in his service summary of July 24, 2013, bailiff Marc Landreville stated that the method of service used is in accordance with paragraph 140(1)(a) of the Rules. However, this provision does not apply to documents that require personal service, such as the show cause order.

[29] Thus, as regards the record and contrary to what the Rules dictate, the respondent was not personally served the show cause order. However, the Rules contain another section that allows the Court to declare valid service that would otherwise not be authorized. Specifically, section 147 of the Rules provides

**147.** Where a document has been served in a manner not authorized by these Rules or by an order of the Court, the Court may consider the document to have been validly served if it is satisfied that the document came to the notice of the person to be served or that it would have come to that person's notice except for the person's avoidance of service.  
[Emphasis added.]

[30] In this case, the respondent appeared at the hearing and testified. Thus, I was also able to conclude that he took notice of the compliance order. Otherwise, how would he have known that he had to appear? Thus, I consider that, under section 147 of the Rules, the applicant had validly served the compliance order on the respondent for the application of section 467 of the Rules and, therefore, I am satisfied beyond a reasonable doubt that the respondent was served the compliance order and the show cause order.

[31] The Court must then assess whether the respondent indeed neglected to comply with the compliance order of Justice Beaudry. The applicant claims that the respondent failed to communicate the information and produce the documents required under the requirement. The respondent acknowledged that he did not send the documents in time, but stated that it would have been impossible for him to do so in such a short timeframe because of computer problems and his busy schedule. However, the respondent could have contacted the applicant at any time during the proceedings to request a longer filing deadline, but he stated that he had not thought of it.

[32] The evidence submitted before the Court establishes that the respondent was personally notified of the compliance order of Justice Beaudry, that he did not comply with it within the time period specified and that despite the fact that he was served the compliance order and the show cause order. It is true that the respondent provided a series of documents to the applicant during the hearing. However, as the applicant rightly submitted, the fact that the respondent may have complied with the compliance order (a verification of the documents submitted at the hearing must be done before drawing such a conclusion) does not detract from the reality that contempt of court was indeed committed.

[33] Therefore, for these reasons and considering the evidence before the Court, I am satisfied beyond a reasonable doubt that the respondent is in contempt of court.

## **VII. Sentence**

[34] With respect to this matter, the applicant invited the Court to impose the following sentence on a finding of contempt:

1. The respondent must pay a fine of \$1,500, payable within 10 days of this order; said payment to be made to the Receiver General for Canada;
2. The respondent must pay the applicant costs awarded on a solicitor and client basis of \$3,000, payable within 10 days of this order; said payment to be made to the Receiver General for Canada;
3. The respondent must comply with the compliance order of Justice Beaudry dated January 22, 2013, within 30 days of this order.

[35] Note that this sentence differs from that stated in the applicant's original submissions: the total costs requested is now higher. At the hearing, the counsel for the applicant requested to modify her original application and justified this increase in costs by relying on a decision, *Minister of National Revenue v Bosnjak*, 2013 FC 399, 108 WCB (2d) 621, which she stated having found during recent case law research. Yet this decision, which dates back to April 2013, pre-dates the filing of her original submissions. Thus, the applicant was free to find this case law before submitting her original application. This Court nevertheless allowed the application to amend by the applicant.

[36] Section 472 of the Rules specifies the sentences that may be ordered following a contempt conviction. However, it is important to assess a series of factors or principles set out in

case law relating to sentencing. Justice Kelen summarized in *Canada (Minister of National Revenue) v Marshall*, 2006 FC 788, at para 16, [2006] FCA No 1008, the applicable criteria to the determination of contempt sentences related to the ITA:

- i. The primary purpose of imposing sanctions is to ensure compliance with orders of the court. Specific and general deterrence are important to ensure continued public confidence in the administration of justice;
- ii. Proportionality of sentencing requires striking a balance between enforcing the law and what the Court has called "temperance of justice";
- iii. Aggravating factors include the objective gravity of the contemptuous conduct, the subjective gravity of the conduct (i.e. whether the conduct was a technical breach or a flagrant act with full knowledge of its unlawfulness), and whether the offender has repeatedly breached orders of the Court; and
- iv. Mitigating factors might include good faith attempts to comply (even after the breach), apologize or accept responsibility, or whether the breach is a first offence.

[37] As the applicant stated, this is the respondent's first breach. However, his attitude toward his tax obligations to the Crown constitutes an aggravating factor, since he breached the compliance order of Justice Beaudry in a flagrant manner, even after having been informed of the illegality of his actions. Further, the respondent never showed intent to accept his responsibility, in addition to complying with the requirement. On the contrary, he did not want to accept the service of the compliance order. Moreover, he never contacted the applicant to get more time so as to comply with the requirement. In contrast, the respondent appeared at the hearing, explained himself and had in his possession documents that he claims are those sought by the applicant and gave them to him. These factors favour a more lenient sentence.

[38] That is why I am of the view that it is appropriate to amend and set the conditions of the sentence suggested by the applicant, specifically so that it helps achieve the primary objective of the sentence, i.e. ensure compliance with the order of Justice Beaudry

[39] Therefore, in light of the record, it is appropriate to order the respondent to pay a fine of \$500 and to pay the costs awarded on a solicitor and client basis of \$1,000, all to be paid to the Receiver General for Canada in 10 monthly payments of \$150. The respondent will also be required to comply, as appropriate, within 30 days of this order, with the compliance order of Justice Beaudry dated January 22, 2013, by communicating the information and producing the documents requested under the requirement of February 20, 2012.

**ORDER**

**THE COURT:**

1. **FINDS** the respondent guilty of contempt of the compliance order of Justice Beaudry dated January 22, 2013;
2. **ORDERS** the respondent to comply with the compliance order of Justice Beaudry dated January 22, 2013, as appropriate, within 30 days of this order, by communicating the information and producing the documents requested under the requirement of February 20, 2012;
3. **SENTENCES** the respondent to pay a fine of \$500 and costs awarded on a solicitor and client basis of \$1,000, payable in 10 monthly payments of \$150, the first payment to be made one month after this order and the payments must be made to the Receiver General for Canada.

"Simon Noël"

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Judge

Certified true translation  
Catherine Jones, Translator

**APPENDIX A – APPLICABLE LEGISLATIVE PROVISIONS**

<i>Federal Court Rules, SOR/98-106</i>	<i>Règles des Cours fédérales, DORS/98-106</i>
<b>Contempt Orders</b>	<b>Ordonnances pour outrage</b>
Contempt	Outrage
<b>466.</b> Subject to rule 467, a person is guilty of contempt of Court who	<b>466.</b> Sous réserve de la règle 467, est coupable d'outrage au tribunal quiconque :
...	[...]
<i>(b)</i> disobeys a process or order of the Court;	<i>b)</i> désobéit à un moyen de contrainte ou à une ordonnance de la Cour;
...	[...]
Right to a hearing	Droit à une audience
<b>467. (1)</b> Subject to rule 468, before a person may be found in contempt of Court, the person alleged to be in contempt shall be served with an order, made on the motion of a person who has an interest in the proceeding or at the Court's own initiative, requiring the person alleged to be in contempt	<b>467. (1)</b> Sous réserve de la règle 468, avant qu'une personne puisse être reconnue coupable d'outrage au tribunal, une ordonnance, rendue sur requête d'une personne ayant un intérêt dans l'instance ou sur l'initiative de la Cour, doit lui être signifiée. Cette ordonnance lui enjoint :
<i>(a)</i> to appear before a judge at a time and place stipulated in the order;	<i>a)</i> de comparaître devant un juge aux date, heure et lieu précisés;
<i>(b)</i> to be prepared to hear proof of the act with which the person is charged, which shall be described in the order with sufficient particularity to enable the person to know the	<i>b)</i> d'être prête à entendre la preuve de l'acte qui lui est reproché, dont une description suffisamment détaillée est donnée pour lui permettre de connaître la nature des



<p>nature of the case against the person; and</p>	<p>accusations portées contre elle;</p>
<p>(c) to be prepared to present any defence that the person may have.</p>	<p>c) d'être prête à présenter une défense.</p>
<p>Ex parte motion</p>	<p>Requête ex parte</p>
<p>(2) A motion for an order under subsection (1) may be made ex parte.</p>	<p>(2) Une requête peut être présentée ex parte pour obtenir l'ordonnance visée au paragraphe (1).</p>
<p>Burden of proof</p>	<p>Fardeau de preuve</p>
<p>(3) An order may be made under subsection (1) if the Court is satisfied that there is a prima facie case that contempt has been committed.</p>	<p>(3) La Cour peut rendre l'ordonnance visée au paragraphe (1) si elle est d'avis qu'il existe une preuve prima facie de l'outrage reproché.</p>
<p>Service of contempt order</p>	<p>Signification de l'ordonnance</p>
<p>(4) An order under subsection (1) shall be personally served, together with any supporting documents, unless otherwise ordered by the Court.</p>	<p>(4) Sauf ordonnance contraire de la Cour, l'ordonnance visée au paragraphe (1) et les documents à l'appui sont signifiés à personne.</p>
<p>...</p>	<p>[...]</p>
<p>Burden of proof</p>	<p>Fardeau de preuve</p>
<p><b>469.</b> A finding of contempt shall be based on proof beyond a reasonable doubt.</p>	<p><b>469.</b> La déclaration de culpabilité dans le cas d'outrage au tribunal est fondée sur une preuve hors de tout doute raisonnable.</p>
<p>Evidence to be oral</p>	<p>Témoignages oraux</p>
<p><b>470. (1)</b> Unless the Court directs otherwise, evidence on a motion for a contempt order, other than an order under</p>	<p><b>470. (1)</b> Sauf directives contraires de la Cour, les témoignages dans le cadre d'une requête pour une ordonnance d'outrage au</p>

<p>subsection 467(1), shall be oral.</p>	<p>tribunal, sauf celle visée au paragraphe 467(1), sont donnés oralement.</p>
<p>Testimony not compellable</p>	<p>Témoignage facultatif</p>
<p>(2) A person alleged to be in contempt may not be compelled to testify.</p>	<p>(2) La personne à qui l'outrage au tribunal est reproché ne peut être contrainte à témoigner.</p>
<p>...</p>	<p>[...]</p>
<p>Penalty</p>	<p>Peine</p>
<p><b>472.</b> Where a person is found to be in contempt, a judge may order that</p>	<p><b>472.</b> Lorsqu'une personne est reconnue coupable d'outrage au tribunal, le juge peut ordonner :</p>
<p>(a) the person be imprisoned for a period of less than five years or until the person complies with the order;</p>	<p>a) qu'elle soit incarcérée pour une période de moins de cinq ans ou jusqu'à ce qu'elle se conforme à l'ordonnance;</p>
<p>(b) the person be imprisoned for a period of less than five years if the person fails to comply with the order;</p>	<p>b) qu'elle soit incarcérée pour une période de moins de cinq ans si elle ne se conforme pas à l'ordonnance;</p>
<p>(c) the person pay a fine;</p>	<p>c) qu'elle paie une amende;</p>
<p>(d) the person do or refrain from doing any act;</p>	<p>d) qu'elle accomplisse un acte ou s'abstienne de l'accomplir;</p>
<p>(e) in respect of a person referred to in rule 429, the person's property be sequestered; and</p>	<p>e) que les biens de la personne soient mis sous séquestre, dans le cas visé à la règle 429;</p>
<p>(f) the person pay costs.</p>	<p>f) qu'elle soit condamnée aux dépens.</p>

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

**DOCKET:** T-2183-12

**STYLE OF CAUSE:** THE MINISTER OF NATIONAL REVENUE  
v ALBIN MARANGONI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** November 4, 2013

**REASONS FOR ORDER  
AND ORDER:** JUSTICE SIMON NOËL

**DATED:** November 14, 2013

**APPEARANCES:**

Julie Mousseau	FOR THE APPLICANT
Albin Marangoni	FOR THE RESPONDENT (FOR HIMSELF)

**SOLICITORS OF RECORD:**

Julie Mousseau Counsel Montréal, Quebec	FOR THE APPLICANT
Albin Marangoni	FOR THE RESPONDENT (FOR HIMSELF)