

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220727

**Dockets: A-166-20
A-169-20
A-170-20
A-171-20
A-172-20
A-173-20
A-174-20
A-175-20
A-176-20
A-177-20**

Citation: 2022 FCA 138

**CORAM: GAUTHIER J.A.
WOODS J.A.
DAWSON D.J.C.A.**

Docket: A-166-20

BETWEEN:

MINISTER OF NATIONAL REVENUE

Appellant

and

FREDERICK SHARP

Respondent

Docket: A-169-20

AND BETWEEN:

MINISTER OF NATIONAL REVENUE

Appellant

and

ESTATE OF MARY HETHEY

Respondent

Docket: A-170-20

AND BETWEEN:

MINISTER OF NATIONAL REVENUE

Appellant

and

RICHARD HETHEY

Respondent

Docket: A-171-20

AND BETWEEN:

MINISTER OF NATIONAL REVENUE

Appellant

and

BRUCE GASARCH

Respondent

Docket: A-172-20

AND BETWEEN:

MINISTER OF NATIONAL REVENUE

Appellant

and

ZHIYING Y. GASARCH

Respondent

Docket: A-173-20

AND BETWEEN:

MINISTER OF NATIONAL REVENUE

Appellant

and

CHARTERHOUSE CAPITAL INC.

Respondent

Docket: A-174-20

AND BETWEEN:

MINISTER OF NATIONAL REVENUE

Appellant

and

DANIEL BLAQUIERE

Respondent

Docket: A-175-20

AND BETWEEN:

MINISTER OF NATIONAL REVENUE

Appellant

and

TERESA SHARP

Respondent

Docket: A-176-20

AND BETWEEN:

MINISTER OF NATIONAL REVENUE

Appellant

and

SHAMSHER G. HIRJI

Respondent

Docket: A-177-20

AND BETWEEN:

MINISTER OF NATIONAL REVENUE

Appellant

and

FREDRICK COOMBES

Respondent

Heard at Vancouver, British Columbia, on November 17 and 18, 2021.

Judgment delivered at Ottawa, Ontario, on July 27, 2022.

REASONS FOR JUDGMENT BY:

WOODS J.A.

CONCURRED IN BY:

GAUTHIER J.A.
DAWSON D.J.C.A.

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ESTATE OF MARY HETHEY

Respondent

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AND BETWEEN:

MINISTER OF NATIONAL REVENUE

Appellant

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RICHARD HETHEY

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REASONS FOR JUDGMENT

WOODS J.A.

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| I. | <u>Overview</u> | |

[1] Before this Court are 10 appeals and cross-appeals from a decision of the Federal Court (2020 FC 724) on motions to strike statements of claim. The Federal Court struck the statements of claim in part and allowed other parts of the claims to proceed.

[2] In 2016, the CRA issued requirement letters to each of the respondent taxpayers under its audit powers seeking information from them. The CRA also issued requirement letters to third parties under its audit powers requiring financial information pertaining to the respondents.

[3] The respondents filed judicial review applications in the Federal Court challenging the CRA's decisions to issue the personal and third party requirement letters. The challenge to the personal requirement letters is no longer at issue, and only the challenge to the third party requirement letters remains.

[4] Upon motion by the respondents, and on consent, the judicial review applications were ordered to be treated and proceeded with as actions and became subject to the rules applicable to actions. The respondents then filed the statements of claim at issue in these appeals.

[5] The appellant Minister of National Revenue (the Minister) moved to strike the statements of claim. The statements of claim mainly concern the validity of requirements to provide documents issued by the Canada Revenue Agency (CRA) and the constitutionality of legislative provisions entitling the CRA to disclose such documents to other agencies. The respondents submit that the requirement letters and the legislative provisions violate their rights under ss. 7 and 8 of the Canadian Charter of Rights and Freedoms, s. 7, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 (Charter).

[6] The Federal Court's decision on the motions focussed on the statement of claim of one of the respondents, Frederick Sharp. The motions judge, Barnes J., described the other statements of claim as "substantially similar" and wrote that the single set of reasons applied to all the proceedings (reasons at para. 3).

[7] Since the motions judge dealt centrally with the motion to strike Frederick Sharp's statement of claim, I will first discuss the appeal and cross-appeal of this motion decision before considering the others. But for the discussion at the end of these reasons concerning the other respondents, all references below relate to Frederick Sharp's statement of claim and Mr. Sharp will be referred to as the Respondent.

II. Frederick Sharp (the Respondent)

A. *Introduction*

[8] The Respondent's statement of claim has two parts. In the first part, the Respondent alleges that the CRA misused its audit powers when it issued the third party requirement letters and that the Respondent's rights under ss. 7 and 8 of the Charter were breached. Relying on *R. v. Jarvis*, 2002 SCC 73, [2002] 3 S.C.R. 757 [*Jarvis*], the Respondent alleges that the requirement letters were invalid because they were issued for the predominant purpose of furthering criminal investigations. I refer to this part of the statement of claim as the "Jarvis claim".

[9] Second, the statement of claim challenges the validity of provisions in three statutes under which the CRA may disclose taxpayer information: *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp. (ITA)); *Criminal Code*, R.S.C. 1985, c. C-46; and *Privacy Act*, R.S.C. 1985, c. P-21. The Respondent seeks declarations that the disclosure provisions are of no force and effect because they permit the CRA to disclose confidential taxpayer information, including to domestic and international criminal law enforcement, and this unjustifiably violates ss. 7 and 8 of the Charter. In the alternative, the Respondent seeks a declaration of invalidity of the provisions entitling the CRA to issue requirements for information and documents. I refer to this part of the statement of claim as the "legislative challenge".

[10] The Minister moved to strike out the statement of claim in whole or in part, without leave to amend. The motions judge declined to strike the *Jarvis* claim but struck the legislative challenge.

[11] The Minister appeals to this Court from the decision not to strike the *Jarvis* claim. The Respondent cross-appeals from the decision to strike the legislative challenge, but only with respect to some of the provisions in the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (ITA).

[12] In the appeal on the *Jarvis* claim, the Minister submits that the Federal Court erred by not striking this claim for failure to disclose a reasonable cause of action and constituting an abuse of process. In the cross-appeal, the Respondent submits that the Federal Court erred when it struck the legislative challenge as being unfocussed and factually empty.

[13] As I will explain, I conclude that the Federal Court erred with respect to the *Jarvis* claim and did not err with respect to the legislative challenge. In the result, the Respondent's statement of claim should be struck in its entirety. However, leave to amend with respect to the *Jarvis* claim should be granted, subject to strict conditions.

B. *Respondent's statement of claim*

[14] This section summarizes the Respondent's statement of claim. The claim makes the following allegations:

(1) Overview

[15] The Respondent is a Canadian citizen and resides in Vancouver, British Columbia.

[16] The CRA has targeted the Respondent for years in investigations that the CRA knew were predominately criminal in nature.

[17] The investigations have involved coordination between CRA's Audit Division, its Criminal Investigations Directorate (CID), and external law enforcement agencies, both domestic and foreign, including the Royal Canadian Mounted Police (RCMP), the U.S. Federal Bureau of Investigation (FBI), and the Joint Intelligence Taskforce on Shared Intelligence and Collaboration (JITSIC).

(2) 2013 Referral

[18] On November 13, 2013, the Audit Division made a criminal referral to the CID based on a detailed memo prepared by a CRA case officer. The memo described allegations that the Respondent's business, the Corporate House Group of Companies (Corporate House), was involved in a complex tax evasion scheme. The memo alleged that Corporate House assists Canadians to hide assets and income, and to hinder and delay the CRA as a creditor. Hundreds of companies were said to be involved and "capital flows" allegedly originated mostly from offshore sources. The memo further alleged that the strategy devised by Corporate House was designed so that the "principals and architects" of the strategy would not file or pay any taxes in

Canada. The Respondent was alleged to be a “central controlling mind” of Corporate House. The Respondent alleges that this memo shows that the Audit Division had concluded that the Respondent was engaged in large-scale tax fraud, both as an intermediary and personally.

[19] The Respondent further alleges that the Audit Division had concluded that the Respondent was guilty of criminal conduct long before the criminal referral in 2013. In order to understand the scope and scale of Corporate House’s criminal operations, the Audit Division misused its audit powers to acquire bank records and other financial information to further an investigation that was predominately criminal in nature.

(3) 2016 search warrant

[20] This misuse of audit powers was said to be predominately criminal in nature at least from the date of the criminal referral. In February 2016, the CID executed a search warrant on Corporate House. The Information to Obtain sworn in support identified the Respondent in connection with a CID investigation into tax evasion by a client of Corporate House. Parenthetically, I note that it is not alleged that the Respondent was the subject of this investigation. The CID, through the execution of the warrant, sought to obtain extensive business records held by Corporate House in order to identify persons who participated in the criminal offences under investigation and to prove the nature and details of the alleged fraudulent scheme.

(4) Panama Papers

[21] In April 2016, after the execution of the search warrant, a group of journalists began to report on documents taken from a Panamanian law firm (the Panama Papers). The events relating to the release of the Panama Papers are said to further demonstrate that the CRA's investigation of the Respondent and others connected to Corporate House was predominately criminal in nature.

[22] It is alleged that the reporting of the Panama Papers led to great public attention amid allegations of tax evasion and fraud committed by the Panamanian law firm, its clients, and its intermediaries. Canadian officials began coordinated efforts with international allies in furtherance of enforcement actions. The United States Department of Justice and the RCMP opened criminal investigations relating to persons named in the Panama Papers.

[23] One week after the public release of the Panama Papers, the Minister announced that the CRA was accelerating compliance actions on offshore activities of some Canadians and would be initiating criminal investigations where warranted.

[24] At the same time, members of JITSIC (overseen by the OECD), including Canada, met to discuss the information obtained in the Panama Papers and the OECD announced that each JITSIC member state would follow up in accordance with its domestic laws and information-sharing agreements.

[25] On May 2, 2016, the RCMP Commissioner advised the media that the RCMP would be commencing a criminal investigation into Canadians named in the Panama Papers. The Commissioner told the Globe and Mail that the RCMP had discussed with foreign partners how to obtain the documents as “there are tremendous suggestions of criminality ...”.

[26] On May 9, 2016, the CBC identified Corporate House as the “go to” firm for wealthy Canadians wanting to keep assets private and offshore to minimize their tax burden. The Respondent was identified as the principal of Corporate House.

[27] On May 9, 2016, the Globe and Mail reported that the Minister had announced that she “had already started to identify targets for audits” and “[i]f there needs to be criminal prosecutions, there will be criminal prosecutions.”

[28] On November 15, 2016, the Toronto Star reported that the CRA had launched 60 formal audits into Canadians identified in the database of the Panamanian law firm. In addition, the CRA had executed search warrants and launched criminal investigations.

[29] On January 16 and 17, 2017, the CRA met with JITSIC member states and a large simultaneous exchange of information through tax treaties occurred. The JITSIC members also agreed to “pool information on key intermediaries from domestic efforts.” The CRA commented that it was conducting audits, had executed search warrants, and was performing criminal investigations, all in relation to the Panama Papers.

[30] It is alleged that the CRA coordinated investigative efforts targeting the Respondent with the RCMP, the Internal Revenue Service (IRS), and other foreign and domestic law enforcement agencies. As part of this effort, the CRA supplied the Respondent's private information, compelled through audit powers, to domestic and international law enforcement agencies. In doing so, the CRA shared the Respondent's private information in violation of the Charter.

(5) Improper use of audit powers

[31] It is alleged that after the Audit Division made the criminal referral, the Audit Division continued to use its audit powers to gather evidence for the improper use of that information in a criminal investigation. This included the issuance of personal and third party requirements in relation to the Respondent and his alleged associates.

[32] The requirement letters were issued at a time when the Respondent was under criminal investigation by the CID and in circumstances where the information obtained was then shared with the CID and other law enforcement agencies, both domestic and international.

(6) The Jarvis claim

[33] The Audit Division issued eight third party requirement letters relating to the Respondent in June 2016. Another four were issued subsequently. The required information related to bank accounts, credit cards, investment accounts and business dealings.

[34] The Respondent alleges that since the Audit Division sought this information for the predominant purpose of obtaining evidence for use in a criminal investigation both domestically and internationally, the issuance of the requirement letters unjustifiably violated the Respondent's rights under ss. 7 and 8 of the Charter.

(7) The legislative challenge

[35] Material to this appeal, the Respondent alleges that parts of the disclosure provisions in the ITA violate his Charter rights. In particular, he alleges that these provisions permit the transfer of private information, compelled without prior judicial authorization, to domestic and international law enforcement and to the Canadian Security Intelligence Service (CSIS), without use limitations. The Respondent alleges that to the extent the CRA disclosed his taxpayer information pursuant to these provisions, these provisions breach his rights under ss. 7 and 8 of the Charter.

[36] In the alternative to the legislative challenge concerning disclosure provisions, the Respondent alleges that the audit powers under ss. 231.1 and 231.2 of the ITA breach his ss. 7 and 8 Charter rights because the confidentiality of the information gathered under these provisions has been eroded by amendments to s. 241 enacted after the audit powers were declared constitutional in *R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627, 68 D.L.R. (4th) 568 [*McKinlay Transport*].

(8) Relief sought

[37] The relief sought by the Respondent includes:

- A declaration that the third party requirement letters are invalid;
- An injunction prohibiting the Minister from disseminating information or documents compelled through the third party requirement letters to any person or agency outside of the Audit Division; and
- A declaration that ss. 241(4)(e)(xii), 241(9), 241(9.1), 241(9.5) and 241(4)(e)(iv) of the ITA, or alternatively ss. 231.1 and 231.2 of the ITA, unjustifiably infringe ss. 7 and 8 of the Charter and are of no force and effect.

C. *Federal Court decision*

[38] The Minister moved to strike the Respondent's statement of claim in whole or in part without leave to amend on the basis that it does not disclose a reasonable cause of action, is scandalous, frivolous or vexatious, and is otherwise an abuse of process.

[39] With respect to the *Jarvis* claim, the Federal Court first considered whether the pleadings contained sufficient material facts. The Court concluded that the pleadings were sufficient, but "barely so", to withstand the challenge. In particular, the Court determined that the allegations

“are arguably sufficient to establish, if later proven, that the Requirements were issued in the face of an ongoing criminal investigation where reasonable grounds to lay charges then existed.” Further, the allegations “could help to establish that the audits were being pursued with a prosecution motive in mind.” (paras. 28-30).

[40] The Court also considered whether the *Jarvis* claim had no chance of success because declaratory relief was not appropriate and the only recourse was in defence of a criminal prosecution (at paras. 32-34). The motions judge was not able to make a definitive finding on this point of law, and concluded that the Respondent should be given the benefit of the doubt on the motion to strike as a result of the decision of this Court in *Kligman v. M.N.R.*, 2004 FCA 152, [2004] 4 F.C.R. 477 [*Kligman*].

[41] With respect to the legislative challenge, the motions judge summarized this claim as alleging that “the Minister has breached or intends to breach the [Respondent’s] Charter interests by sharing audit information with domestic and foreign law enforcement agencies” (para. 35).

[42] The Court stated (at para. 38) that the legislative challenge is “unfocussed and factually empty,” and that “[h]ypothetical *Charter* challenges are inappropriate because there is no factual matrix to support the legal theories that are being advanced.” The Court accordingly struck the parts of the Respondent’s statement of claim relating to the legislative challenge.

D. *Issues and standard of review*

[43] The main issues in the appeal and cross-appeal relating to the Respondent are:

- Did the Federal Court err when it did not strike the parts of the Respondent's statement of claim relating to the *Jarvis* claim?
- Did the Federal Court err in striking the parts of the Respondent's statement of claim relating to the legislative challenge?

[44] The standard of review is set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 [*Housen*]. Questions of law are to be determined on the correctness standard, and questions of fact and questions of mixed fact and law (excluding extricable questions of law) are to be determined on the standard of palpable and overriding error (at paras. 8, 10, 36).

E. *Applicable principles — motions to strike*

[45] The Minister moved to strike the Respondent's statement of claim under rule 221 of the *Federal Courts Rules*, S.O.R./98-106 (Rules) on the basis that the Respondent's claim disclosed no reasonable cause of action; was scandalous, frivolous, or vexatious; and was otherwise an abuse of the process of the Court (rr. 221(1)(a), (c), and (f), respectively).

[46] On a motion to strike under r. 221(1)(a) for failure to disclose a reasonable cause of action, a motion judge must consider whether, assuming the facts as stated in the statement of claim can be proved, it is “plain and obvious” that the plaintiff’s statement of claim discloses no reasonable cause of action (*Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 at 980, 74 D.L.R. (4th) 321; *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45 at para. 17 [*Imperial Tobacco*]). The statement of claim must be construed generously (*Mancuso v. Canada (Minister of Health and Welfare)*, 2015 FCA 227, 476 N.R. 219 at para. 16 [*Mancuso*]).

[47] In *Mancuso*, this Court provided guidance on the distinction between material facts and bald allegations:

[18] There is no bright line between material facts and bald allegations, nor between pleadings of material facts and the prohibition on pleading of evidence. They are points on a continuum, and it is the responsibility of a motions judge, looking at the pleadings as a whole, to ensure that the pleadings define the issues with sufficient precision to make the pre-trial and trial proceedings both manageable and fair.

[19] What constitutes a material fact is determined in light of the cause of action and the damages sought to be recovered. The plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised. The pleading must tell the defendant who, when, where, how and what gave rise to its liability.

[48] In addition to striking a pleading for failure to disclose a reasonable cause of action, the Court may strike a pleading on the ground that it is scandalous, frivolous, or vexatious (r. 221(1)(c) of the Rules). Rule 221(1)(c) has been applied in a variety of circumstances, including to pleadings that did not sufficiently reveal the facts on which the plaintiff bases his cause of action to make it possible for a defendant to answer them or for a court to regulate the

proceedings (*Murray v. Canada (Public Service Commission)* (1978), 21 N.R. 230 at para. 10, [1978] 2 A.C.W.S. 337 [*Murray*]).

[49] Finally, this Court may strike pleadings under r. 221(1)(f) of the Rules where the pleading is an abuse of the process of the Court. The guidance to be applied under r. 221(1)(f) of the Rules is that set out in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77 [*C.U.P.E.*]. The doctrine of abuse of process is a flexible doctrine that engages the Court's inherent power to prevent the misuse of its procedure in a way that would bring the administration of justice into disrepute (*C.U.P.E.* at para. 37).

[50] Evidence is not admissible on a motion under r. 221(1)(a), but is admissible on a motion under rr. 221(1)(c) or (f). (Rules, r. 221(2); *Kremikovtzi Trade v. Phoenix Bulk Carriers Limited*, 2007 FCA 381, 370 N.R. 317 at para. 32).

F. *Applicable principles — audit powers*

[51] This section sets out the relevant legal principles applicable to the Minister's audit powers.

(1) Section 231.2

[52] The Respondent seeks judicial review of the Minister's decision to issue third party requirement letters. Subsection 231.2(1) of the ITA provides the Minister with a broad authority

to require information and documents from any person for a purpose related to the administration or enforcement of the ITA. Subsection 231.2(1) is reproduced in the appendix to these reasons, together with other relevant ITA provisions.

[53] In *McKinlay Transport*, the Supreme Court of Canada in 1990 upheld the validity of a predecessor to s. 231.2 of the ITA, finding that the provision did not violate the right to be secure from unreasonable search and seizure under s. 8 of the Charter.

(2) *Jarvis*

[54] In *Jarvis*, the Supreme Court in 2002 placed limits on the Minister's powers under ss. 231.1(1) and 231.2(1) of the ITA in accordance with ss. 7 and 8 of the Charter. Those sections provide:

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

7 Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

8 Everyone has the right to be secure against unreasonable search or seizure.

8 Chacun a droit à la protection contre les fouilles, les perquisitions ou les saisies abusives.

[55] In *Jarvis*, the taxpayer sought to exclude information obtained pursuant to ss. 231.1(1) and 231.2(1) of the ITA from evidence in his criminal trial (*Jarvis* at paras. 35-36). The Supreme Court concluded that certain evidence should be excluded in accordance with the Charter.

[56] The Supreme Court held that where CRA officials conduct an inquiry for the predominant purpose of determining penal liability, they may not make use of the requirement and inspection powers under ss. 231.1(1) and 231.2(1) (*Jarvis* at para. 96). Conversely, CRA officials conducting an inquiry for the predominant purpose of determining tax liability may make use of the requirement and inspection powers (*Jarvis* at paras. 97, 99).

[57] Further, CRA officials conducting an investigation into penal liability may not make use of information obtained pursuant to ss. 231.1(1) or 231.2(1) where that information was obtained after the investigation into penal liability began (*Jarvis* at para. 97). Conversely, CRA officials conducting an investigation into penal liability may make use of information obtained under ss. 231.1(1) and 231.2(1) where that information was obtained before the investigation began (*Jarvis* at para. 97).

[58] The Supreme Court clarified that the CRA may conduct parallel criminal investigations and administrative audits and auditors may use their requirement and inspection powers so long as the predominant purpose of the administrative audit is the determination of the taxpayer's tax liability (*Jarvis* at para. 97).

[59] The Court provided a non-exhaustive list of factors for determining whether the predominant purpose of an inquiry is the determination of penal liability (*Jarvis* at para. 94). The Court wrote that courts must assess all the circumstances, and that apart from a clear decision to pursue a criminal investigation, no factor was determinative (*Jarvis* at para. 95).

(3) *Kligman*

[60] In 2004, in this Court's decision in *Kligman*, the Court allowed taxpayers' applications for judicial review and quashed requirements for production of documents issued to the taxpayers on behalf of the Minister on the basis that the requirements were issued in the course of a criminal investigation (*Kligman* at paras. 39-41). Notably, the investigator who issued the requirements admitted that the purpose of the investigation was to investigate and gather evidence of tax evasion offences (paras. 11, 13). The decision to use the audit powers was made prior to the release of the Supreme Court's decision in *Jarvis*.

[61] In *Kligman*, the Minister argued that the taxpayers should comply with the requirements and object to their admissibility in any subsequent criminal proceedings (para. 3). This Court rejected that argument on the basis that prohibiting the taxpayers from asserting their Charter right to protection from unreasonable search and seizure and from impeding its imminent violation would seriously undermine the beneficial and protective effect of the Charter (para. 3).

G. *Analysis — Jarvis claim*

[62] The Minister has appealed the Federal Court's decision not to strike the *Jarvis* claim. As I will explain, I would strike this part of the statement of claim and grant the Respondent leave to amend on strict conditions.

(1) Preliminary issue

[63] As mentioned earlier, the Respondent initiated this proceeding by filing an application for judicial review. The Federal Court subsequently issued an order on consent under s. 18.4(2) of the *Federal Courts Act*, R.S.C. 1985, c. F-7. The order required that the proceeding be treated and proceeded with as an action, a statement of claim be filed, and the proceeding be governed by Part 4 of the Rules (those applicable to actions).

[64] In the decision under appeal, the Federal Court concluded that r. 221 (applicable to actions) did not govern this motion to strike, and instead the Court should apply the principles for striking judicial review applications (reasons at para. 12). This conclusion runs contrary to the terms of the s. 18.4(2) order, which specifies that Part 4 of the Rules is applicable to these proceedings. Since Part 4 includes r. 221, the order under s. 18.4(2) provides that r. 221 governs this motion to strike.

[65] Although the Court erred in concluding that r. 221 did not apply, nothing turns on this as the motions judge took the precautionary step of also applying r. 221 in his analysis (reasons at paras. 14-16).

(2) Did the Federal Court err?

[66] The Minister submits that the Federal Court erred in refusing to strike the Respondent's challenge to the third party requirement letters.

[67] One of the Minister's arguments is that the Federal Court erred in law by failing to consider that requirement letters may be issued for purposes of an audit even if a parallel criminal investigation is ongoing. I understand the Minister as arguing that the Federal Court failed to identify the proper legal test from *Jarvis*.

[68] In my view, the Federal Court did not fail to identify the proper legal test. The motions judge recognized that it is permissible for the Minister to issue requirements for audit purposes in the face of a criminal investigation when he discussed collaboration between the Audit Division and the CID (reasons at para. 30). Material facts capable of establishing such collaboration are relevant because, if proven, they may demonstrate that the investigation and audit were not in fact parallel.

[69] Although the Court did not err in identifying the proper legal test, the Court did err in applying the test.

[70] In the Court's discussion of collaboration between auditors and investigators at paragraph 30, the motions judge commented that the statement of claim is "notably lacking" in information about collaboration and stated that the deficiency may be caused by numerous redactions in documents provided by the Minister. The Court did not state that this relieved the Respondent of the requirement to plead sufficient material facts to establish a reasonable cause of action. It does not. A plaintiff must plead sufficient material facts to disclose a cause of action, even if the facts are unknown to the plaintiff and he only hopes to prove them (*Imperial Tobacco* at para. 22).

[71] However, the motions judge did refer to an allegation in support of a finding of collaboration between the auditors and investigators. The Respondent alleges that, around the time the Panama Papers were released, a newspaper reported that the Minister stated that the CRA was identifying targets for audits and “if there needs to be criminal prosecutions, there will be prosecutions.” The motions judge concluded that this allegation could help establish that “the audits were pursued with a prosecution motive in mind.” (reasons at para. 30).

[72] This was the sole material fact that the motions judge referred to in relation to collaboration. This material fact is simply a general statement by the Minister about the CRA’s approach in addressing the Panama Papers. The statement suggests that audits may precede criminal investigations, but this is permitted in *Jarvis*. The contents of the newspaper report, if proven, are not capable of demonstrating that this was not a parallel audit and criminal investigation and do nothing to advance the allegation that the issuance of the requirements breached the Respondent’s Charter rights. Accordingly, the Federal Court failed to identify sufficient material facts to disclose a reasonable cause of action.

[73] The deficiency in the Federal Court’s reasons at paragraph 30 raises an issue of mixed fact and law. This Court has held that such an issue is subject to appellate review on the very high standard of palpable and overriding error (*Bewsher v. Canada*, 2020 FCA 216, 325 A.C.W.S. (3d) 345 at paras. 6-7). A palpable error is one that is plainly seen (*Housen* at para. 6). An overriding error is one that affects the result (*Hydro-Québec v. Matta*, 2020 SCC 37, 450 D.L.R. (4th) 547 at para. 33; *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157, [2018] 2 F.C.R. 344 at para. 62).

[74] In my view, the Federal Court's error is plain to see and it affects the result.

[75] The Respondent submits that, in any event, the statement of claim contains another material fact that makes up for any deficiency in the Federal Court's reasons. I disagree for reasons that follow.

[76] The Respondent refers to the allegation in the statement of claim that the Audit Division shared information gathered from the requirement letters with criminal investigators. The Respondent suggests that this allegation is sufficient to demonstrate collaboration such that the investigation and audit were not parallel.

[77] The Respondent cites paragraph 97 of *Jarvis*, in which the Supreme Court wrote:

97 The predominant purpose test does not thereby prevent the CCRA from conducting parallel criminal investigations and administrative audits. The fact that the CCRA is investigating a taxpayer's penal liability, does not preclude the possibility of a simultaneous investigation, the predominant purpose of which is a determination of the same taxpayer's tax liability. However, if an investigation into penal liability is subsequently commenced, the investigators can avail themselves of that information obtained pursuant to the audit powers prior to the commencement of the criminal investigation, but not with respect to information obtained pursuant to such powers subsequent to the commencement of the investigation into penal liability. . . .

[Emphasis added]

[78] This submission suggests that the Respondent has pleaded material facts which, if true, are capable of demonstrating that the Audit Division issued requirements and obtained information pursuant to those requirements after the commencement of the criminal

investigation, and that the criminal investigators availed themselves of that information. I understand the Respondent as submitting that this pleading discloses a reasonable cause of action on the basis of a Charter breach as described in paragraph 97 of *Jarvis*.

[79] However, the facts pleaded in support of this Charter breach are deficient.

[80] As discussed above, a proper pleading must clearly state the facts giving rise to the cause of action so that the pre-trial and trial proceedings are manageable and fair (*Mancuso* at paras. 18-19). Transactions must be described with particularity, and if, as in the present case, a party is a stranger to a transaction, the transaction must still be described with sufficient detail that the other party can identify it (*Enercorp Sand Solutions Inc. v. Specialized Desanders Inc.*, 2018 FCA 215, 160 C.P.R. (4th) 79 at paras. 34-37 [*Enercorp*]). Further, the court must be able to regulate the proceedings (*Murray* at para. 10).

[81] The parts of the statement of claim alleging sharing information fail to satisfy these conditions as they lack the particularity required of a proper pleading. This is evident in both the pleading of the material facts and the pleading of the cause of action.

[82] To illustrate, the Respondent asserts a Charter breach on the basis of the Audit Division sharing information with criminal investigators. In the relevant material facts, the Respondent alleges that there were many investigations over a number of years: “the CRA has targeted him for years in investigations that were known to the CRA to be predominately criminal in nature, some known to the [Respondent], but all known to the CRA” (statement of claim at para. 10).

However, the statement of claim did not identify with particularity any criminal investigation into the Respondent. The pleading specifies one criminal investigation which led to the 2016 search warrant, but this was an investigation into a client and not the Respondent himself.

[83] The allegations of sharing are also lacking in particularity. The Respondent alleges that “documents and information compelled by the Audit Division were then shared with the CID and other law enforcement agencies, both domestic and international” (statement of claim at para. 27). The pleading does not link the alleged sharing of information to any particular criminal investigation.

[84] Similarly, the pleading of the cause of action in the statement of claim is couched in extremely broad language: “By issuing the ... Third-Party Requirements, as referenced above, for the use and assistance of domestic and international criminal investigation, the CRA has unjustifiably breached the Plaintiff’s rights under ss. 7 and 8 of the Charter.” (statement of claim at para. 34).

[85] The claim and the material facts supporting it relating to the allegation of sharing with a criminal investigation are extremely broad and unfocussed. The unfocussed nature of this pleading will make it difficult to determine the scope of discoveries, as illustrated in paragraph 90 below which describes the evidence sought by the respondent. Inevitably, the conduct of the proceeding would be unmanageable and unfair. In the circumstances, this part of the Respondent’s statement of claim is vexatious within the meaning of r. 221(1)(c) and should be struck on that basis (*Murray* at para. 10).

[86] As such, I disagree with the Respondent that the material facts relating to sharing information with criminal investigators are capable of remedying the deficiency in the Federal Court's reasons. The statement of claim must properly plead sharing with criminal investigators in order to demonstrate collaboration such that the third party requirements were not issued in a parallel investigation. As held in *Enercorp*, sharing must be identified with sufficient detail that the Minister can identify it. The statement of claim does not do this, and accordingly the statement of claim fails to disclose a reasonable cause of action.

[87] The remaining issue is whether the Court should grant leave to amend the statement of claim.

[88] The general principle to be applied is that leave should be granted unless it is plain and obvious that the defect in the pleading cannot be cured by amendment (*Enercorp* at para. 27; *Simon v. Canada*, 2011 FCA 6 at para. 15, 410 N.R. 374). This is a low bar.

[89] The Minister's submissions on the *Jarvis* claim include arguments that, if accepted, would mean that the defect cannot be cured. These submissions are considered below.

[90] The Minister submits that this litigation is an abuse of process because the Respondent is attempting to use the litigation to obtain extensive disclosure of information to which he would not otherwise be entitled. The Minister submits that the Respondent's intent was revealed in the previous motion for an order under s. 18.4(2). The Respondent argued in that motion that a s. 18.4(2) order should be granted because the litigation requires extensive evidence, including

information as to CID's processing of the referral, details as to intra-agency meetings as to how to coordinate the criminal investigation, and information as to investigative steps taken by CID in furtherance of their investigation. (Minister's representations on the motion to strike, Appeal Book, Vol. 1, Tab 8, pp. 127-29; Respondent's supplemental submissions on motion to convert, Appeal Book, Vol. 1, Tab 7, pp. 100-101).

[91] The Minister submits that this is an abuse of the Court's process because it is an attempt to circumvent restrictions on disclosure of information relating to a criminal investigation. Citing *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 at 335-36, 339-40, 343, 130 N.R. 277, the Minister suggests that the Respondent is generally not entitled to disclosure from the Crown as to details of a criminal investigation until charges have been laid. In the Minister's submission, this litigation is an attempt to circumvent this rule.

[92] In effect, the Minister is suggesting that the Court should intervene at the motion to strike stage to prevent an attempt by the Respondent to use the discovery process inappropriately. At this stage the discovery process has not commenced and an intervention by this Court is premature. If it subsequently turns out that the discovery process is being used inappropriately in the Minister's view, the Minister could bring a motion at that time.

[93] The Minister also submits that *Jarvis* and *Kligman* should not apply to a case such as this.

[94] With respect to *Jarvis*, the Minister suggests that the framework for determining predominant purpose by applying a non-exhaustive list of factors should be restricted to a

criminal context as it was in *Jarvis*. As for *Kligman*, the Minister suggests that this decision should be restricted to its facts, or reconsidered altogether.

[95] These arguments are worthy of consideration at the appropriate time, but they should not be considered based only on allegations in pleadings. The Supreme Court of Canada has concluded that Charter issues should not be decided in a factual vacuum (*MacKay v. Manitoba*, [1989] 2 S.C.R. 357 at 361, 61 D.L.R. (4th) 385 [*MacKay*]). Accordingly, if the facts as ultimately determined do not reveal any potential Charter breach, it would not be appropriate for *Jarvis* and *Kligman* to be reviewed in this decision. The arguments are best left for the trial judge who has the benefit of a full evidentiary record.

[96] In the result, it is not plain and obvious that the defects in the pleading cannot be cured by amendment and the Respondent should be given an opportunity to do so by filing a fresh as amended statement of claim in the Federal Court. However, I would grant leave on the strict condition that the pleading identify with particularity the facts giving rise to the cause of action and exclude immaterial allegations.

H. *Analysis — legislative challenge*

[97] The Respondent has cross-appealed with respect to the legislative challenge.

[98] The legislative challenge seeks declarations of invalidity with respect to legislative provisions that permit the CRA to disclose taxpayer information to other agencies. The Federal

Court struck the parts of the statement of claim relevant to this issue on the basis that the allegations were “unfocussed and factually empty” (reasons at para. 38).

[99] The scope of the cross-appeal is restricted to ss. 241(4)(e)(iv), 241(4)(e)(xii), 241(9), 241(9.1) and 241(9.5) of the ITA, and, in the alternative, ss. 231.1 and 231.2 of the ITA.

(1) Did the Federal Court err?

[100] The Respondent claims that to the extent that taxpayer information obtained under the audit powers was shared pursuant to the impugned provisions, the provisions are unconstitutional as they violate the Respondent’s rights under ss. 7 and 8 of the Charter (statement of claim at para. 39).

[101] The motions judge dealt with the legislative challenge in short order. He commented that the Respondent was seeking “broad declarations of unconstitutionality of a host of statutory provisions that authorize the distribution of taxpayer information whether or not those provisions have been or ever will be employed against their interests. ... This is the kind of unfocussed and factually empty pleading that the Courts routinely refuse to entertain” (reasons at paras. 37-38).

[102] I agree with the motions judge’s decision on this issue, substantially for the reasons he gave. The pleading on the legislative challenge is clearly deficient.

[103] The Respondent's claim is based largely on the broad allegation that the CRA has shared, and continues to share, taxpayer information obtained through requirement letters with "domestic and international criminal law enforcement, including, among others, CID, the RCMP, the FBI and CSIS" (statement of claim at para. 37).

[104] This allegation is not sufficient to engage the impugned legislative provisions. The Respondent claims that the impugned disclosure provisions are unconstitutional to the extent that his taxpayer information was shared pursuant to these provisions. Accordingly, the Respondent must plead with particularity that information was shared pursuant to one of more of these provisions.

[105] The impugned disclosure provisions provide exceptions to the general confidentiality rules set out in s. 241(1) of the ITA. The provisions are very specific, as set out below:

- s. 241(4)(e)(iv) – information may be disclosed for the purposes of a warrant under s. 21(3) of the Canadian Security Intelligence Service Act;
- s. 241(4)(e)(xii) – information may be disclosed for the purposes of a provision in a tax treaty or in a listed international agreement;
- s. 241(9) – information may be disclosed to specified Canadian governmental institutions if the information may be relevant to an investigation into threats to the security of Canada, an investigation into a terrorism offence, or an investigation of a laundering proceeds of crime offence related to a terrorism offence;
- s. 241(9.1) – information provided to an official of CSIS or the RCMP for specified purposes may be used for the purpose of investigating or prosecuting a

terrorism offence, a laundering proceeds of crime offence related to a terrorism offence, or investigating threats to the security of Canada; and

- s. 241(9.5) – information may be disclosed to a law enforcement officer of an appropriate police organization if it may afford evidence of specified serious offences, such as corruption, terrorism, criminal organization offences, or an offence with a stated term of imprisonment.

[106] Accordingly, the pleading does not properly ground the legislative challenge because it does not provide any material facts which, if taken as true, would demonstrate that the CRA shared the Respondent's taxpayer information pursuant to these provisions.

[107] The legislative challenge in the statement of claim is aptly described by the motions judge as unfocussed and factually empty. Further, it makes no difference that the legislative challenge is narrowed in the cross-appeal. The motions judge's conclusions are equally valid with respect to the legislative challenge as reframed.

[108] The Respondent made a number of submissions on this issue.

[109] First, the Respondent submits that the general non-particularized allegation of sharing is sufficient for the purposes of challenging the impugned legislation. The motions judge was correct to find otherwise: "Hypothetical *Charter* challenges are inappropriate because there is no factual matrix to support the legal theories that are being advanced" (reasons at para. 38). The relevant principle was described by Supreme Court of Canada in 1989: "Charter challenges should not and must not be made in a factual vacuum. To attempt to do so would trivialize the Charter and inevitably result in ill-considered opinions" (*MacKay* at 361).

[110] The Respondent also suggests that the particulars of sharing do not need to be pleaded and will be introduced at trial. According to the Respondent, it is sufficient to plead that the Respondent's taxpayer information "has already been shared with domestic and international law enforcement bodies in breach of his Charter rights." I disagree as the requirements of a proper pleading also apply to Charter challenges (*Mancuso* at paras. 16, 21). It would be unfair if the pleading did not reveal the material facts supporting the claim. Accordingly, the material facts pleaded must include the elements of the provisions that are alleged to be unconstitutional.

[111] Finally, the Respondent suggests that the Federal Court erred in not addressing the issue of standing. This issue was raised before the Federal Court but was not discussed in the reasons. There was no reason for the Federal Court to discuss whether the Respondent has standing since the Court found that the pleading relating to the legislative challenge should be struck on other grounds.

[112] Accordingly, I conclude that the motions judge did not err in striking the legislative challenge. In the context of the relevant principles in striking an action, the legislative challenge should be struck as vexatious under r. 221(1)(c) or an abuse of process under r. 221(1)(f).

(2) Fresh evidence motion

[113] A few days before the hearing in this Court, the Respondent moved to introduce fresh evidence on the cross-appeal. The panel dismissed the fresh evidence motion at the hearing with reasons to follow. These are those reasons.

[114] The fresh evidence at issue is a criminal complaint and supporting affidavit filed by an FBI Special Agent in the United States District Court for the District of Massachusetts. The complaint was filed to charge the Respondent and three other individuals for offences relating to securities fraud that allegedly took place from 2014 to October 2018.

[115] The allegations are described in detail in the supporting affidavit. The alleged fraudulent activity involves breaches of securities laws to facilitate what is commonly known as a “pump and dump” operation by which the perpetrators artificially inflate the trading price of shares for their own benefit.

[116] The Respondent submits that if this evidence were accepted he would seek to amend the statement of claim to add an allegation that the taxpayer information at issue was shared with the FBI for the purposes of this criminal matter. He submits that this evidence engages one of the disclosure provisions at issue because the alleged securities offences are serious offences as described in s. 241(9.5)(a)(iii)(A) and (B) of the ITA. For the purpose of this cross-appeal, I assume that the alleged offences are described in these disclosure provisions. In light of this submission, it appears that the Respondent’s argument is that he is able to plead sufficient material facts to support the legislative challenge, at least with respect to the impugned provision at s. 241(9.5).

[117] The principles that apply in determining whether new evidence should be admitted on an appeal are set out by the Supreme Court of Canada in *Palmer v. R.* (1979), [1980] 1 S.C.R. 759 at 775-76, 106 D.L.R. (3d) 212 [*Palmer*]:

(1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases: see *McMartin v. The Queen*, [[1964] S.C.R. 484].

(2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.

(3) The evidence must be credible in the sense that it is reasonably capable of belief.

(4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

[118] It is not necessary to discuss the first three elements of the *Palmer* test as the fourth element disposes of the fresh evidence motion. The fourth element requires that the allegations revealed by the proposed evidence, taken with the other allegations in the statement of claim, could reasonably be expected to have affected the outcome of the motion to strike.

[119] In my view, the fourth requirement from *Palmer* is not satisfied because the Respondent has not established that in light of this fresh evidence, the Federal Court could reasonably be expected to conclude that there was a sufficient factual basis for the claim.

[120] The criminal complaint alleges that the Respondent breached United States securities laws or conspired to breach these laws when the Respondent participated in a pump and dump operation. The Respondent suggests that the gathered financial information would be useful to

the FBI investigation because it is relevant to the “overall picture” as to whether the Respondent profited from the illicit operation.

[121] However, the Respondent has not established that the gathered information would be useful to the U.S. investigation. The fresh evidence suggests that this is not the case and that the FBI had sufficient evidence from other sources to establish that the Respondent made substantial profits from this operation. No reference is made in the fresh evidence to any information obtained from the CRA or Canada.

[122] The fourth element from *Palmer* is satisfied only if the Federal Court could reasonably be expected to conclude that there was a sufficient factual basis for the claim to withstand a motion to strike. This element has not been satisfied.

[123] Finally, where one or more of the four criteria set out in *Palmer* are not met, this Court retains a residual discretion to grant leave to a party to present new evidence on appeal. This Court should exercise this discretion only in the “clearest of cases” where the interests of justice so require (*Brace v. Canada*, 2014 FCA 92, 239 A.C.W.S. (3d) 550 at para. 12).

[124] The Respondent did not make submissions on whether this Court should exercise its residual discretion to consider fresh evidence on appeal. In my view, this is not among the clearest of cases in which the interests of justice require this Court to grant leave to present this new evidence. This Court should not exercise its discretion to consider fresh evidence in this appeal.

(3) Conclusion

[125] The Federal Court granted the Minister's motion to strike the pleadings on the legislative challenge and did not grant leave to amend. There is no reason to interfere with the decision of the Federal Court on this issue. The pleadings relating to the legislative challenge are deficient and there is no reason to think that they could be cured by an amendment.

[126] Accordingly, I would dismiss the cross-appeal.

III. Analysis — other respondents

[127] The Federal Court determined that it was not necessary to provide separate reasons in relation to the other nine respondents. The Court found that their claims were substantially similar to the claim of the Respondent, and the conclusion on these nine motions to strike should be the same as on the motion to strike relating to the Respondent. This was a sensible approach to the other respondents' legislative challenges but not with respect to their *Jarvis* claims.

[128] With respect to the legislative challenges, I agree with the Federal Court that they do not warrant separate consideration because there were no significant differences from the Respondent's legislative challenge. The legislative challenges of the nine other respondents were similarly unfocused and factually empty and I agree with the motions judge that they should be struck without leave to amend on the same basis as the Respondent's legislative challenge. Accordingly, I would dismiss the cross-appeals of the other nine respondents.

[129] With respect to the *Jarvis* claims, it was an error for the Federal Court to conclude that the claims were substantially similar to the Respondent's claim. For instance, the other nine respondents pleaded facts relating to a criminal investigation but these facts differed from the allegations pleaded by the Respondent. Whether these differences would affect the outcome of the motions to strike should be considered on an individual basis.

[130] The task of considering the motions to strike with respect to the *Jarvis* claims of the other nine respondents should be undertaken by the Federal Court. Accordingly, I would allow the appeals with respect to the *Jarvis* claims of the other nine respondents, set aside this part of the decision of the Federal Court, and refer the motions back to the Federal Court for reconsideration by another judge.

IV. Conclusion and disposition

A. *The Respondent*

[131] With respect to the Respondent, I would allow the appeal and dismiss the cross-appeal both with costs in this Court to the Minister. I would set aside the order relating to the *Jarvis* claim, and making the order the Federal Court should have made, I would strike the statement of claim in its entirety, with costs in the Federal Court to the Minister. I would also grant leave to the Respondent to file a fresh as amended statement of claim on the conditions set out above.

B. *Other respondents*

[132] With respect to the nine other respondents, I would allow the respective appeals and dismiss the respective cross-appeals, both without costs in this Court. I would set aside the order relating to the *Jarvis* claims of the other respondents and refer the motions to strike the *Jarvis* claims back to the Federal Court for reconsideration by another judge.

C. *Style of cause*

[133] One of the respondents, Mary Hethey, unfortunately passed away shortly before the hearing in this Court. Counsel has filed a notice and affidavit in accordance with r. 117(2) of the Rules in order to carry on the proceeding and the Minister has informed the Court that she will not object to its continuance in this Court by the estate. Accordingly, I would amend the style of cause to substitute the Estate of Mary Hethey as the respondent.

"Judith Woods"

J.A.

"I agree.
Johanne Gauthier J.A."

"I agree.
Eleanor R. Dawson D.J.C.A."

APPENDIX

Extracts from *Income Tax Act* (current version)

Income Tax Act, R.S.C. 1985, c. 1
(5th Supp.)

Loi de l'impôt sur le revenu, L.R.C.
(1985), ch. 1 (5^e suppl.)

SECTION 231.1

231.1(1) An authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Act,

(a) inspect, audit or examine the books and records of a taxpayer and any document of the taxpayer or of any other person that relates or may relate to the information that is or should be in the books or records of the taxpayer or to any amount payable by the taxpayer under this Act, and

(b) examine property in an inventory of a taxpayer and any property or process of, or matter relating to, the taxpayer or any other person, an examination of which may assist the authorized person in determining the accuracy of the inventory of the taxpayer or in ascertaining the information that is or should be in the books or records of the taxpayer or any amount payable by the taxpayer under this Act,

[...]

SECTION 231.1

231.1(1) Une personne autorisée peut, à tout moment raisonnable, pour l'application et l'exécution de la présente loi, à la fois :

a) inspecter, vérifier ou examiner les livres et registres d'un contribuable ainsi que tous documents du contribuable ou d'une autre personne qui se rapportent ou peuvent se rapporter soit aux renseignements qui figurent dans les livres ou registres du contribuable ou qui devraient y figurer, soit à tout montant payable par le contribuable en vertu de la présente loi;

b) examiner les biens à porter à l'inventaire d'un contribuable, ainsi que tout bien ou tout procédé du contribuable ou d'une autre personne ou toute matière concernant l'un ou l'autre dont l'examen peut aider la personne autorisée à établir l'exactitude de l'inventaire du contribuable ou à contrôler soit les renseignements qui figurent dans les livres ou registres du contribuable ou qui devraient y figurer, soit tout montant payable par le contribuable en vertu de la présente loi;

[...]

SECTION 231.2

231.2(1) Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act (including the collection of any amount payable under this Act by any person), of a listed international agreement or, for greater certainty, of a tax treaty with another country, by notice sent or served in accordance with subsection (1.1), require that any person provide, within such reasonable time as is stipulated in the notice,

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

(b) any document.

[...]

SECTION 241

241(4) An official may

[...]

(e) provide taxpayer information, or allow the inspection of or access to taxpayer information, as the case may be, under, and solely for the purposes of,

[...]

(iv) a warrant issued under subsection 21(3) of the

SECTION 231.2

231.2(1) Malgré les autres dispositions de la présente loi, le ministre peut, sous réserve du paragraphe (2) et, pour l'application ou l'exécution de la présente loi (y compris la perception d'un montant payable par une personne en vertu de la présente loi), d'un accord international désigné ou d'un traité fiscal conclu avec un autre pays, par avis signifié ou envoyé conformément au paragraphe (1.1), 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.

[...]

SECTION 241

241(4) Un fonctionnaire peut :

[...]

e) fournir un renseignement confidentiel, ou en permettre l'examen ou l'accès, en conformité avec les dispositions ou documents suivants, mais uniquement pour leur application :

[...]

(iv) un mandat décerné aux termes du paragraphe 21(3) de

*Canadian Security
Intelligence Service Act,*

(v) an order made under
subsection 462.48(3) of the
Criminal Code,

[...]

(xii) a provision contained in a
tax treaty with another country
or in a listed international
agreement, or

[...]

*la Loi sur le service canadien
du renseignement de sécurité,*

(v) une ordonnance rendue en
vertu du paragraphe 462.48(3)
du *Code criminel,*

[...]

(xii) une disposition d'un
traité fiscal ou d'un accord
international désigné,

[...]

241(9) An official may provide to the
head of a recipient Government of
Canada institution listed in Schedule
3 to the *Security of Canada
Information Disclosure Act,* or to an
official designated for the purposes of
that Act by the head of that recipient
institution,

(a) publicly accessible charity
information;

(b) taxpayer information, if there
are reasonable grounds to suspect
that the information would be
relevant to

(i) an investigation of whether
the activity of any person may
constitute threats to the
security of Canada, as defined
in section 2 of the *Canadian
Security Intelligence Service
Act,* or

241(9) Un fonctionnaire peut fournir
les renseignements ciaprès au
responsable d'une institution fédérale
destinataire figurant à l'annexe 3 de
la *Loi sur la communication
d'information ayant trait à la sécurité
du Canada,* ou à un fonctionnaire que
le responsable de l'institution désigne
pour l'application de cette loi :

a) les renseignements
d'organismes de bienfaisance
accessibles au public;

b) des renseignements
confidentiels, s'il existe des
motifs raisonnables de
soupçonner qu'ils seraient utiles
aux fins suivantes :

(i) toute enquête visant à
vérifier si les activités d'une
personne sont de nature à
constituer des menaces envers
la sécurité du Canada, au sens
de l'article 2 de la *Loi sur le
Service canadien du
renseignement de sécurité,*

(ii) an investigation of whether any of the following offences may have been committed:

(A) a terrorism offence as defined in section 2 of the *Criminal Code*, and

(B) an offence under section 462.31 of the *Criminal Code*, if that investigation is related to a terrorism offence as defined in section 2 of that Act; and

(c) information setting out the reasonable grounds referred to in paragraph (b), to the extent that any such grounds rely on information referred to in paragraph (a) or (b).

241(9.1) Information — other than designated donor information — provided to an official of the Canadian Security Intelligence Service or the Royal Canadian Mounted Police, as permitted by paragraph (4)(f.1), may be used by such an official, or communicated by such an official to another official of the Canadian Security Intelligence Service or the Royal Canadian Mounted Police for use by that other official, for the purpose of

(a) investigating whether an offence may have been committed, ascertaining the identity of a person or persons who may have committed an offence, or prosecuting an offence, which offence is

(ii) toute enquête visant à établir si l'une des infractions ci-après peut avoir été commise :

(A) une infraction de terrorisme, au sens de l'article 2 du *Code criminel*,

(B) une infraction prévue à l'article 462.31 du *Code criminel*, si l'enquête en cause est liée à une infraction de terrorisme au sens de l'article 2 de cette loi;

c) les renseignements établissant les motifs raisonnables mentionnés à l'alinéa b), dans la mesure où ces motifs sont fondés sur les renseignements visés aux alinéas a) ou b).

241(9.1) Tout fonctionnaire du Service canadien du renseignement de sécurité ou de la Gendarmerie royale du Canada à qui des renseignements, sauf les renseignements désignés sur les donateurs, sont fournis en conformité avec l'alinéa (4)f.1) peut les utiliser, ou les communiquer à un autre fonctionnaire du Service canadien du renseignement de sécurité ou de la Gendarmerie royale du Canada pour que celui-ci les utilise, en vue :

a) de mener une enquête pour établir si une infraction prévue aux dispositions ci-après peut avoir été commise, de vérifier l'identité de toute personne pouvant avoir commis une telle infraction ou d'intenter une

poursuite relative à une telle infraction :

(i) described in Part II.1 of the *Criminal Code*, or

(i) les dispositions de la partie II.1 du *Code criminel*,

(ii) described in section 462.31 of the *Criminal Code*, if that investigation, ascertainment or prosecution is related to an investigation, ascertainment or prosecution in respect of an offence described in Part II.1 of that Act; or

(ii) l'article 462.31 du *Code criminel*, si l'enquête, la vérification ou la poursuite en cause est liée à une enquête, à une vérification ou à une poursuite relatives à une infraction prévue à la partie II.1 de cette loi;

(b) investigating whether the activities of any person may constitute threats to the security of Canada, as defined in section 2 of the *Canadian Security Intelligence Service Act*.

(b) de mener une enquête pour établir si les activités d'une personne sont de nature à constituer des menaces envers la sécurité du Canada, au sens de la *Loi sur le Service canadien du renseignement de sécurité*.

[...]

[...]

241(9.5) An official may provide to a law enforcement officer of an appropriate police organization

241(9.5) Un fonctionnaire peut fournir les renseignements ci-après à un agent d'exécution de la loi d'une organisation de police compétente :

(a) taxpayer information, if the official has reasonable grounds to believe that the information will afford evidence of an act or omission in or outside of Canada that, if committed in Canada, would be

a) des renseignements confidentiels, si le fonctionnaire a des motifs raisonnables de croire qu'ils constituent des éléments de preuve d'une action ou d'une omission commise au Canada ou à l'étranger qui, si elle était commise au Canada, constituerait :

(i) an offence under any of

(i) une infraction prévue à l'une des dispositions suivantes :

(A) section 3 of the *Corruption of Foreign Public Officials Act*,

(B) sections 119 to 121, 123 to 125 and 426 of the *Criminal Code*,

(C) section 465 of the *Criminal Code* as it relates to an offence described in clause (B), and

(D) sections 144, 264, 271, 279, 279.02, 281 and 333.1, paragraphs 334(a) and 348(1)(e) and sections 349, 435 and 462.31 of the *Criminal Code*,

(ii) a terrorism offence or a criminal organization offence, as those terms are defined in section 2 of the *Criminal Code*, for which the maximum term of imprisonment is 10 years or more, or

(iii) an offence

(A) that is punishable by a minimum term of imprisonment,

(B) for which the maximum term of imprisonment is 14 years or life, or

(C) for which the maximum term of imprisonment is 10 years and that

(I) resulted in bodily harm

(A) l'article 3 de la *Loi sur la corruption d'agents publics étrangers*,

(B) les articles 119 à 121, 123 à 125 et 426 du *Code criminel*,

(C) l'article 465 du *Code criminel*, relativement à une infraction visée à la division (B),

(D) les articles 144, 264, 271, 279, 279.02, 281 et 333.1, les alinéas 334a) et 348(1)e) et les articles 349, 435 et 462.31 du *Code criminel*,

(ii) une infraction de terrorisme ou une infraction d'organisation criminelle, au sens de l'article 2 du *Code criminel*, passible d'une peine maximale d'emprisonnement de dix ans ou plus,

(iii) une infraction passible :

(A) d'une peine minimale d'emprisonnement,

(B) d'une peine maximale d'emprisonnement de quatorze ans ou d'emprisonnement à perpétuité,

(C) d'une peine maximale d'emprisonnement de dix ans, et, selon le cas :

(I) dont la perpétration entraîne des lésions corporelles,

(II) involved the import, export, trafficking or production of drugs, or

(II) qui met en cause l'importation, l'exportation, le trafic ou la production de drogues,

(III) involved the use of a weapon; and

(III) qui met en cause l'usage d'une arme;

(b) information setting out the reasonable grounds referred to in paragraph (a), to the extent that any such grounds rely on information referred to in that paragraph.

b) les renseignements établissant les motifs raisonnables mentionnés à l'alinéa a), dans la mesure où ces motifs sont fondés sur les renseignements visés à cet alinéa.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

| | |
|------------------------|---|
| DOCKETS: | A-166-20, A-169-20, A-170-20, A-171-20, A-172-20, A-173-20, A-174-20, A-175-20, A-176-20 and A-177-20 |
| DOCKET: | A-166-20 |
| STYLE OF CAUSE: | MINISTER OF NATIONAL REVENUE v. FREDERICK SHARP |
| AND DOCKET: | A-169-20 |
| STYLE OF CAUSE: | MINISTER OF NATIONAL REVENUE v. ESTATE OF MARY HETHEY |
| AND DOCKET: | A-170-20 |
| STYLE OF CAUSE: | MINISTER OF NATIONAL REVENUE v. RICHARD HETHEY |
| AND DOCKET: | A-171-20 |
| STYLE OF CAUSE: | MINISTER OF NATIONAL REVENUE v. BRUCE GASARCH |
| AND DOCKET: | A-172-20 |
| STYLE OF CAUSE: | MINISTER OF NATIONAL REVENUE v. ZHIYING Y. GASARCH |
| AND DOCKET: | A-173-20 |
| STYLE OF CAUSE: | MINISTER OF NATIONAL REVENUE v. CHARTERHOUSE CAPITAL INC. |
| AND DOCKET: | A-174-20 |

STYLE OF CAUSE: MINISTER OF NATIONAL
REVENUE v. DANIEL
BLAQUIERE

AND DOCKET: A-175-20

STYLE OF CAUSE: MINISTER OF NATIONAL
REVENUE v. TERESA SHARP

AND DOCKET: A-176-20

STYLE OF CAUSE: MINISTER OF NATIONAL
REVENUE v. SHAMSHER G.
HIRJI

AND DOCKET: A-177-20

STYLE OF CAUSE: MINISTER OF NATIONAL
REVENUE v. FREDRICK
COOMBES

PLACE OF HEARING: VANCOUVER, BRITISH
COLUMBIA

DATE OF HEARING: NOVEMBER 17 and 18, 2021

REASONS FOR JUDGMENT BY: WOODS J.A.

CONCURRED IN BY: GAUTHIER J.A.
DAWSON D.J.C.A.

DATED: JULY 27, 2022

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