



INCOME TAX

PRACTICE

Judicial reviews of requirements for information (RFIs) issued by Minister of National Revenue delegate under *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1, s. 231.2(1) — Applicants two individuals, one corporation — RFIs requesting, *inter alia*, production of information, documents relating to certain corporations, foreign corporations, subsidiaries, in particular banking information — Main issues whether RFIs invalid because Minister failed: to obtain judicial authorization required under Act, s. 231.2(2) for unnamed persons requirement; to comply with criteria in Act, s. 231.6 for foreign-based information — Dispute surrounding meaning of term “unnamed persons” in ss. 231.2(2), (3) — Applicants submitting that it means unnamed in RFI, Respondent submitting that it means unknown to Minister — Court having to decide whether reasonable for decision maker to issue RFIs without first seeking judicial authorization under s. 231.2(3) — Decision that no judicial authorization required in advance of issuance of RFIs best characterized as an implicit decision — Assessment of reasonableness turning on outcome of decision not to pursue the ss. 231.2(2), (3) process — Conclusion in *Canadian Forest Products Ltd. v. Minister of National Revenue* (1996), 119 F.T.R. 152 (F.C.T.D.) to effect that unnamed persons provisions engaged whenever Minister sought information about unnamed person, regardless of whether unnamed person subject of investigation, clearly no longer good law — Decision maker hardly expected to pursue application under s. 231.2(3), in effort to satisfy Court that persons Minister wishing to investigate were ascertainable, when identities of those persons actually known to Minister — Reasonable for decision maker to have issued RFIs without seeking judicial authorization in advance — No basis to conclude, based on applicants’ arguments surrounding foreign-based information provisions, that decision maker acted unreasonably in issuing RFIs under s. 231.2(1) — No convincing evidence that statutory scheme of Act permitting Minister to require production of foreign-based information through s. 231.2(1) — Record not indicating where requested material actually located — Court’s role herein to assess whether reasonable for decision maker to issue RFIs under s. 231.2 rather than s. 231.6 — Minister entitled to pursue process of “poke-and-check” in its efforts to verify person’s compliance with Act — Determination of location of requested material need not take place before requirement issued — No inconsistency shown herein in simultaneous use of both ss. 231.2, 231.6 — Applications in T-1439-18, T-1440-18, T-1451-18, T-1452-18 dismissed — Application in T-1501-18 allowed.

GHERMEZIAN V. CANADA (ATTORNEY GENERAL) (T-1439-18, T-1440-18, T-1451-18, T-1452-18, T-1501-18, 2020 FC 1137, Southcott J., reasons for judgment dated December 9, 2020, 83 pp.)