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A-230-21

2022 FCA 183

David Randall Miller (*Appellant*)

v.

Minister of National Revenue (*Respondent*)

INDEXED AS: MILLER V. CANADA (NATIONAL REVENUE)

Federal Court of Appeal, Gleason, Mactavish and Roussel JJ.A.—Toronto, May 11;
Ottawa, October 31, 2022.

Income Tax — Administration and Enforcement — Appeal from Federal Court order issued pursuant to Income Tax Act (ITA), s. 231.7 ordering appellant to provide information, produce documents, seek information and documents from various sources — Appellant audited in respect of several taxation years — Federal Court granted order in respect of, inter alia, invoices, information from appellant's bank accounts, trust ledgers — All items appellant ordered to provide requested under s. 231.1 — Federal Court determined that such items were matters that taxpayer could be required to provide under s. 231.1, thus could be subject of compliance order under s. 231.7 — Rejected appellant's reading of decision of Federal Court of Appeal in Canada (National Revenue) v. Cameco Corporation (Cameco) — Concluded that broad wording used in s. 231.1(1) afforded Federal Court authority to make order it made — Determined that s. 231.1(1) affording respondent Minister authority to require production of information of sort appellant ordered to provide, to require appellant to attempt to obtain requested documents, information from bank in Luxembourg, accountant, solicitors — Appellant submitted that Cameco establishes that Federal Court lacked authority to make almost all parts of order under appeal — Whether Federal Court erred in its interpretation of s. 231.1 — Federal Court not erring in finding that documents, information in question subject of requests made under s. 231.1 — Text, context, purpose of relevant provisions in ITA examined — Text of s. 231.1(1)(a),(b) supporting authority of Minister to have issued requests — Term "document" in s. 231 meaning much more than physical record — Dictionary definitions not supporting appellant's conclusion, namely that audit precluding asking for information about funds, e.g. in taxpayer's bank account — Terms "audit" or "vérifier" broad, encompassing more than physical examination of record in possession of taxpayer — Plain wording of s. 231.1(1)(a) permitting Minister to "audit" "documents" — S. 231.1(1)(a) supporting authority of Canada Revenue Agency to seek sort of information sought in case at bar — Clear in Redeemer Foundation v. Canada (National Revenue) (Redeemer) that Minister may obtain information under s. 231.1(1)(a) — Information not contained in appellant's books, records may be sought in request under s. 231.1(1)(a) — Relevant context in ITA, case law interpreting it, supporting Federal Court's authority to issue order under appeal in present case — Ss. 231.1, 231.2 not each complete codes as argued by appellant — Provisions at issue not watertight compartments, overlap existing between them — Because overlap possible, ss. 232, 231.6 not read as setting out the only processes for obtaining

documents from appellant's solicitors, bank in Luxembourg — Appellant not ordered to produce documents held by solicitors, but rather to seek them — Given broad wording of s. 231.1(1)(a),(b),(d), Federal Court entitled to require that appellant make these inquiries — Provisions at issue serving purpose of affording mechanism to Minister to monitor, ensure compliance with ITA — Such purpose supporting interpretation of s. 231.1 herein — Federal Court possessing requisite authority to order appellant to provide information it ordered him to provide — Appeal dismissed.

Federal Court Jurisdiction — Federal Court ordering appellant to provide information, produce documents, seek information and documents from various sources pursuant to Income Tax Act (ITA), s. 231.7 — Appellant audited in respect of several taxation years — Federal Court determined that requested items were matters that taxpayer could be required to provide under s. 231.1, thus subject of compliance order under s. 231.7 — Rejected appellant's reading of decision of Federal Court of Appeal in Canada (National Revenue) v. Cameco Corporation (Cameco) — Appellant submitted that Cameco establishes that Federal Court lacked authority to make almost all parts of order under appeal — Federal Court not erring in holding that Cameco not limiting jurisdiction of Federal Court in way appellant submitted, that relevant provisions in ITA affording Federal Court jurisdiction to make order under appeal.

This was an appeal from a Federal Court order issued pursuant to section 231.7 of the *Income Tax Act* (ITA), ordering the appellant to provide information, produce documents, and seek information and documents from various sources.

The appellant had a consulting business and was being audited in respect of several taxation years. The respondent Minister sought orders in respect of several items, and the Federal Court granted an order in respect of, *inter alia*, invoices issued by the appellant to one of his clients, information and documents from the appellant's bank accounts in Luxembourg, a copy of the trust ledgers for the appellant, and details of the appellant's gross professional income reported in his 2016 tax return. The appellant had argued before the Federal Court that he could not be required to provide, under section 231.1 of the ITA, any information beyond information relating to the provenance, location or maintenance of his books and records or other documents; documents that were outside of his possession and that were in the hands of third parties, who acted on the appellant's behalf; and documents and information that the appellant alleged were not sought in the demands made under section 231.1. In order to succeed in the application for a compliance order, the Minister was required to establish that: (1) the items had been sought under section 231.1 of the ITA, and the appellant was required to provide them under that provision; (2) the appellant had not done so within a reasonable period of time; and (3) the requested items were not protected by solicitor-client privilege (not in issue herein). The Federal Court accepted that all the items it ordered the appellant to provide had been requested under section 231.1. It determined that such items were matters that a taxpayer could be required to provide under section 231.1 and thus could be the subject of a compliance order under section 231.7. More specifically, the Federal Court rejected the appellant's reading of the decision of the Federal Court of Appeal in *Canada (National Revenue) v. Cameco Corporation (Cameco)*, finding that the ruling in that case was limited to a finding that a taxpayer cannot be compelled to submit to an oral interview and answer questions posed during the interview. The Federal Court concluded that the broad wording used in subsection 231.1(1) of the ITA and, in particular, the reference to information that ought to have been in a taxpayer's books and records in that subsection afforded the Federal Court the authority to make the order it made because the items in question were properly the subject of a request under subsection 231.1(1). The Federal Court determined that subsection 231.1(1) affords the Minister the authority to require production of information of the sort the Federal Court ordered the appellant to provide, which went beyond the provenance, location or maintenance of the appellant's books and records or other documents. The Federal Court also determined that subsection 231.1(1) afforded the Minister the authority to require the appellant to attempt to obtain the requested documents and information from his bank in Luxembourg, his accountant, and his solicitors.

The appellant's arguments rested primarily on the decision in *Cameco*. The appellant more specifically submitted that *Cameco* establishes that the Federal Court lacked authority to make almost all parts of the order under appeal.

At issue was whether the Federal Court erred in its interpretation of section 231.1 of the ITA in the case at bar.

Held, the appeal should be dismissed.

The Federal Court did not err in finding that the documents and information in question were the subject of requests made under section 231.1. The Federal Court also did not err in holding that *Cameco* does not limit the jurisdiction of the Federal Court in the way the appellant submitted and that the relevant provisions in the ITA afforded the Federal Court jurisdiction to make the order under appeal. *Cameco* did not determine the result in this appeal. It only held that the Minister cannot compel oral interviews under paragraph 231.1(1)(a). The text, context and purpose of the relevant provisions in the ITA were examined. The text of paragraphs 231.1(1)(a) and (b) of the ITA supported the authority of the Minister to have issued the requests at issue in this appeal. Section 231 of the ITA provides that a “**document** includes money, a security and a record”. The term therefore means much more than a record that can be physically inspected and includes funds received by a taxpayer, to which the matters ordered by the Federal Court in the case at bar all pertained. Unlike the term “document”, the provisions at issue contain no definition of what is meant by an audit. Dictionary definitions do not support the conclusion urged by the appellant, namely, that an audit precludes asking for information about the funds in a taxpayer’s bank account, his lawyer’s trust accounts or detailed in invoices sent to clients. The terms “audit” or “*vérifier*” are broad and encompass more than the physical examination of a record in the possession of a taxpayer. The plain wording of paragraph 231.1(1)(a) permits individuals authorized by the Minister to “audit ... document[s]”. Given the broad statutory definition of “document” which includes money, the dictionary definitions of “audit” (or “*vérifier*”), and the recognition in paragraph 231.1(1)(a) of the ITA that what may be audited includes information that should be in the books and records of the taxpayer, the plain wording of this paragraph supported the authority of the Canada Revenue Agency to seek the sort of information sought in the case at bar. In *Redeemer Foundation v. Canada (National Revenue)* (*Redeemer*), the Supreme Court held in very clear terms that the Minister may obtain information under paragraph 231.1(1)(a) of the ITA. This holding in *Redeemer* was not sufficiently drawn to the attention of the panel in *Cameco* as the reasons in *Cameco* do not refer to it. This omission affords a further reason for reading *Cameco* as being narrowly confined to holding that the Minister cannot compel attendance at oral interviews under paragraph 231.1(1)(a). The decision of the Supreme Court in *Redeemer* was a complete answer to the appellant’s arguments in the present case and entirely supported the Minister’s position. It holds that information that should have been contained in the appellant’s books and records, but is not, may be sought in a request under paragraph 231.1(1)(a). The Federal Court’s interpretation of paragraph 231.1(1)(a) accorded with the post-*Cameco* decision of the Federal Court of Appeal in *Friedman v. Canada (National Revenue)*. The text of paragraph 231.1(1)(b) also supported the Minister’s right to require the information the appellant was ordered to provide in the instant case. The relevant context in the ITA, as well as the case law interpreting it, supported the Federal Court’s authority to issue the order under appeal in the present case. The effect of the appellant’s argument in this case was to make an assertion that sections 231.1 and 231.2 are each a complete code, such that powers afforded under section 231.2 cannot be exercised under section 231.1. This was an untenable argument in light of the holding of the Supreme Court of Canada in *Redeemer*. That decision establishes that the various provisions at issue in this appeal are not watertight compartments, and that there is overlap between them. The existence of such overlap also foreclosed the appellant’s reliance on sections 231.6 and 232 of the ITA. Because overlap is possible, one cannot read section 232 as setting out the only process for obtaining documents from the appellant’s solicitors or section 231.6 as setting out the only process for obtaining documents from the appellant’s bank in Luxembourg. In the instant case, the Federal Court carefully fashioned its order to not overreach. The appellant was not ordered to produce the documents held by the appellant’s solicitors, but rather to seek them and, if they were not forthcoming, to provide the correspondence received by the appellant explaining why the documents would not be disclosed by the persons holding them. Given the broad wording of paragraphs 231.1(1)(a), (b) and (d), the Federal Court was entitled to require that the appellant make these inquiries. The provisions at issue in this appeal serve the purpose of affording a mechanism to the Minister, through the CRA, to monitor and ensure compliance with the ITA. The need for such mechanism is self-evident given the self-assessment scheme established under the

ITA. Such purpose supported the interpretation given to section 231.1 herein and was inconsistent with the appellant's reading of the section. The text, context and purpose of section 231.1 of the ITA led to the conclusion that the Federal Court was correct in finding that it possessed the requisite authority to order the appellant to provide the information it ordered him to provide and to seek to obtain documents and information from his accountants, his solicitors, and his bank in Luxembourg.

STATUTES AND REGULATIONS CITED

Income Tax Act, R.S.C., 1985 (5th Supp.), c. 1, ss. 220(2.01), 230–232.

CASES CITED

APPLIED:

Canada Trustco Mortgage Co. v. Canada, 2005 SCC 54, [2005] 2 S.C.R. 601; *Redeemer Foundation v. Canada (National Revenue)*, 2008 SCC 46, [2008] 2 S.C.R. 643, affg 2006 FCA 325, [2007] 3 F.C.R. 40; *Revcon Oilfield Constructors Inc. v. Canada (National Revenue)*, 2017 FCA 22, 2017 D.T.C. 5019.

DISTINGUISHED:

BP Canada Energy Co. v. Canada (National Revenue), 2017 FCA 61, [2017] 4 F.C.R. 355.

CONSIDERED:

Canada (National Revenue) v. Cameco Corporation, 2019 FCA 67, [2020] 4 F.C.R. 254; *R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627, 90 D.T.C. 6243; *Friedman v. Canada (National Revenue)*, 2021 FCA 101, 2021 D.T.C. 5056.

REFERRED TO:

Housen v. Nikolaisen, 2002 SCC 33, [2002] 2 S.C.R. 235; *BP Canada Energy Company v. Canada (National Revenue)*, 2017 FCA 61, [2017] 4 F.C.R. 355; *CIBC World Markets Inc. v. Canada*, 2019 FCA 147, A.C.W.S. (3d) 208; *Hillier v. Canada (Attorney General)*, 2019 FCA 44, 431 D.L.R. (4th) 556; *Canada (National Revenue) v. Amdocs Canadian Managed Services Inc.*, 2015 FC 1234, 2015 D.T.C. 5117; *Canada (National Revenue) v. Ghermezian*, 2022 FC 236, 2022 D.T.C. 5029; *eBay Canada Ltd. v. Canada (National Revenue)*, 2008 FCA 348, *sub nom. eBay Canada Ltd. v. M.N.R.*, [2010] 1 F.C.R. 145; *R. v. Jarvis*, 2002 SCC 73, [2002] 3 S.C.R. 757.

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Rey, Alain and Josette Rey-Debove, eds., *Le Petit Robert: dictionnaire alphabétique et analogique de la langue française*, Paris: Le Robert, 2022, “examiner”, “vérifier”.

APPEAL from a Federal Court order (2021 FC 851, 2021 D.T.C. 5104) issued pursuant to section 231.7 of the *Income Tax Act* (ITA), ordering the appellant to provide information, produce documents, and seek information and documents from various sources. Appeal dismissed.

APPEARANCES

Thang Trieu and Salvatore Mirandola for appellant.

Montano Cabezas for respondent.

SOLICITORS OF RECORD

KPMG Law LLP, Toronto, for appellant.

Deputy Attorney General of Canada for respondent.

The following are the reasons for judgment rendered in English by

[1] GLEASON J.A.: This appeal concerns the authority afforded under section 231.7 of the *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1 (the ITA), to a court to order taxpayers to provide information and documents previously sought in a request issued under section 231.1 of the ITA that a taxpayer refuses to provide.

[2] In the order under appeal, reasons for which are reported as *Canada (National Revenue) v. Miller*, 2021 FC 851, 2021 D.T.C. 5104 (*Miller*), the Federal Court (*per* Walker, J.) issued an order pursuant to section 231.7 of the ITA, ordering the appellant to provide information, produce documents, and seek information and documents from his accountants, his solicitors, and his bank in Luxembourg. The order followed a series of requests the Minister issued to the appellant under section 231.1 of the ITA.

[3] The appellant submits that the Federal Court's order should be set aside principally because the decision of this Court in *Canada (National Revenue) v. Cameco Corporation*, 2019 FCA 67, [2020] 4 F.C.R. 254 (*Cameco*) establishes that the Federal Court lacked authority to make the order. The appellant more specifically contends that *Cameco* stands for the proposition that, where a request has been issued under section 231.1 of the ITA, a court may only order production of documents in a taxpayer's possession and may only require a taxpayer to provide information about the provenance, location or maintenance of the taxpayer's books and records or other documents. Since the Federal Court's order in the present case was broader, the appellant submits that it must be set aside. The appellant also contends that the Federal Court's remedial authority was circumscribed by the terms of the requests made under section 231.1 of the ITA, and that the Federal Court erred in requiring the appellant to provide documents that had not been sought or that he already provided.

[4] For the reasons that follow, I conclude that the Federal Court did not err in finding that the documents and information in question were the subject of requests made under section 231.1 of the ITA, with which the appellant did not comply. I also conclude that the Federal Court did not err in holding that *Cameco* does not limit the jurisdiction of the Federal Court in the way the appellant submits and that the relevant provisions in the ITA afforded the Federal Court jurisdiction to make the order under appeal. I would therefore dismiss this appeal, with costs fixed in the agreed-upon all-inclusive amount of \$2,000.00.

I. Relevant Statutory Provisions

[5] It is useful to commence by setting out the relevant statutory provisions.

[6] The ITA establishes a system for the collection of income tax in this country based on self-reporting by taxpayers. As noted by the Supreme Court of Canada in *R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627, 90 D.T.C. 6243 (*McKinlay Transport*), at page 637, it would be naïve to think that all taxpayers will properly self-report and pay the taxes they owe. In recognition of this reality, the ITA contains a broad suite of enforcement mechanisms.

[7] The first of these measures relevant to this appeal is set out in subsection 230(1) of the ITA. It requires taxpayers to maintain books and records in Canada containing the information required to determine the amount of taxes payable by them and provides as follows:

Records and books

230 (1) Every person carrying on business and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account (including an annual inventory kept in prescribed manner) at the person's place of business or residence in Canada or at such other place as may be designated by the Minister, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

[8] Sections 230 to 232 of the ITA set out the authority of the Minister of National Revenue (the Minister) to conduct audits, require production of information and documents, and obtain compliance orders. In general terms, these provisions allow either the Minister (in practice, through a delegate) or those authorized to act on the Minister's behalf to audit taxpayers, request documents and information from taxpayers or third parties, and, if the information or documents are not forthcoming, allow the Minister to seek a compliance order from a superior court in a province or from the Federal Court. Section 231.6 of the ITA contains specific provisions relating to obtaining documents located outside of Canada, and section 232 of the ITA relates to certain matters concerning documents held by lawyers in respect of which claims for solicitor-client privilege pertain.

[9] The full text of the provisions in the ITA relevant to this appeal is set out in the appendix to these reasons. The portions of those provisions of particular relevance are set out below.

Definitions

231 In sections 231.1 to 231.8,

authorized person means a person authorized by the Minister for the purposes of sections 231.1 to 231.5; (*personne autorisée*)

document includes money, a security and a record; (*document*)

...

Inspections

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,

and for those purposes the authorized person may

(c) subject to subsection 231.1(2), enter into any premises or place where any business is carried on, any property is kept, anything is done in connection with any business or any books or records are or should be kept, and

(d) require the owner or manager of the property or business and any other person on the premises or place to give the authorized person all reasonable assistance and to answer all proper questions relating to the administration or enforcement of this Act and, for that purpose, require the owner or manager to attend at the premises or place with the authorized person.

...

Requirement to provide documents or information

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.

Notice

(1.1) A notice referred to in subsection (1) may be

(a) served personally;

(b) sent by registered or certified mail; or

(c) sent electronically to a bank or credit union that has provided written consent to receive notices under subsection (1) electronically.

...

Inquiry

231.4 (1) The Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether or not the person is an officer of the Canada Revenue Agency, to make such inquiry as the person may deem necessary with reference to anything relating to the administration or enforcement of this Act.

Appointment of hearing officer

(2) Where the Minister, pursuant to subsection 231.4(1), authorizes a person to make an inquiry, the Minister shall forthwith apply to the Tax Court of Canada for an order appointing a hearing officer before whom the inquiry will be held.

...

Definition of *foreign-based information or document*

231.6 (1) For the purposes of this section, ***foreign-based information or document*** means any information or document that is available or located outside Canada and that may be relevant to the administration or enforcement of this Act, including the collection of any amount payable under this Act by any person.

Requirement to provide foreign-based information

(2) Notwithstanding any other provision of this Act, the Minister may, by notice sent or served in accordance with subsection (3.1), require that a person resident in Canada or a non-resident person carrying on business in Canada provide any foreign-based information or document.

...

Review of foreign information requirement

(4) The person who is sent or served with a notice of a requirement under subsection (2) may, within 90 days after the notice is sent or served, apply to a judge for a review of the requirement.

...

Compliance order

231.7 (1) On summary application by the Minister, a judge may, notwithstanding subsection 238(2), order a person to provide any access, assistance, information or document sought by the Minister under section 231.1 or 231.2 if the judge is satisfied that

(a) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document and did not do so; and

(b) in the case of information or a document, the information or document is not protected from disclosure by solicitor-client privilege (within the meaning of subsection 232(1)).

...

Judge may impose conditions

(3) A judge making an order under subsection (1) may impose any conditions in respect of the order that the judge considers appropriate.

...

Definitions

232 (1) In this section,

... ***lawyer*** means, in the province of Quebec, an advocate or notary and, in any other province, a barrister or solicitor; (*avocat*)

...

solicitor-client privilege means the right, if any, that a person has in a superior court in the province where the matter arises to refuse to disclose an oral or documentary communication on the ground that the communication is one passing between the person and the person's lawyer in professional confidence, except that for the purposes of this section an accounting record of a lawyer, including any supporting voucher or cheque, shall be deemed not to be such a communication. (*privilège des communications entre client et avocat*)

...

Examination of certain documents where privilege claimed

(3.1) Where, pursuant to section 231.1, an officer is about to inspect or examine a document in the possession of a lawyer or where, pursuant to section 231.2, the Minister has required provision of a document by a lawyer, and the lawyer claims that a named client or former client of the lawyer has a solicitor-client privilege in respect of the document, no officer shall inspect or examine the document and the lawyer shall

(a) place the document, together with any other document in respect of which the lawyer at the same time makes the same claim on behalf of the same client, in a package and suitably seal and identify the package or, if the officer and the lawyer agree, allow the pages of the document to be initialed and numbered or otherwise suitably identified; and

(b) retain it and ensure that it is preserved until it is produced to a judge as required under this section and an order is issued under this section in respect of the document.

Application to judge

(4) Where a document has been seized and placed in custody under subsection 232(3) or is being retained under subsection 232(3.1), the client, or the lawyer on behalf of the client, may

(a) within 14 days after the day the document was so placed in custody or commenced to be so retained apply, on three clear days notice of motion to the Deputy Attorney General of Canada, to a judge for an order

(i) fixing a day, not later than 21 days after the date of the order, and place for the determination of the question whether the client has a solicitor-client privilege in respect of the document.

II. Order and Reasons of the Federal Court

[10] I turn next to discuss the order and reasons of the Federal Court in the instant case.

[11] The Federal Court had before it an application from the Minister under section 231.7 of the ITA for a compliance order, requiring the appellant to comply with requests the Minister asserted were previously made under section 231.1 of the ITA. The Minister sought orders in respect of several items, and the Federal Court granted an order in respect of seven of them, dismissing the application in respect of several other items. More specifically, the Federal Court ordered the appellant, who carried on a consulting business and was being audited in respect of several taxation years, to provide:

- a response to the request for invoices issued by the appellant to one of his clients, Casala Limited (Casala), during the years that were under audit, outlining the services provided (Order, at paragraph 1(a)(i));
- information regarding the terms and conditions of the appellant's oral contract(s) with Casala and the invoices submitted to Casala for the audit period (Order, at paragraph 1(a)(ii));
- a detailed schedule outlining the compensation received from Casala for the audit period (Order, at paragraph 1(a)(iii));
- information and documents from the appellant's bank accounts in Luxembourg, listed in the requests issued to the appellant, unless the bank were to provide a statement that the requested items were not available or could only be made available if the appellant were to go to Luxembourg, in which event the appellant was ordered to provide an explanation and supporting documentation regarding the bank's response (Order, at paragraph 1(b)(i));
- an accounting of all funds deposited to the appellant's Luxembourg accounts and the source(s) of the deposited funds (Order, at paragraph 1(b)(ii));
- a copy of the trust ledgers for the appellant, maintained by the appellant's solicitors in Canada, evidencing the information sought in the Minister's requests regarding payments received by the law firms, unless the law firm(s) in question refused to release the documents to the appellant, in which event the appellant was ordered to provide the written correspondence in this regard from the law firm(s) (Order, at paragraph 1(c)); and
- details of the appellant's gross professional income reported on line 164 of his 2016 tax return as set out in the Minister's request made May 1, 2019 (Order, at paragraph 1(d)).

[12] Before the Federal Court, the appellant made much the same arguments as he made before us, namely, that he could not be required to provide under section 231.1 of the ITA:

- (a) any information beyond information relating to the provenance, location or maintenance of his books and records or other documents;
- (b) documents that were outside of his possession and that were in the hands of third parties, who acted on the appellant's behalf; and
- (c) documents and information that the appellant alleges were not sought in the demands made under section 231.1 of the ITA.

[13] In certain instances, he also claimed that he had complied with the requests.

[14] The Minister, on the other hand, argued that subsection 231.1(1) of the ITA afforded the [Federal] Court the requisite authority to issue the compliance order and relied on the entirety of the subsection in support of her position.

[15] The Federal Court commenced its legal analysis by noting that, in order to succeed in the application for a compliance order, the Minister was required to establish that: (1) the items had been sought under section 231.1 of the ITA, and the appellant was required to provide them under that provision; (2) the appellant had not done so within a reasonable period of time; and (3) the requested items were not protected by solicitor-client privilege.

[16] The final condition was not in issue before the Federal Court and is not in issue before us.

[17] As concerns the first of the foregoing conditions, the Federal Court accepted that all the items it ordered the appellant to provide had been requested under section 231.1 of the ITA. The Federal Court further determined that such items were matters that a taxpayer could be required to provide under section 231.1 and thus could be the subject of a compliance order under section 231.7 of the ITA.

[18] More specifically, the Federal Court rejected the appellant's reading of the decision of this Court in *Cameco*, finding that the ruling in that case was limited to a finding that a taxpayer cannot be compelled to submit to an oral interview and answer questions posed during the interview.

[19] After reviewing the relevant statutory provisions, the Federal Court concluded that the broad wording used in subsection 231.1(1) of the ITA and, in particular, the reference to information that ought to have been in a taxpayer's books and records in that subsection afforded the [Federal] Court the authority to make the order it made because the items in question were properly the subject of a request under subsection 231.1(1) of the ITA. In this regard, the Federal Court determined that subsection 231.1(1) of the ITA affords the Minister the authority to require production of information of the sort the Court ordered the appellant to provide, which went beyond the provenance, location or maintenance of the appellant's books and records or other documents. The Federal Court also determined that, for the same reasons, subsection 231.1(1) of the ITA afforded the Minister the authority to require the appellant to attempt to obtain the requested documents and information from his bank in Luxembourg, his accountant, and his solicitors.

[20] As concerns the requirement to make such efforts, the Federal Court noted that "a taxpayer is required to make reasonable efforts to accurately respond to requests for documents and information that are within the scope of subsection 231.1(1)" (*Miller*, at paragraph 50).

[21] The Federal Court determined that the second of the above-listed conditions was also met in respect of each of the items covered by its order. In each instance, the Federal Court reviewed the evidence and, where it made an order, determined that the appellant had not complied with requests that had been issued under section 231.1 of the ITA.

III. Analysis

[22] I turn next to review the appellant's arguments. In discussing them, it is useful to commence by detailing the points that are not in dispute.

A. *Matters Not in Dispute*

[23] The first of the points not in dispute concerns the standard of review to be applied by this Court. As this is an appeal from the Federal Court, the appellate standard of review applies. Accordingly, errors of law are reviewable for correctness, whereas errors of fact or of mixed fact and law from which a legal issue cannot be extricated are reviewable for palpable and overriding error (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paragraphs 8 and 37; *BP Canada Energy Company v. Canada (National Revenue)*, 2017 FCA 61, [2017] 4 F.C.R. 355, at paragraph 56).

[24] The second matter that is not in dispute concerns the appellant's failure to maintain books and records as required by subsection 230(1) of the ITA. The respondent asserts that the various items that the Federal Court ordered the appellant to provide should have been recorded in his books and records in Canada in conformity with subsection 230(1) of the ITA. This is not contested by the appellant. Thus, had the appellant complied with his record-keeping obligations, there is no dispute that the Minister would have been entitled to obtain an order for production of the books and records in which such information was contained if the Minister had issued a request for them and the appellant had not produced them voluntarily.

[25] Third, it is uncontested that subsection 231.7(1) of the ITA sets out the items the Minister must establish to be entitled to a compliance order. Prior to listing these items, it is helpful to set out the subsection again. Subsection 231.7(1) of the ITA provides:

Compliance order

231.7 (1) On summary application by the Minister, a judge may, notwithstanding subsection 238(2), order a person to provide any access, assistance, information or document sought by the Minister under section 231.1 or 231.2 if the judge is satisfied that

(a) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document and did not do so; and

(b) in the case of information or a document, the information or document is not protected from disclosure by solicitor-client privilege (within the meaning of subsection 232(1)).

[26] As is apparent from this provision, the conditions precedent for the issuance of a compliance order by the Federal Court are that:

1. the person against whom the order is made must have been required under section 231.1 or 231.2 of the ITA to provide the access, assistance, information or document that is the subject of the order;
2. that person must have failed to provide the access, assistance, information or document in question; and
3. in the case of information or a document, it must not be subject to solicitor-client privilege.

B. *Points in Issue*

[27] Where the parties part company is on whether the appellant was entitled to refuse to comply with the Canada Revenue Agency's (the CRA) requests in issue in this appeal, which is determinative of whether the Federal Court possessed authority under the ITA to order compliance in the manner it did. As noted, the appellant's arguments rest primarily on the decision of this Court in *Cameco*. The appellant more specifically submits that *Cameco* establishes that the Federal Court lacked authority to make all parts of the order under appeal, with the exception of paragraph 1(a)(i). With regard to that paragraph of the Federal Court's order, as is more fully discussed below, the appellant primarily contends that he has complied and there are no documents responsive to the requests issued to him. The appellant also makes subsidiary arguments premised on sections 231.6 and 232 of the ITA.

[28] The appellant's arguments premised on *Cameco* and on sections 231.6 and 232 of the ITA raise issues of law, whereas his other arguments raise matters of fact. Given the centrality of this Court's decision in *Cameco* to the appellant's arguments, it is useful to commence the discussion by considering precisely what was decided in that case.

(1) What Does *Cameco* Decide?

[29] In *Cameco*, where Woods J.A. issued concurring reasons, Rennie J.A. wrote for the majority. In paragraph 1 of the majority reasons, Rennie J.A. set out the issues before the Court as follows:

The issue in this appeal is whether the Minister of National Revenue can require employees of a corporation to attend for interviews and compel oral answers to questions posed by auditors of the Canada Revenue Agency (CRA). The Minister says that paragraph 231.1(1)(a) of the *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1 (Act) provides her the authority to do so.

[30] In terms of the facts that were before the Court in *Cameco*, the CRA had requested 25 employees of Cameco and its subsidiaries to attend interviews and answer orally various categories of questions that the CRA believed were relevant to its audit into Cameco's compliance with the transfer pricing rules set out in the ITA. This followed a lengthy audit process during which Cameco had already provided extensive information to the CRA. Cameco indicated to the CRA that it was willing to answer the questions in writing but declined to have the employees attend the interviews and answer orally.

[31] The Federal Court dismissed the request for an order requiring their attendance at the interviews under section 231.7 of the ITA, finding both that section 231.7 of the ITA did not afford the Court authority to compel oral interviews and that certain discretionary considerations militated in any event against issuing the compliance order.

[32] This Court dismissed the appeal. Woods J.A. would have dismissed the appeal on the basis of the discretionary authority of the Federal Court. The majority, on the other hand, determined that the Federal Court lacked the authority to order the employees to attend the interviews. The Minister in that case, unlike the present one, relied only on paragraph 231.1(1)(a) of the ITA in support of the request. In the case at bar, as noted, the Minister relies on the entirety of subsection 231.1(1) in support of her authority to issue the requests at issue in this appeal.

[33] A central component of the majority's reasons in *Cameco* involved the amendments to the ITA in 1986, which removed from section 231.1 the reference to the right of the Minister to require oral answers under oath to questions and added to what is now section 231.4 to the ITA. Under section 231.4 of the ITA, the Minister may seek an order from the Tax Court for an inquiry before a hearing officer, during which evidence may be obtained under oath from any person.

[34] Prior to its amendment in 1986, subsection 231.1(1) (then subsection 231(1)) of the ITA provided:

Investigations

231. (1) Any person thereunto authorized by the Minister, for any purpose related to the administration or enforcement of this Act, may, at all reasonable times, enter into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business or any books or records are or should be kept, and

(a) audit or examine the books and records and any account, voucher, letter, telegram or other document which relates or may relate to the information that is or should be in the books or records or the amount of tax payable under this Act,

(b) examine property described by an inventory or any property, process or matter an examination of which may, in his opinion, assist him in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records or the amount of any tax payable under this Act,

(c) require the owner or manager of the property or business and any other person on the premises or place to give him all reasonable assistance with his audit or examination and to answer all proper questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration and, for that purpose, require the owner or manager to attend at the premises or place with him, and

(d) if, during the course of an audit or examination, it appears to him that there has been a violation of this Act or a regulation, seize and take away any of the documents, books, records, papers or things that may be required as evidence as to the violation of any provision of this Act or a regulation. [Emphasis from *Cameco*.]

[35] In large part due to the disappearance of the previous requirement to answer questions under oath from what is now section 231.1 of the ITA, the majority in *Cameco* determined that, subsequent to the amendments, the Minister could not require that individuals attend the oral interviews under paragraph 231.1(1)(a) of the ITA. The Court's determination that paragraph 231.1(1)(a) of the ITA did not authorize the issuance of the request at issue in *Cameco*, in turn, meant that the Federal Court was correct in declining to issue an order under section 231.7 of the ITA, which would have required the employees' attendance at oral interviews.

[36] As is apparent from the foregoing, the issue before the Court in *Cameco* concerned only the Minister's right to compel attendance at oral interviews to answer questions under paragraph 231.1(1)(a) of the ITA. The broader statements made in *Cameco* (for example, at paragraphs 18 to 23, upon which the appellant relies) have to be understood in the context of and are limited to the issue that was before the Court in that case.

[37] Thus, *Cameco* does not determine the result in this appeal but, rather, only held that the Minister cannot compel oral interviews under paragraph 231.1(1)(a) of the ITA. Accordingly, it is necessary for this panel to determine whether the Federal Court erred in its interpretation of section 231.1 of the ITA in the case at bar.

(2) Text, Context and Purpose of the Relevant Provisions in the ITA

[38] The principles governing statutory interpretation are well settled and require a court to consider the text, context and purpose of a provision to determine its meaning. As was stated in the oft-cited passage from *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at paragraph 10:

It has been long established as a matter of statutory interpretation that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: see *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole.

(See also, to similar effect, *CIBC World Markets Inc. v. Canada*, 2019 FCA 147, A.C.W.S. (3d) 208, at paragraphs 27–28; and *Hillier v. Canada (Attorney General)*, 2019 FCA 44, 431 D.L.R. (4th) 556, at paragraph 24).

(a) Text

[39] In discussing the text of the provisions at issue in the present appeal, the appropriate starting point involves consideration of the meaning of the term “document” in section 231.1 of the ITA and the related provisions that follow. Section 231 of the ITA provides that, for purposes of sections 231.1 to 231.8 of the ITA, a “**document** includes money, a security and a record”. The term therefore means much more than a record that can be physically inspected and includes funds received by a taxpayer, to which the matters ordered by the Federal Court in the case at bar all pertained.

[40] The next important point in the textual analysis of these provisions involves consideration of the meaning to be given to the term “audit” in paragraph 231.1(1)(a) of the ITA (or “*vérifier*” in the French version of the paragraph). Unlike the term “document”, the provisions at issue contain no definition of what is meant by an audit.

[41] Dictionary definitions do not support the conclusion urged by the appellant, namely, that an audit precludes asking for information about the funds in a taxpayer’s bank account, his lawyer’s trust accounts or detailed in invoices sent to clients. To the contrary, such definitions ascribe a much broader meaning to the terms “audit” and “*vérifier*” that would include inquiries of the sort posed in the case at bar.

[42] The *Canadian Oxford Dictionary*, 2nd ed. by Katherine Barber (Don Mills, Ont.: Oxford University Press, 2004), defines the meaning of the noun “audit” as including “a detailed examination or analysis, [especially] to assess strengths and weaknesses”, and the verb “audit” as the act of conducting an audit. The *Collins English Dictionary*, 13th ed. by Ian Brookes et al. (Glasgow: HarperCollins Publishers, 2018), provides the broad “audit” definition of “any thoroughgoing check or examination [emphasis added].”

[43] Similarly, the meaning of the French term “*vérifier*” is not limited to the meaning urged by the appellant. The French dictionary, *Le Petit Robert*, ed. by Alain Rey & Josette Rey-Debove (Paris: Dictionnaires Le Robert — SEJER, 2022) at page 2693, defines “*vérifier*” as: “*Examiner la valeur de (qqch.), par une confrontation avec les faits ou par un contrôle de la cohérence interne*” (Examine something’s value, by confronting the facts or by reviewing the internal coherence). *Le Petit Larousse illustré*, ed. by Claude Nimmo & Julie Pelpel-Moulian (Paris: Larousse, 2018), also defines the verb “*vérifier*” as “*contrôler*” and “[s]oumettre à un contrôle” (i.e., to review and examine).

[44] Thus, the terms “audit” or “*vérifier*” are broad and encompass more than the physical examination of a record in the possession of a taxpayer.

[45] At this point in the analysis, it is helpful to once more set out subsection 231.1(1) of the ITA. It provides:

Inspections

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,

and for those purposes the authorized person may

(c) subject to subsection 231.1(2), enter into any premises or place where any business is carried on, any property is kept, anything is done in connection with any business or any books or records are or should be kept, and

(d) require the owner or manager of the property or business and any other person on the premises or place to give the authorized person all reasonable assistance and to answer all proper questions relating to the administration or enforcement of this Act and, for that purpose, require the owner or manager to attend at the premises or place with the authorized person. [Emphasis added.]

[46] The plain wording of paragraph 231.1(1)(a) permits individuals authorized by the Minister to “audit ... document[s]” (i.e., money) of the taxpayer or of third parties that relate or may relate to information that should be in the books and records of a taxpayer or that relate to any amount payable by the taxpayer under the ITA.

[47] Given the broad statutory definition of “document” which includes money, the dictionary definitions of “audit” (or “*vérifier*”), and the recognition in paragraph 231.1(1)(a) of the ITA that what may be audited includes information that should be in the books and records of the taxpayer or that relate to amounts payable by the taxpayer under the ITA, it is my view that the plain wording of this paragraph supports the authority of the CRA to seek the sort of information sought in the case at bar.

[48] I am not alone in this view.

[49] In *Redeemer Foundation v. Canada (National Revenue)*, 2008 SCC 46, [2008] 2 S.C.R. 643 (*Redeemer*), the Supreme Court of Canada dismissed an application for judicial review that sought to set aside a request made by the CRA under paragraph 231.1(1)(a) of the ITA for a registered charity to provide information about its donors. In paragraph 1 of the reasons of the Supreme Court, McLachlin C.J. and LeBel J., who wrote for the majority, noted that the issue before the Court was “whether the Minister was required under s. 231.2(2) of the [ITA] to obtain judicial authorization before asking the [appellant] for information about the identity of its donors”. The Supreme Court concluded that such authorization was not required, and that “[t]he Minister was entitled to information about the identity of the donors through the combined effect of s. 230(2)(a) [the record-keeping obligation applicable to registered charities] and s. 231.1” (at paragraph 1).

[50] While the appellant in *Redeemer* did not make the same argument as the appellant makes in the instant case, the reasons of this Court in *Canada (Minister of National Revenue) v. Redeemer Foundation*, 2006 FCA 325, [2007] 3 F.C.R. 40, make it clear that the CRA sought information from the appellant, as opposed to merely written records, and had asked the appellant to compile a list from its donation receipts. At paragraph 37, Pelletier J.A., who wrote for this Court, stated:

It is not contested that, in the exercise of the audit power set out in section 231.1, the CRA auditor was entitled to examine all the books and records of the Foundation, including the duplicate receipts, and on the basis of that inspection, to prepare a list of the names and addresses of the donors to the Foundation in various taxation years. If the auditor is entitled to obtain information by means of his own examination of the Foundation’s books and records, I can think of no principle which would require him to obtain a court order before asking for the Foundation’s assistance in obtaining the very same information.

[51] In dismissing the appeal, the Supreme Court of Canada held in very clear terms that the Minister may obtain information under paragraph 231.1(1)(a) of the ITA. In paragraph 13 of its reasons, the majority in *Redeemer*, after quoting paragraph 231.1(1)(a) of the ITA, wrote as follows:

On its face, this section covers the situation at bar. It authorizes the Minister to examine “information that is or should be” in the Foundation’s books. The information at issue regarding third party taxpayers who had contributed to the Foundation was either in the Foundation’s books, or “should” have been in its books pursuant to the broad record-keeping requirements created by s. 230(2). [Emphasis added.]

[52] In paragraph 24, after discussing the purpose of section 231.1, the majority stated:

... s. 231.1(1) is broadly worded. It allows access to “information that is or should be in the books or records of the taxpayer”. It thus gives access to information about third parties that is required to be kept by the taxpayer, as well as information that may not be required to be kept but happens to be in the taxpayer’s records. [Emphasis added.]

[53] It appears that this holding in *Redeemer* was not sufficiently drawn to the attention of the panel in *Cameco* as the reasons in *Cameco* make no reference to it. This omission affords a further reason for reading *Cameco* as being narrowly confined

to holding that the Minister cannot compel attendance at oral interviews under paragraph 231.1(1)(a) of the ITA.

[54] In my view, the decision of the Supreme Court in *Redeemer* is a complete answer to the appellant's arguments in the present case and entirely supports the Minister's position. It holds that information that should have been contained in the appellant's books and records, but is not, may be sought in a request under paragraph 231.1(1)(a) of the ITA.

[55] In addition, my interpretation of paragraph 231.1(1)(a) of the ITA accords with the post-*Cameco* decision of this Court in *Friedman v. Canada (National Revenue)*, 2021 FCA 101, 2021 D.T.C. 5056, as the respondent rightly notes at paragraph 31 of its memorandum of fact and law. In that case, this Court upheld a compliance order of the Federal Court, requiring written answers to a CRA questionnaire that sought information similar to the information that the appellant was ordered to produce in the case at bar. There, the CRA had proceeded under paragraph 231.1(1)(a) in issuing in the Requirement to answer the questionnaire.

[56] In addition to paragraph 231.1(1)(a) of the ITA, the text of paragraph 231.1(1)(b) of the ITA also supports the Minister's right to require the information the appellant was ordered to provide in the instant case. Paragraph 231.1(1)(b) of the ITA allows the person authorized by the Minister to "examine" any "matter relating to ... the taxpayer" that "may assist" in "ascertaining the information that is or should be in the books or records of the taxpayer" or that "may assist" in "ascertaining ... any amount payable by the taxpayer". It is hard to see how this provision could be drafted more broadly.

[57] Dictionary definitions of "examine" and "*examineur*" are not limited to the physical review of items in the taxpayer's possession and include inquiries of the sort made in the case at bar. For example, the *Canadian Oxford Dictionary* defines the verb "examine" broadly as to "inquire into the nature or condition etc. of"; the *Collins English Dictionary* summarizes it as "investigate". *Le Petit Robert*, at page 966, defines "*examineur*" as "[c]onsidérer avec attention, avec réflexion" (consider with attention, with reflection), and *Le Petit Larousse illustré* provides "[é]tudier attentivement, minutieusement" (study attentively, meticulously).

[58] Similarly, the use of the words "matter" and, in French, "*toute matière*" indicates the breadth of the inquiry contemplated by Parliament.

[59] Perhaps most importantly, paragraph 231.1(1)(b) extends the scope of the examination not only to matters contained in the taxpayer's books and records but also to the matters that should be contained in them, and to any matter that would assist the authorized person in ascertaining the amount payable by the taxpayer under the ITA. I agree with the Minister that the breadth of this language supports her position. Information that should be but is not included in a taxpayer's books and records is frequently undocumented. An authorized person could only examine such information by asking for a response to questions.

[60] I thus conclude that the text of paragraphs 231.1(1)(a) and (b) of the ITA supports the authority of the Minister to have issued the requests at issue in this appeal.

(b) *Context*

[61] The relevant context includes, first, the balance of subsection 231.1(1) of the ITA.

[62] I agree with the appellant that the mid-amble of subsection 231.1(1) of the ITA limits paragraphs 231.1(1)(c) and (d) to the exercise of authority afforded under subsection 231.1(1) of the ITA preceding the mid-amble. Thus, paragraphs 231.1(1)(c) and (d) of the ITA must be read in conjunction with earlier portions of the subsection. While this may well mean that neither paragraph 231.1(1)(c) nor paragraph 231.1(1)(d) of the ITA affords an independent source of authority in and of itself in the present case, these paragraphs cannot be ignored.

[63] For our purposes, paragraph 231.1(1)(d) of the ITA is particularly relevant. This provision in its current form was adopted in 1986, at the same time that the obligation to provide oral answers to questions, including those under oath, was removed from the section and section 231.4 was added to the ITA. The current version of paragraph 231.1(1)(d) is worded in broad terms and requires any person whom the auditor encounters, or requires to be present at the taxpayer's place of business, to provide answers to "all proper questions relating to the administration or enforcement of [the ITA]". Once again, it is hard to conceive how the provision could be more broadly drafted. I agree with the Minister that the breadth of this provision supports her interpretation of paragraphs 231.1(1)(a) and (b) of the ITA.

[64] Relevant context also includes sections 231.2, 231.6 and 232 of the ITA.

[65] Section 231.2 sets out the authority of the Minister to require that taxpayers and third parties provide information and documents. Unlike section 231.1, section 231.2 vests authority in the Minister, as opposed to individuals authorized by the Minister. In practice, the Minister delegates her authority to act under this and other provisions in the ITA to "an officer or a class of officers" pursuant to subsection 220(2.01) of the ITA. However, it is to be anticipated that delegations under subsection 220(2.01) of the ITA would be made to fewer employees of the CRA than the "persons" authorized to carry out audits.

[66] Section 231.2 also contains procedural requirements that are absent in section 231.1 of the ITA. These include the requirement to provide a notice served personally or sent by registered mail that sets out what information must be provided (subsections 231.2(1) and (1.1)). If the Minister were required to proceed under section 231.2 of the ITA every time information that should have been recorded in the taxpayer's books and records is required from a taxpayer, it is likely that the audit process would be significantly hindered.

[67] I also note that section 231.2 of the ITA is stated to apply "[n]otwithstanding any other provision of [the ITA]". Given this wording, it is not necessary to read section 231.2 as providing authority distinct from that set out elsewhere. Indeed, the need for this clause points to the opposite conclusion and contemplates that there is overlap between the provisions.

[68] The effect of the appellant's argument in this case is to make an assertion that sections 231.1 and 231.2 of the ITA are each a complete code, such that powers afforded under section 231.2 cannot be exercised under section 231.1. In my view, this is an untenable argument in light of the holding of the Supreme Court of Canada in

Redeemer. That decision establishes that the various provisions at issue in this appeal are not watertight compartments, and that there is overlap between them.

[69] The existence of such overlap also forecloses the appellant's reliance on sections 231.6 and 232 of the ITA. Because overlap is possible, one cannot read section 232 as setting out the only process for obtaining documents from the appellant's solicitors or section 231.6 as setting out the only process for obtaining documents from the appellant's bank in Luxembourg.

[70] Moreover, as concerns documents held by a taxpayer's solicitors, this Court affirmed in *Revcon Oilfield Constructors Inc. v. Canada (National Revenue)*, 2017 FCA 22, 2017 D.T.C. 5019 (*Revcon*), that the Minister may obtain an order like that issued in the case at bar, which requires the appellant to seek the documents requested from his solicitors. Stratias J.A., who wrote for this Court in *Revcon*, noted that the order in that case legitimately required the appellant to disclose all documents in its possession, control or power (at paragraph 9). These included non-privileged documents the appellant was entitled to receive from its lawyers.

[71] The Federal Court has also confirmed that orders under section 231.1 of the ITA are legitimately directed at documents within the possession, control or power of a taxpayer (see, for example, *Canada (National Revenue) v. Amdocs Canadian Managed Services Inc.*, 2015 FC 1234, 2015 D.T.C. 5117, at paragraphs 33–34 and 75–76; and *Canada (National Revenue) v. Ghermezian*, 2022 FC 236, 2022 D.T.C. 5029, at paragraphs 73–78).

[72] In the instant case, the Federal Court carefully fashioned its order to not overreach. The appellant was not ordered to produce the documents held by the appellant's solicitors, but rather to seek them and, if they were not forthcoming, to provide the correspondence received by the appellant explaining why the documents would not be disclosed by the persons holding them. Likewise, the portion of the order regarding obtaining details of the appellant's professional income reported at line 164 of his 2016 tax return required that the appellant pursue inquiries with his accountant.

[73] Given the broad wording of paragraphs 231.1(1)(a), (b) and (d) of the ITA, the Federal Court was entitled to require that the appellant make these inquiries, which are consistent with his making reasonable efforts to comply with the Minister's requests.

[74] Similarly, the order issued by the Federal Court in respect of the documents and information held by the appellant's bank in Switzerland does not require their production, but rather only that the appellant make the request for them and, if refused, provide the explanation the appellant was given for their refusal. In light of the way the Federal Court fashioned its order, the decision of this Court in *eBay Canada Ltd. v. Canada (National Revenue)*, 2008 FCA 348, [2010] 1 F.C.R. 145 (*eBay*), upon which the appellant relies, actually assists the Minister in the instant case. Here, as in *eBay*, the appellant has not been ordered to produce foreign-based documents.

[75] I also believe that the decision of this Court in *BP Canada Energy Co. v. Canada (National Revenue)*, 2017 FCA 61, [2017] 4 F.C.R. 355 (*BP*), which the appellant relies on, is of no assistance to him. *BP* concerned a wholly different situation. In *BP*, the CRA sought portions of the working papers prepared by a public company's auditors for purposes of the preparation of financial statements required by provincial securities

legislation. The portions of the audit papers in question detailed the reasons for the reserves taken in the financial statements for possible exposure for unpaid income taxes. Such possible taxes were not the subject of the CRA's audit. This Court held that they need not be disclosed in part because it would do violence to the audit function and to the integrity of the financial reporting process required under securities legislation. In reaching this determination, Noël C.J., who wrote for this Court, stated that the "obligation to 'self-assess' [under the ITA] does not require taxpayers to tax themselves on amounts which they believe not to be taxable", and they therefore cannot be required to reveal their "soft spots" (at paragraph 82). These considerations are worlds away from the matters ordered in the case at bar, which merely concern revenues received by the appellant and the bases for their payment.

[76] Thus, the relevant context in the ITA, as well as the case law interpreting it, supports the Federal Court's authority to issue the order under appeal in the present case.

(c) *Purpose*

[77] The provisions at issue in this appeal serve the purpose of affording a mechanism to the Minister, through the CRA, to monitor and ensure compliance with the ITA. The need for such mechanism is self-evident given the self-assessment scheme established under the ITA, as noted by the Supreme Court of Canada in *McKinlay Transport*, at pages 636–637 and 648, and *R. v. Jarvis*, 2002 SCC 73, [2002] 3 S.C.R. 757, at paragraphs 49–51.

[78] Such purpose supports my interpretation of section 231.1 and is inconsistent with the appellant's reading of the section, which, as already noted, would hinder the CRA's ability to exercise its audit functions.

[79] I accordingly determine that the text, context and purpose of section 231.1 of the ITA lead to the conclusion that the Federal Court was correct in finding that it possessed the requisite authority to order the appellant to provide the information it [ordered him to provide] and to seek to obtain documents and information from his accountants, his solicitors, and his bank in Luxembourg.

[80] The Federal Court therefore did not err in law.

(3) Additional Errors Alleged by the Appellant

[81] I turn finally to the additional arguments raised by the appellant, which involve matters of fact and are reviewable under the deferential standard of palpable and overriding error.

[82] The appellant alleges in this regard that: (1) he has complied with the request to produce invoices, and that the scope of paragraph 1(a)(i) of the Federal Court's order would lead to an answer that he has no such invoices; (2) he has complied with the request for a detailed schedule of the compensation received from Casala as required by paragraph 1(a)(iii) of the Federal Court's order; and (3) he has already provided to a limited degree the information required by paragraph 1(d) of the Federal Court's order or does not appear to have such information.

[83] In terms of the first of the foregoing issues, the Federal Court found that the appellant “ha[d] not furnished the Minister with a statement that no written invoices, in any form, exist” (*Miller*, at paragraph 39). I see no error in this determination. In his replies to the requests, the appellant did not clearly state that there were no such invoices. Thus, it was open to the Federal Court to order their production. As for the response to the order to produce the invoices issued to Casala that the Federal Court ordered be produced, the appellant is required to determine if such invoices exist and, if so, to produce them.

[84] As regards the second of the above points, the Federal Court found that the appellant’s responses were “incomplete and equivocal” as the appellant had only replied that he believed he was paid by Casala via two wire transfers in the approximate amount of €20,000 and via the amounts paid to his solicitors. Given this response, the Federal Court did not err in terming it “incomplete and unequivocal”, and it was accordingly open to the Federal Court to make the order it made in paragraph 1(a)(iii) of its order.

[85] Finally, with regard to paragraph 1(d) of the Federal Court’s order, the Federal Court found that the appellant had requested this information but had not yet received a response from his accountants due to delays associated with the COVID-19 pandemic. The evidence before the Federal Court supports this determination. I accordingly see no error in the Federal Court ordering the appellant to seek this information and, if received, to produce it.

IV. Proposed Disposition

[86] I therefore would dismiss this appeal with costs. The parties have agreed that costs should follow the event and should be fixed at \$2000, which I find to be reasonable. I would therefore fix them in that amount.

MACTAVISH J.A.: I agree.

ROUSSEL J.A.: I agree.

Appendix: ITA Provisions Relevant to this Appeal

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

...

General

Records and books

230 (1) Every person carrying on business and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account (including an annual inventory kept in prescribed manner) at the person’s place of business or residence in Canada or at such other place as may be designated by the Minister, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

...

Definitions

231 In sections 231.1 to 231.8,

authorized person means a person authorized by the Minister for the purposes of sections 231.1 to 231.5; (*personne autorisée*)

document includes money, a security and a record; (document)

...

judge means a judge of a superior court having jurisdiction in the province where the matter arises or a judge of the Federal Court. (*juge*)

...

Inspections

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,

and for those purposes the authorized person may

(c) subject to subsection 231.1(2), enter into any premises or place where any business is carried on, any property is kept, anything is done in connection with any business or any books or records are or should be kept, and

(d) require the owner or manager of the property or business and any other person on the premises or place to give the authorized person all reasonable assistance and to answer all proper questions relating to the administration or enforcement of this Act and, for that purpose, require the owner or manager to attend at the premises or place with the authorized person.

...

Requirement to provide documents or information

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.

Notice

(1.1) A notice referred to in subsection (1) may be

- (a)** served personally;
- (b)** sent by registered or certified mail; or
- (c)** sent electronically to a bank or credit union that has provided written consent to receive notices under subsection (1) electronically.

Unnamed persons

(2) The Minister shall not impose on any person (in this section referred to as a “third party”) a requirement under subsection 231.2(1) to provide information or any document relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection 231.2(3).

Judicial authorization

(3) A judge of the Federal Court may, on application by the Minister and subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person or more than one unnamed person (in this section referred to as the “group”) if the judge is satisfied by information on oath that

- (a)** the person or group is ascertainable; and
- (b)** the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.
- (c) and (d)** [Repealed, 1996, c. 21, s. 58(1)]

(4) to (6) [Repealed, 2013, c. 33, s. 21]

...

Inquiry

231.4 (1) The Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether or not the person is an officer of the Canada Revenue Agency, to make such inquiry as the person may deem necessary with reference to anything relating to the administration or enforcement of this Act.

Appointment of hearing officer

(2) Where the Minister, pursuant to subsection 231.4(1), authorizes a person to make an inquiry, the Minister shall forthwith apply to the Tax Court of Canada for an order appointing a hearing officer before whom the inquiry will be held.

Powers of hearing officer

(3) For the purposes of an inquiry authorized under subsection 231.4(1), a hearing officer appointed under subsection 231.4(2) in relation thereto has all the powers conferred on a commissioner by sections 4 and 5 of the *Inquiries Act* and that may be conferred on a commissioner under section 11 thereof.

When powers to be exercised

(4) A hearing officer appointed under subsection 231.4(2) in relation to an inquiry shall exercise the powers conferred on a commissioner by section 4 of the Inquiries Act in relation to such persons as the person authorized to make the inquiry considers appropriate for the conduct thereof but the hearing officer shall not exercise the power to punish any person unless, on application by the hearing officer, a judge of a superior or county court certifies that the power may be exercised in the matter disclosed in the application and the applicant has given to the person in respect of whom the applicant proposes to exercise the power 24 hours notice of the hearing of the application or such shorter notice as the judge considers reasonable.

Rights of witness at inquiry

(5) Any person who gives evidence in an inquiry authorized under subsection 231.4(1) is entitled to be represented by counsel and, on request made by the person to the Minister, to receive a transcript of the evidence given by the person.

Rights of person whose affairs are investigated

(6) Any person whose affairs are investigated in the course of an inquiry authorized under subsection 231.4(1) is entitled to be present and to be represented by counsel throughout the inquiry unless the hearing officer appointed under subsection 231.4(2) in relation to the inquiry, on application by the Minister or a person giving evidence, orders otherwise in relation to the whole or any part of the inquiry on the ground that the presence of the person and the person's counsel, or either of them, would be prejudicial to the effective conduct of the inquiry.

Copies

231.5 (1) Where any document is seized, inspected, audited, examined or provided under any of sections 231.1 to 231.4, the person by whom it is seized, inspected, audited or examined or to whom it is provided or any officer of the Canada Revenue Agency may make, or cause to be made, one or more copies thereof and, in the case of an electronic document, make or cause to be made a print-out of the electronic document, and any document purporting to be certified by the Minister or an authorized person to be a copy of the document, or to be a print-out of an electronic document, made pursuant to this section is evidence of the nature and content of the original document and has the same probative force as the original document would have if it were proven in the ordinary way.

Compliance

(2) No person shall, physically or otherwise, interfere with, hinder or molest an official (in this subsection having the meaning assigned by subsection 241(10)) doing anything that the official is authorized to do under this Act or attempt to interfere with, hinder or molest any official doing or prevent or attempt to prevent an official from doing, anything that the official is authorized to do under this Act, and every person shall, unless the person is unable to do so, do everything that the person is required to do by or under subsection (1) or sections 231.1 to 231.4.

Definition of *foreign-based information or document*

231.6 (1) For the purposes of this section, *foreign-based information or document* means any information or document that is available or located outside Canada and that may be relevant to the administration or enforcement of this Act, including the collection of any amount payable under this Act by any person.

Requirement to provide foreign-based information

(2) Notwithstanding any other provision of this Act, the Minister may, by notice sent or served in accordance with subsection (3.1), require that a person resident in Canada or a

non-resident person carrying on business in Canada provide any foreign-based information or document.

Notice

(3) The notice referred to in subsection 231.6(2) shall set out

- (a)** a reasonable period of time of not less than 90 days for the production of the information or document;
- (b)** a description of the information or document being sought; and
- (c)** the consequences under subsection 231.6(8) to the person of the failure to provide the information or documents being sought within the period of time set out in the notice.

Notice

(3.1) A notice referred to in subsection (2) may be

- (a)** served personally;
- (b)** sent by registered or certified mail; or
- (c)** sent electronically to a bank or credit union that has provided written consent to receive notices under subsection (2) electronically.

Review of foreign information requirement

(4) The person who is sent or served with a notice of a requirement under subsection (2) may, within 90 days after the notice is sent or served, apply to a judge for a review of the requirement.

Powers on review

(5) On hearing an application under subsection 231.6(4) in respect of a requirement, a judge may

- (a)** confirm the requirement;
- (b)** vary the requirement as the judge considers appropriate in the circumstances; or
- (c)** set aside the requirement if the judge is satisfied that the requirement is unreasonable.

Unreasonableness

(6) For the purposes of paragraph (5)(c), the requirement to provide the information or document shall not be considered to be unreasonable because the information or document is under the control of or available to a non-resident person that is not controlled by the person who is sent or served with the notice of the requirement under subsection (2) if that person is related to the non-resident person.

...

Compliance order

231.7 (1) On summary application by the Minister, a judge may, notwithstanding subsection 238(2), order a person to provide any access, assistance, information or document sought by the Minister under section 231.1 or 231.2 if the judge is satisfied that

(a) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document and did not do so; and

(b) in the case of information or a document, the information or document is not protected from disclosure by solicitor-client privilege (within the meaning of subsection 232(1)).

...

Judge may impose conditions

(3) A judge making an order under subsection (1) may impose any conditions in respect of the order that the judge considers appropriate.

...

Definitions

232 (1) In this section,

...

lawyer means, in the province of Quebec, an advocate or notary and, in any other province, a barrister or solicitor; (*avocat*)

officer means a person acting under the authority conferred by or under sections 231.1 to 231.5; (*fonctionnaire*)

solicitor-client privilege means the right, if any, that a person has in a superior court in the province where the matter arises to refuse to disclose an oral or documentary communication on the ground that the communication is one passing between the person and the person's lawyer in professional confidence, except that for the purposes of this section an accounting record of a lawyer, including any supporting voucher or cheque, shall be deemed not to be such a communication. (*privège des communications entre client et avocat*)

Solicitor-client privilege defence

(2) Where a lawyer is prosecuted for failure to comply with a requirement under section 231.2 with respect to information or a document, the lawyer shall be acquitted if the lawyer establishes to the satisfaction of the court

(a) that the lawyer, on reasonable grounds, believed that a client of the lawyer had a solicitor-client privilege in respect of the information or document; and

(b) that the lawyer communicated to the Minister, or some person duly authorized to act for the Minister, the lawyer's refusal to comply with the requirement together with a claim that a named client of the lawyer had a solicitor-client privilege in respect of the information or document.

Seizure of certain documents where privilege claimed

(3) Where, pursuant to section 231.3, an officer is about to seize a document in the possession of a lawyer and the lawyer claims that a named client of the lawyer has a

solicitor-client privilege in respect of that document, the officer shall, without inspecting, examining or making copies of the document,

- (a) seize the document and place it, together with any other document in respect of which the lawyer at the same time makes the same claim on behalf of the same client, in a package and suitably seal and identify the package; and
- (b) place the package in the custody of the sheriff of the district or county in which the seizure was made or, if the officer and the lawyer agree in writing on a person to act as custodian, in the custody of that person.

Examination of certain documents where privilege claimed

(3.1) Where, pursuant to section 231.1, an officer is about to inspect or examine a document in the possession of a lawyer or where, pursuant to section 231.2, the Minister has required provision of a document by a lawyer, and the lawyer claims that a named client or former client of the lawyer has a solicitor-client privilege in respect of the document, no officer shall inspect or examine the document and the lawyer shall

- (a) place the document, together with any other document in respect of which the lawyer at the same time makes the same claim on behalf of the same client, in a package and suitably seal and identify the package or, if the officer and the lawyer agree, allow the pages of the document to be initialed and numbered or otherwise suitably identified; and
- (b) retain it and ensure that it is preserved until it is produced to a judge as required under this section and an order is issued under this section in respect of the document.

Application to judge

(4) Where a document has been seized and placed in custody under subsection 232(3) or is being retained under subsection 232(3.1), the client, or the lawyer on behalf of the client, may

- (a) within 14 days after the day the document was so placed in custody or commenced to be so retained apply, on three clear days notice of motion to the Deputy Attorney General of Canada, to a judge for an order
 - (i) fixing a day, not later than 21 days after the date of the order, and place for the determination of the question whether the client has a solicitor-client privilege in respect of the document, and

...

Disposition of application

(5) An application under paragraph 232(4)(c) shall be heard *in camera*, and on the application

- (a) the judge may, if the judge considers it necessary to determine the question, inspect the document and, if the judge does so, the judge shall ensure that it is repackaged and resealed; and
- (b) the judge shall decide the matter summarily and,
 - (i) if the judge is of the opinion that the client has a solicitor-client privilege in respect of the document, shall order the release of the document to the lawyer, and

(ii) if the judge is of the opinion that the client does not have a solicitor-client privilege in respect of the document, shall order

(A) that the custodian deliver the document to the officer or some other person designated by the Commissioner of Revenue, in the case of a document that was seized and placed in custody under subsection 232(3), or

(B) that the lawyer make the document available for inspection or examination by the officer or other person designated by the Commissioner of Revenue, in the case of a document that was retained under subsection 232(3.1),

and the judge shall, at the same time, deliver concise reasons in which the judge shall identify the document without divulging the details thereof.

...

Idem

(12) No officer shall inspect, examine or seize a document in the possession of a lawyer without giving the lawyer a reasonable opportunity of making a claim under this section.