

FEDERAL COURT

BETWEEN:

PAUL GHERMEZIAN

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at the Federal Court in Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date

Issued
by:

(Registry Officer)

Address of local
office:

TO:

1. Deputy Attorney General of Canada
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H8
2. Minister of National Revenue
7th Floor
555 MacKenzie Avenue
Ottawa, ON K1A 0L5

Application
(For a Judicial Review)

This is an application for judicial review in respect of:

The act, matter, or decision of Mr. Andrew Bowe, CRA to issue a demand for information returns ("**Demand**") dated December 9, 2020 (ref: A-GDT5-0108) purporting to require the Applicant to file Form T1134 information returns in relation to a non-resident trust which does not carry on a business in Canada and thus does not fall within the jurisdiction of the Income Tax Act ("**ITA**").

The matter was communicated to the Applicant on: December 15, 2020.

The Applicant makes application for:

1. A writ of certiorari.
2. An order quashing the Demand dated December 9, 2020.
3. A declaration that the Demand is *ultra vires*.
4. A writ of prohibition and an order of injunction prohibiting the Minister of National Revenue (the "**Minister**") from subsequently making any similar demands against the Applicant.
5. If necessary, an interim order pursuant to section 18.2 of the Federal Courts Act staying the Demand and prohibiting and restraining the Minister from taking any steps to enforce the Demand until 120 days following final disposition of this application for judicial review.
6. Costs of this application.
7. Such further or other relief as this Court may permit.

The grounds for the application are:

8. On December 9, 2020 Mr. Andrew Bowe, Canada Revenue Agency (“**CRA**”) issued the impugned Demand requiring the Applicant, under section 233 of the Income Tax Act (“**ITA**”), to file the following in relation to a non-resident trust:
 - (i) A completed Form T1134 information return with a separate supplement for each foreign affiliate of the non-resident trust, regardless of whether or not the foreign affiliate is considered to be inactive or dormant during 2013, 2014, 2015, 2016 and 2018;
 - (ii) Financial statements, including the trial balance and the notes to the financial statements for each foreign affiliate;
 - (iii) For foreign affiliates that have multiple classes of shares or that have a single class of shares that are less than wholly owned, provide all documentation relied upon in determining control and ownership for the purposes of the definitions of controlled foreign affiliate, direct equity percentage and equity percentage (defined in subsections 95(1) and 95(4) of the ITA) as referenced by subsection 233.4(2);
 - (iv) A list of all foreign (branch) registrations for each foreign affiliate;
 - (v) Where the response to be provided indicates that a foreign affiliate has been wound-up or otherwise struck from the registry in a taxation year, provide dissolution documents for the foreign affiliate and for each of its foreign (branch) registrations; and
 - (vi) In an attachment to the cover letter of the response, please indicate whether the non-resident trust previously relied upon the CRA’s administrative policies with respect to inactive or dormant foreign affiliates to determine whether or not an information return should be filed in respect of a foreign affiliate.

9. The Demand is *ultra vires* because it fails to strictly comply with the statutory conditions under sections 231.2, 231.6 and 233 of the ITA. It also contravenes the CRA’s established administrative policies (including AD-19-02R dated June 3, 2019 titled “Obtaining Information for Audit Purposes”) which prohibit authorized delegates of the Minister of National Revenue (“**Minister**”) from seeking compliance with a demand issued to a person outside of Canada.

10. The Minister was aware that, at all relevant times, the Applicant was not resident in Canada.

11. The Demand was not properly served on the Applicant.

12. Furthermore, the Demand was not initiated, issued and signed by a person with proper delegated authority under subsection 220(2.01) of the ITA to exercise powers or perform the duties of the Minister.
13. The Demand relates to a trust that is neither a factual nor a deemed resident of Canada. The Minister knows that unless such Canadian residency is first established the CRA does not have jurisdiction to require the non-resident trust to file a Form T1134 information return.
14. The Demand seeks information that is located outside Canada and thus constitutes “foreign-based information or documents” within the meaning of subsection 231.6(1) of the ITA. The Minister knows that the statutory scheme of the ITA does not authorize her to require production of foreign-based information through sections 231.2 and 233; instead, those general provisions must yield to the specific provisions of section 231.6 (i.e., *generalia specialibus non derogant*).
15. The Demand also relates to unnamed persons whose identities are unknown to the Minister. In the circumstances, the Minister was obliged to obtain judicial authorization under subsections 231.2(2) and (3) of the ITA but failed to do so.
16. The Minister improperly circumvented the taxpayer protections provided under subsection 231.2(2) and (3), and section 231.6 of the ITA. She attempted to do indirectly what she couldn’t do directly.
17. The Demand fails to give a sufficiently precise description of the information sought in order for the Applicant to understand what he is required to provide in response (for example, see paragraph 8(iii) above).
18. The Demand constitutes an impermissible “fishing expedition”.
19. The decision-maker acted without jurisdiction or acted beyond his jurisdiction because his act or decision fails to comply with the applicable statutory provisions of the ITA and also contravenes the CRA’s established administrative policies relating to the exercise of the Minister’s powers under sections 231.2, 231.6 and 233 of the ITA.
20. The act or decision to issue the Demand was not reasonable because, among other things, it lacks justification, transparency and intelligibility. It does not fall within a range

of possible, acceptable outcomes which are defensible in light of the relevant facts and law.

21. Further the action or decision was made in a perverse or capricious manner without regard for the facts or the law, and made with the knowledge and/or understanding that it would result in prejudice to the Applicant. To protect the Applicant from any further prejudice in the future, the Minister ought to be prohibited from subsequently making any similar demands.
22. The Applicant asks the Respondent to consent to extend the time for compliance with the Demand until 120 days following final disposition of this application for judicial review. If the Respondent refuses, then the Applicant seeks an interim order pursuant to section 18.2 of the Federal Courts Act staying the Demand and prohibiting and restraining the Minister from taking any steps to enforce the Demand until 120 days following final disposition of this application for judicial review.
23. The Applicant relies upon sections 18, 18.1 and 18.2 of the Federal Courts Act, and sections 220, 231.2, 231.6, 233 and 233.4 of the ITA.

This application will be supported by the following material:

24. An affidavit, if any, to be sworn or affirmed.
25. With leave of the Court, the *viva voce* testimonies of Mr. Andrew Bowe and Mr. Hanif Amlani at the hearing of the application (as per Rule 316 of the Federal Court Rules).
26. Such further and other evidence as counsel may advise and this Court may permit.

Dated at Toronto this 8th day of January, 2020.



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