

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. Hanif Amlani, CRA to issue a requirement for information (“**RFI**”) dated December 11, 2020 purporting to require the Applicant, under subsection 231.2(1) of the Income Tax Act (“**ITA**”), to provide extensive foreign-based information and documents 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 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 RFI dated December 11, 2020.
3. A declaration that the RFI 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 RFI and prohibiting and restraining the Minister from taking any steps to enforce the RFI 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 11, 2020 Mr. Hanif Amlani, Canada Revenue Agency (“CRA”) issued the impugned RFI purporting to require the Applicant, under subsection 231.2(1) of the ITA , to provide extensive foreign-based information and documents in relation to a non-resident trust which does not carry on a business in Canada.
9. Among other things, the RFI demanded the Applicant to provide the following information and documents:
 - (i) For all periods of the non-resident trust since May 3, 2013, ending on December 31st in each of 2013, 2014, 2015, 2016, 2017, 2018 and 2019:
 - a. The following returns and supplemental returns, accurately and fully completed:
 - i. Form T106 (as required by section 233.1 of the ITA);
 - ii. Form T1134 (as required by section 233.4 of the ITA);
 - iii. Form T1135 (as required by section 233.3 of the ITA);
 - iv. Form T3RET (T3 Trust Income Tax and Information Return);
 - b. Financial statements, trial balances, account groupings and year end adjusting entries for the non-resident trust;
 - c. Accounting books and records, including financial statements, trustees’ resolutions, bank statements and deposit slips that have been maintained for the non-resident trust since its formation;
 - d. Copies of all foreign tax returns filed for the non-resident trust for all periods since it was settled;
 - e. Corporate organizational charts relating to the non-resident trust, for each year of the trust. The organizational chart should include all resident and non-resident corporations, trusts, bare trusts, partnerships, co-ownerships, and joint ventures under common control by the [undefined] Ghermezian Group whether directly or indirectly, either alone or together with [unnamed] related parties;
 - f. Information in the form of a list of all assets/property held by the non-resident trust throughout the existence of the trust. For each asset owned at any time during the life of the trust, identify all dates of acquisition, disposition and distribution;
 - g. All relevant information with respect to each distribution made by the non-resident trust, including the identity of the recipients and the character of the distribution; and

- h. Basis calculations, closing books, step memos, plans for arrangement, etc. (where applicable).
- (ii) For all periods since formation/incorporation/etc. for each of:
- five non-resident entities incorporated outside of Canada (as identified in the RFI); and
 - for all other [unnamed] entities that were previously or are currently direct/indirect subsidiaries or partnerships of the non-resident trust;
 - a. Articles of organization / incorporation / formation, operating agreement(s), unanimous shareholders agreement(s) or similar document(s); as well as any and all amendments to any of these agreements;
 - b. "Member registers", ledgers and all other listings showing a complete list of all current and historical members of each membership class;
 - c. All minutes and resolutions of the Managers, Members, Directors and shareholders (as the case might be);
 - d. All memorandums and agreements in respect of any changes, whether direct or indirect, in the membership / ownership of the entity;
 - e. Identification and contact information for each current and historical Manager / Director;
 - f. Contribution(s) and pledged contribution(s) of each Member;
 - g. Financial statements with notes and where assurance has been obtained, audit opinions and reports;
 - h. Detailed trial balances;
 - i. A list of all bank accounts maintained. Where a list does not exist or is not available, provide all bank statements for each bank account;
 - j. Copies of all Schedule K-1 issued or received;
 - k. Purchase and sale agreement(s) (and assignment/assumption agreements) in respect of the acquisition or sale of membership interests;
 - l. Supporting documentation that identifies sources of funding, including contributions, intercompany loans, financing agreements and offering memorandums; and
 - m. All assignment agreements or similar documents.

- (iii) All schedules, appendices, or other documents attached or referenced in each document identified in list item (i) and (ii) above. For example, the member list for each class of Members that may be attached as a schedule to an operating agreement.
10. The RFI 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 RFI issued to a person outside of Canada.
 11. The Minister was aware that, at all relevant times, the Applicant was not resident in Canada. Consequently, the Minister acted without jurisdiction or beyond her jurisdiction in attempting to serve the RFI on the Applicant.
 12. The RFI was not properly served on the Applicant.
 13. Furthermore, the RFI 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.
 14. The RFI 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 provide any information or documents.
 15. The RFI 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 subsection 231.2(1); instead, that general provision must yield to the specific provisions of section 231.6 (i.e., *generalia specialibus non derogant*). The Minister unreasonably attempted to exercise her powers extra-territorially.

16. The RFI 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.
17. 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.
18. The RFI also contravened the CRA's policies against the issuance of broad, indiscriminate and duplicative requirements for information. The Minister fails to establish a rational connection between the information sought and the administration and enforcement of the ITA. The RFI constitutes an impermissible "fishing expedition".
19. The RFI 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.
20. 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.
21. The act or decision to issue the RFI 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.
22. 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.
23. The RFI demanded that the information and documents be delivered within 45 days from December 11, 2020. The Minister has not demonstrated that the deadline reflected a reasonable amount of time for compliance with the RFI. Among other things, the Minister failed to consider the volume of materials demanded, their extra-territorial nature, the unreasonable breadth of the request, the age of the information, and the current global Covid pandemic.

24. The RFI warned that failure to comply could lead to legal proceedings being initiated against the Applicant for a compliance order under section 231.7 of the ITA. It further notified that "failure to comply with such an order could lead to a finding of contempt of court"; thereby improperly intimidating the Applicant by threatening penal consequences.
25. The Applicant asks the Respondent to consent to extend the time for compliance with the RFI 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 RFI and prohibiting and restraining the Minister from taking any steps to enforce the RFI until 120 days following final disposition of this application for judicial review.
26. The Applicant relies upon sections 18, 18.1 and 18.2 of the Federal Courts Act, and sections 220, 231.2, 231.6 and 233 of the ITA.

This application will be supported by the following material:

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

Dated at Toronto this 11th day of January, 2020.



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