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2022 FC 236

T-252-19

The Minister of National Revenue (*Applicant*)

v.

Nader Ghermezian (*Respondent*)

T-254-19

The Minister of National Revenue (*Applicant*)

v.

Marc Vaturi (*Respondent*)

T-258-19

The Minister of National Revenue (*Applicant*)

v.

Gherfam Equities Inc (*Respondent*)

T-259-19

The Minister of National Revenue (*Applicant*)

v.

Paul Ghermezian (*Respondent*)

T-261-19

The Minister of National Revenue (*Applicant*)

v.

Raphael Ghermezian (*Respondent*)

The Minister of National Revenue (*Applicant*)

v.

Joshua Ghermezian (*Respondent*)

INDEXED AS: CANADA (NATIONAL REVENUE) V. GHERMEZIAN

Federal Court, Southcott J.—By videoconference, January 24-27; Ottawa, February 23, 2022.

Income Tax — Administration and Enforcement — Applications seeking compliance orders under Income Tax Act, s. 231.7 to compel respondents to provide documents and/or information previously sought by applicant under Act, ss. 231.1, 231.2 — Respondents failed to provide all documentation, information — Argued requests purportedly issued under s. 231.1(1) sought information that Minister was authorized to compel only through requirement issued under s. 231.2(1) — Further argued, inter alia, that s. 231.1(1) not granting Minister power comparable to s. 231.2(1), either to: (a) compel provision of documents outside context of inspection; or (b) compel provision of information other than information about location or provenance of documentation sought in context of inspection — Respondents' position having two aspects — First, while an "authorized person" can rely upon s. 231.1(1) to enter business premises, inspect documents kept there, that section providing no authority for authorized person to issue written demand compelling provision of such documents — Second, s. 231.1(1) relating only to pre-existing documentation, not authorizing issuance of written demand compelling recipient to answer questions or otherwise provide substantive information relevant to a taxpayer's tax position — Respondents submitted that circumscribed power to demand documentation, information under s. 231.2(1), absence of similar guardrails in s. 231.1(1), suggesting that s. 231.1(1) not intended to authorize issuance of demands in same manner as s. 231.2(1) — Whether respondents required to provide documents, information in response to request issued under s. 231.1 — S. 231.1(1) entitling authorized person to demand provision of documentation without physically attending at place or premises where documentation kept — Purpose of s. 231.1 is to facilitate Minister's unencumbered, immediate access to all of taxpayer's books, records, information — Words "inspect, audit or examine…" in s. 231.1(1)(a) are broad terms encompassing range of activities, which logically include requesting provision of documents — This consistent with statutory interpretation analysis performed in Tellza Inc. v. Canada (National Revenue) of comparable provision of Excise Tax Act (ETA), s. 288(1) — While Tellza involved application for judicial review under ETA, applicant in that case advanced a position essentially identical to that taken by respondents in present case — Within context, purpose of ETA, s. 288(1) indeed granting authorized person power to request or require taxpayer to provide information in any form — This inspection power necessarily entailing power to request or require documents to be provided so that authorized person can conduct inspection, audit or examination effectively — No reason to depart from this analysis or to decline to apply it to provisions of Act at issue herein — Statutory interpretation set out in Tellza reasonable, correct interpretation of relevant provision — Conclusion in Tellza consistent with appellate authority identified by Minister — That said, s. 231.1 not authorizing issuance of demand compelling recipient to provide, through written answers to questions, substantive information relevant to taxpayer's tax position — Words "inspect, audit or examine…" not encompassing demands for information that is not contained in a document — As explained in Canada (National Revenue) v. Cameco Corporation, obligation to assist in s. 231.1(1)(d) is in aid of inspection, search, examination or review of records — Cameco not suggesting that s. 231.1 affording Minister access to undocumented information — Minister cannot compel oral answers to questions — No point of principle identified here militating in favour of different result in context of demands to answer questions in writing rather than orally — S. 231.1(1)(a) empowering Minister to compel provision of documented information, not undocumented information — Term "document" broader than term "record", potentially encompasses records within meaning of s. 230 as well as other forms of documentation not falling

within that meaning — Appropriate analysis not to identify "pith and substance" of a request, then consider whether it complies with s. 231.2 as a requirement — Rather, required analysis whether s. 231.1 providing authority for the request — Necessary herein to decide how conclusions on statutory interpretation issue applied to individual items in requests and, as result, which items were valid because they represented demand for documentation, and which were not valid because they represented demand for undocumented information — Minister largely successful in resisting defence argument raised by respondents — Applications allowed.

These were applications seeking compliance orders under section 231.7 of the *Income Tax Act* to compel the respondents to provide documents and/or information previously sought by the applicant Minister under sections 231.1 and 231.2 of the Act.

The nature of the documentation and/or information sought in each application pertained, *inter alia*, to a number of principally foreign corporations and to companies and other entities outside of Canada where the respondents were shareholders, officers, directors, trustees, or beneficiaries of a trust. The respondents failed to provide the requested documentation and information. Sections 231.1 and 231.2 form part of the broad suite of powers that Parliament has conferred on the Minister to obtain information and/or documentation from taxpayers and third parties to verify self-assessments. The respondents submitted that the Minister conflated aspects of the authority provided by subsections 231.1(1) and 231.2(1). They argued that many or all of the requests purportedly issued under section 231.1(1) sought information and/or documentation that the Minister was authorized to compel only through a requirement issued under section 231.2(1). The respondents submitted that subsection 231.1(1) affords the Minister only an inspection power, i.e., authority to attend at the premises of a taxpayer or other person to inspect books and records or other documents. The respondents argued, *inter alia*, that subsection 231.1(1) does not grant the Minister power comparable to subsection 231.2(1), either to: (a) compel provision of documents outside the context of an inspection; or (b) compel the provision of information other than information about the location or provenance of documentation sought in the context of an inspection. There were two aspects to the respondents' position. First, the respondents submitted that, while an "authorized person" can rely upon subsection 231.1(1) to enter business premises and inspect documents that are kept there, that section provides no authority for the authorized person to issue a written demand compelling the provision of such documents. Second, the respondents submitted that subsection 231.1(1) relates only to pre-existing documentation and does not authorize issuance of a written demand compelling the recipient to answer questions or otherwise provide substantive (but previously undocumented) information relevant to a taxpayer's tax position. They submitted that the express but somewhat circumscribed power to demand documentation and information under subsection 231.2(1), and the absence of similar guardrails in section 231.1(1), suggest that subsection 231.1(1) is not intended to authorize the issuance of demands in the same manner as subsection 231.2(1).

The main issue was whether the respondents were required to provide documents and/or information in response to a request issued under section 231.1 of the Act.

Held, the applications should be allowed.

Regarding the first aspect of the respondents' position, subsection 231.1(1) entitles an authorized person to demand provision of documentation without physically attending at a place or premises where the documentation is kept. In *Canada (National Revenue) v. Cameco Corporation* (*Cameco*), the Federal Court of Appeal stated that the purpose of section 231.1 is to facilitate the Minister's unencumbered and immediate access to all books, records and information of the taxpayer. *Cameco* also recognizes that the legislative purpose, however important, cannot replace the language of the statute that Parliament has chosen. The words "inspect, audit or examine…" in paragraph 231.1(1)(a) are broad terms encompassing a range of activities, which logically include requesting the provision of documents. This is consistent with the statutory interpretation analysis performed in *Tellza Inc. v. Canada (National Revenue)* (*Tellza*). The Court in *Tellza* concluded that the inspection power afforded by the comparable provision of subsection 288(1) of the *Excise Tax Act* (ETA) necessarily entailed the power to request or require documents to be provided so that the authorized

person can conduct an inspection, audit or examination effectively. Among the cases relied upon by both parties in support of their respective positions on the statutory interpretation issue, *Tellza* most directly addresses this aspect of the issue. While *Tellza* involved an application for judicial review under the ETA, the applicant in that case advanced a position essentially identical to that taken by the respondents in this case. The Court found that on a plain reading of the applicable definitions, within the context and purpose of the ETA, subsection 288(1) indeed grants an authorized person the power to request or require a taxpayer to provide information in any form. The inspection power necessarily entails the power to request or require documents to be provided so that the authorized person can conduct the inspection, audit or examination effectively. There was no reason to depart from this analysis or to decline to apply it to the provisions of the Act at issue in the case at hand. The statutory interpretation set out in detail in *Tellza* was reasonable and is the correct interpretation of the relevant provision. The conclusion in *Tellza* that the authorized person is not limited, in a modern, electronic era, to an inspection, audit or examination of the taxpayer's documents and records at their premises, is consistent with appellate authority identified by the Minister. As to the second aspect of the statutory interpretation issue, the respondents were correct in their position that section 231.1 does not authorize issuance of a demand compelling the recipient to provide, through written answers to questions, substantive information relevant to a taxpayer's tax position. Notwithstanding that the words "inspect, audit or examine…" in paragraph 231.1(1)(a) are sufficiently broad that, in keeping with the statutory purpose, they encompass demands for the provision of documents, the words of paragraph 231.1(1)(a) are not capable of being interpreted to encompass demands for information that is not contained in a document. *Cameco* addressed whether the Minister can compel oral answers to questions posed by CRA auditors, as opposed to written answers as in the present case. As part of its textual analysis, *Cameco* also engages in analysis of paragraph 231.1(1)(d) of the Act. *Cameco* explains that the obligation to assist in paragraph 231.1(1)(d) is in aid of the inspection, search, examination or review of records. *Cameco* does not suggest that section 231.1 affords the Minister access to <u>undocumented</u> information, as that interpretation would be inconsistent with the overall conclusion in *Cameco* that the Minister cannot compel oral answers to questions. In the present case, the Minister identified no point of principle that would militate in favour of a different result in the context of demands to answer questions in writing rather than orally. The distinction underlying the reasoning in *Cameco* is between documented and undocumented information. Paragraph 231.1(1)(a) empowers the Minister to compel provision of the former but not the latter. The term "document" is defined by section 231 to include money, security and a record. Therefore, "document" is a broader term than "record" and, at least potentially, encompasses records within the meaning of section 230 as well as other forms of documentation that may not fall within that meaning. An authorized person seeking to compel the provision of documentation that does not qualify as "the books and records of the taxpayer", and relying on the potentially broader power to compel "any document of the taxpayer or of any other person that relates or may relate to the information that…should be in the books or records of the taxpayer" must also be seeking a <u>document</u> that relates or may relate to this information, as it is clear from the language of paragraph 231.1(1)(a) that it is a document that the person is empowered to inspect, audit or examine. The appropriate analysis is not to identify the "pith and substance" of a request and then potentially consider whether it complies with section 231.2 as a requirement. Rather, the required analysis is to consider whether section 231.1 provides the authority for the request. The parties herein met with divided success on the issue surrounding statutory interpretation of the scope of subsection 231.1(1). If certain demands included both valid and invalid items, the Court had discretion to order compliance with the valid portions, notwithstanding the invalidity of other portions. It was therefore necessary herein to decide how the conclusions on the statutory interpretation issue applied to individual items in the requests and, as a result, which items were valid because they represented a demand for documentation and which were not valid because they represented a demand for undocumented information.

These conclusions were applied herein to the individual requests and requirements. The Minister was largely successful in resisting the defence argument raised by the respondents in these applications. It was deemed appropriate and useful for the parties to provide further submissions on the application of the outcome of the statutory interpretation issue. The parties were afforded 60 days to complete this process and either provide mutually agreed draft orders or advise the Court that agreement has not been achieved or has not been achieved in relation to particular applications

or individual demands or portions thereof.

STATUTES AND REGULATIONS CITED

Canadian Charter of Rights and Freedoms, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44], s. 8.

Excise Tax Act, R.S.C., 1985, c. E-15, ss. 288(1), 335(1), 355(1).

Federal Courts Act, R.S.C., 1985, c. F-7, s. 18.5.

Federal Courts Rules, SOR/98-106, r. 81.

Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 44.

Income Tax Act, R.S.C., 1985 (5th Supp.), c. 1, ss. 94, 220(2.01), 230, 231, 231.1, 231.2, 231.6, 231.7, 237.1(1), 238(1), 244(5).

TREATIES AND OTHER INSTRUMENTS CITED

Convention Between Canada and the United States of America with Respect to Taxes on Income and on Capital, being Schedule I of the Canada-United States Tax Convention Act, [1984] Can. T.S. No. 15, Art. XXVII.

CASES CITED

NOT FOLLOWED:

Canada (National Revenue) v. Miller, 2021 FC 851, 2021 D.T.C. 5104; *R. v. MacDonald*, 2005 BCPC 398 (CanLII), 2005 D.T.C. 5652.

APPLIED:

Tellza Inc. v. Canada (National Revenue), 2021 FC 853, [2022] 1 F.C.R. 75; *Canada (National Revenue) v. Lee*, 2016 FCA 53, 481 N.R. 100, revg 2015 FC 634, 481 F.T.R. 71; *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; *Canada (National Revenue) v. Cameco Corporation*, 2019 FCA 67, [2020] 4 F.C.R. 254; *Canada (Customs and Revenue Agency) v. Artistic Ideas Inc.*, 2005 FCA 68, [2005] 2 C.T.C. 25, [2006] 2 F.C.R. D-15.

DISTINGUISHED:

Canada (Board of Internal Economy) v. Canada (Attorney General), 2017 FCA 43, 412 D.L.R. (4th) 336.

CONSIDERED:

Canada (National Revenue) v. Derakhshani, 2009 FCA 190, 400 N.R. 311; *Canada (National Revenue) v. Chamandy*, 2014 FC 354, 452 F.T.R. 261; *Canada (Minister of National Revenue) v. SML Operations (Canada) Ltd.*, 2003 FC 868, [2003] 4 C.T.C. 201; *Ghermezian v. Canada (Attorney General)*, 2020 FC 1137, [2021] 1 F.C.R. D-12; *Fabrikant v. Canada*, 2017 FC 1115; *Canada (Attorney General) v. Iris Technologies Inc.*, 2021 FCA 223, [2022] 4 C.T.C. 147; *Twentieth Century Fox Home Entertainment Canada Limited v. Canada (Attorney General)*, 2012 FC 823, 414 F.T.R. 291, affd 2013 FCA 25; *O'Grady v. Canada (Attorney General)*, 2016 FC 9, affd 2016 FCA 221; *Coldwater First Nation v. Canada (Attorney General)*, 2019 FCA 292; *eBay Canada Ltd. v. Canada (National Revenue)*, 2008 FCA 348, [2010] 1 F.C.R. 145; *Canada (National Revenue) v. Tellza Inc.*, 2021 CarswellNat 3964, 2021 CanLII 76055 (F.C.); *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*,

2004 SCC 45, [2004] 2 S.C.R. 427; *Friedman v. Canada (National Revenue)*, 2021 FCA 101, affg 2019 FC 1583; *Branigan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 245, 247 F.T.R. 305; *Lim v. Canada (Citizenship and Immigration)*, 2019 FC 871; *Canada (Minister of Human Resources Development) v. Wiemer* (1998), 228 N.R. 341, [1998] F.C.J. No. 809 (QL) (C.A.); *Boroumend v. The Queen*, 2016 TCC 256; *Luxury Home Landscape Construction Inc. v. The Queen*, 2021 TCC 4, 2021 D.T.C. 1008; *R. v. Sedhu*, 2015 BCCA 92 (CanLII), 2015 D.T.C. 5038; *Canada (National Revenue) v. Hydro-Québec*, 2018 FC 622, [2019] 4 C.T.C. 31, [2018] 4 F.C.R. D-11; *Zeifmans LLP v. Canada (National Revenue)*, 2021 FC 363; *Canada (National Revenue) v. Lin*, 2019 FC 646; *R. v. Hape*, 2007 SCC 26, [2007] 2 S.C.R. 292; *Saipem Luxembourg S.A. v. Canada (Customs and Revenue Agency)*, 2005 FCA 218, 337 N.R. 213, [2006] 3 F.C.R. D-43; *Canada (National Revenue) v. Kitsch,* 2003 FCA 307, *sub nom. Tower v. M.N.R.*, [2004] 1 F.C.R. 183; *Nadler (Estate) v. Canada (Attorney General),* 2005 FC 935, [2005] 4 C.T.C. 7.

REFERRED TO:

R. v. McKinlay Transport Ltd., [1990] 1 S.C.R. 627, 68 D.L.R. (4th) 568; *Capital Vision Inc. v. Canada (Minister of National Revenue)*, 2002 FCT 1317, [2003] 4 F.C. D-70; *Redhead Equipment Ltd. v. Canada (Attorney General)*, 2016 SKCA 115 (CanLII), 402 D.L.R. (4th) 649; *Canada (National Revenue) v. Atlas Tube Canada ULC*, 2018 FC 1086, [2019] 4 C.T.C. 123; *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601; *BP Canada Energy Company v. Canada (National Revenue)*, 2017 FCA 61, [2017] 4 F.C.R. 355; *Canada (National Revenue) v. 2276230 Ontario Inc.*, 2021 FC 242; *R. v. Tait*, [1992] B.C.J. No. 2693 (QL) (P.C.); *Oroville Reman & Reload Inc. v. Canada*, 2016 TCC 75, [2016] 5 C.T.C. 2118; *Oceanspan Carriers Ltd. v. Canada*, [1987] 2 F.C. 171, [1987] F.C.J. No. 126 (QL) (C.A.); *Holiday Luggage Mfg. Co. v. Canada*, [1987] 2 F.C. 249, 86 D.T.C. 6601 (T.D.); *Canada (National Revenue) v. Stanchfield*, 2009 FC 99, 340 F.T.R. 150; *Marino v. The Queen*, 2020 TCC 50, 2020 D.T.C. 1039; *Ludmer v. Canada*, [1995] 2 F.C. 3, 95 D.T.C. 5035 (C.A.); *Canadian Bank of Commerce v. Attorney General of Canada*, [1962] S.C.R. 729, 35 D.L.R. (2d) 49.

APPLICATIONS seeking compliance orders under section 231.7 of the *Income Tax Act* to compel the respondents to provide documents and/or information previously sought by the applicant under sections 231.1 and 231.2 of the Act. Applications allowed.

APPEARANCES

Rita Araujo, *Peter Swanstrom*, *Jesse Epp-Fransen* and *Allene Kilpatrick* for applicant.

Bobby J. Sood, *Stephen S. Ruby*, *Michael H. Lubetsky* and *Sarah Cormack* for respondents.

SOLICITORS OF RECORD

Deputy Attorney General of Canada for applicant.

Davies Ward Phillips & Vineberg LLP, Toronto, for respondents.

The following are the reasons for judgment and judgment rendered in English by

SOUTHCOTT J.:

I. Overview

[1] This decision relates to six applications by the Minister of National Revenue (the Minister), seeking compliance orders under section 231.7 of the *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1 (the Act).

[2] The respondents are five individuals, all members of the Ghermezian extended family, and a related corporation, Gherfam Equities Inc. (Gherfam). Nader Ghermezian (the respondent in Court file number T-252-19) and Raphael Ghermezian (the respondent in Court file number T-261-19) are brothers. Joshua Ghermezian (the respondent in Court file number T-262-19) is the son of Raphael Ghermezian, and Paul Ghermezian (the respondent in Court file number T-259-19) is the nephew of Nader Ghermezian and Raphael Ghermezian. Marc Vaturi (the respondent in Court file number T-254-19) is the son-in-law of Nader Ghermezian.

[3] Each of the Minister's applications seeks an order compelling the relevant respondent to provide documents and/or information previously sought by the Minister under section 231.1 and/or section 231.2 of the Act.

[4] These six applications were heard together, by videoconference employing the Zoom platform, on January 24 to 27, 2022. As they raise many common issues, these Reasons address all six applications.

[5] As explained in greater detail in the Reasons below, these applications are granted, subject to the remaining steps I have outlined for applying my conclusions surrounding the respondents' success in some of their defence arguments to the development of the form of compliance order in each application.

II. Background

[6] First, a few words about nomenclature. As set out in more detail later in these Reasons, most of these applications rely on both section 231.1 and section 231.2 of the Act. The issues in these applications include disputes between the parties on the scope of the powers granted to the Minister under section 231.1 and section 231.2. For purposes of these Reasons, I will adopt the language employed by the Minister in her written submissions, referring to the invocation of section 231.1 as a "Request" and the invocation of section 231.2 as a "Requirement". I note this is consistent with the language employed by Justice Fuhrer in *Tellza Inc. v. Canada (National Revenue)*, 2021 FC 853, [2022] 1 F.C.R. 75 (*Tellza*), in relation to the comparable provisions of the *Excise Tax Act*, R.S.C., 1985, c. E-15 (ETA)). However, I emphasize these terms are adopted solely to enhance the readability of these Reasons and are not intended to be terms of art or to suggest that a Request issued under section 231.1 gives rise to less compulsion than a Requirement issued under section 231.2. Similarly, without intending to ascribe any technical significance to it, I will employ the term "Demands" to encompass generically both Requests and Requirements.

[7] The Minister commenced each of these six applications by a Notice of Summary Application dated February 7, 2019. In each application, the Minister asserts that: she issued Requests and/or Requirements to the relevant respondent requiring the provision of documents and/or information related to the administration or enforcement of the Act; the respondent has failed to provide all such documentation and/or information; and the respondent has not asserted any claim for solicitor-client-privilege in relation thereto. The Minister asserts that she has therefore met the statutory

conditions for the Court to issue a compliance order under section 231.7 of the Act, ordering the respondent to provide the outstanding documents and/or information.

[8] In each application, the Minister has filed an Amended Notice of Summary Application dated April 7, 2021 (Amended Notice), which specified the particular Demands, or portions thereof, that the Minister considered to be still outstanding. In the course of the hearing, the Minister further clarified or refined her Demands in each application, in some cases further reducing the Demands or portions thereof for which she is seeking a compliance order.

[9] In each application, the Minister relies upon an affidavit sworn in July 2019 by Andrew Bowe, who was, at the time, an International and Large Business Case Manager with the Canada Revenue Agency (CRA) and had conduct of the audit matters in relation to the respondents. In T-254-19 (with Mr. Vaturi as the respondent), Mr. Bowe also affirmed a Supplementary Affidavit on April 7, 2021 (the Supplementary Affidavit). The respondents have cross-examined Mr. Bowe on his affidavits, and the relevant transcripts have been included in the record in each application. The respondents have not otherwise filed any evidence in these proceedings.

[10] In opposing these applications, the respondents rely in part on arguments surrounding the admissibility of or, alternatively, the weight that should be afforded to Mr. Bowe's evidence. In the proceedings related to Nader Ghermezian, Raphael Ghermezian, and Marc Vaturi, the respondents had previously filed motions to strike Mr. Bowe's affidavits and dismiss the applications. By Order dated December 15, 2021, Prothonotary Aalto adjourned these motions, concluding that the issues raised therein should be argued at the hearing of the applications. The parties presented their arguments on these issues at the commencement of the hearings on January 24, 2021. This decision will address those arguments.

[11] The respondents also raise a number of other issues in support of their position that the applications should be dismissed. Most of the issues are common to some or all of the applications, although there are also a small number of issues specific to individual applications. These Reasons will first address the common issues and identify any general conclusions that can be reached without individually canvassing each application, as well as apply those conclusions to the applications, to the extent it is possible to do so. I will then turn to the individual applications, applying the general conclusions to each application where I have not done so already and addressing any additional issues specific to each application.

III. Issues

[12] The following issues, common to some or all of the applications, have been raised for the Court's adjudication:

A. Whether the affidavits of Andrew Bowe should be struck out or, in the alternative, afforded little weight;

B. Whether the respondents were required to provide documents and/or information in response to a Request issued under section 231.1 of the Act;

C. Whether the individuals who issued the Demands were authorized to do so;

D. Whether the respondents were properly given notice of the Demands;

E. Whether the Demands provided a reasonable time for compliance;

F. Whether the Demands relate to one or more unnamed persons, requiring the Minister to seek prior judicial authorization under subsection 231.2(3) of the Act;

G. Whether the Demands raise ambiguity as to whether their recipient is the same as the respondent;

H. Whether the Demands improperly sought the production of foreign-based information or documents within the meaning of section 231.6 of the Act;

I. If the Court determines that any compliance orders should be issued, whether such orders should contain an exclusion for documents and information protected by solicitor-client privilege;

J. If the Court concludes that a compliance order should not be issued in relation to a portion of a Demand, whether the Court has the authority to sever that portion and issue an order in relation to the remainder of the Demand; and

K. Whether certain Requirements were ineffective because the respondents are not residents of Canada.

IV. Analysis

A. *General Principles Regarding Compliance Orders Under section 231.7*

[13] Before turning to the individual issues, it is useful to identify some general principles relevant to applications under section 231.7 of the Act, the text of which reads as follows:

> **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)).
>
> **Notice required**
>
> **(2)** An application under subsection (1) must not be heard before the end of five clear days from the day the notice of application is served on the person against whom the order is sought.
>
> **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.

Contempt of court

(4) If a person fails or refuses to comply with an order, a judge may find the person in contempt of court and the person is subject to the processes and the punishments of the court to which the judge is appointed.

Appeal

(5) An order by a judge under subsection (1) may be appealed to a court having appellate jurisdiction over decisions of the court to which the judge is appointed. An appeal does not suspend the execution of the order unless it is so ordered by a judge of the court to which the appeal is made.

[14] As is evident from subsection 231.7(1), the Minister's recourse to a compliance order is premised on the Minister previously having sought access, assistance, information or documentation under sections 231.1 or 231.2. The text of those sections (which, together with other provisions considered in these Reasons, are set out in full in Appendix "A"), will be canvassed later in this decision. For present purposes, it is sufficient to identify that, in the context of Canada's self-assessment system for the collection of income tax under the Act, sections 231.1 and 231.2 form part of the broad suite of powers that Parliament has conferred on the Minister to obtain information and/or documentation from taxpayers and third parties to verify self-assessments (*see R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627, 68 D.L.R. (4th) 568 (*McKinlay*), at paragraph 18 (referencing subsection 231(3), which was the predecessor to subsection 231.2(1)).

[15] When a person who is subject to a demand under sections 231.1 or 231.2 does not comply with that demand, section 231.7 entitles the Minister to apply to the Federal Court for an order compelling compliance. Consistent with the language of subsection 231.7(1), the Federal Court of Appeal explained in *Canada (National Revenue) v. Lee*, 2016 FCA 53, 481 N.R. 100 (*Lee*), at paragraph 6 that the Court must be satisfied of three points before granting a compliance order:

i) The person against whom the order is sought was required under section 231.1 or 231.2 of the Act to provide the access, assistance, information or documents sought by the Minister;

ii) Although the person was required to provide the information or documents sought by the Minister, he or she did not do so; and,

iii) The documents or information sought is not protected from disclosure by solicitor-client privilege as defined within the Act.

[16] The respondents refer the Court to *Canada (National Revenue) v. Derakhshani*, 2009 FCA 190, 400 N.R. 311 (*Derakhshani*), in which the Federal Court of Appeal rejected the Minister's argument that, when presented with an application under subsection 231.2(3) of the Act, a judge has no discretion to reject the application if the conditions prescribed by that section are met (at paragraphs 17–19). While that case involved an application under subsection 231.2(3) to authorize the Minister to serve a requirement related to an unnamed person, I agree with the respondents' submission that the Court's analysis of whether it retains discretion even where the statutory conditions are met usefully informs the interpretation of section 231.7 as well. Both sections require that the judge be satisfied that the statutory conditions for the

application are met and provide the judge granting an order the authority to impose any conditions the judge considers appropriate. As these are the factors that the Court in *Derakhshani* took into account in identifying the existence of its discretion, I agree that judicially exercised discretion exists under section 231.7 as well.

[17] Indeed, I do not understand the Minister to dispute this point in the case at hand. In support of her position on the "severance" issue (canvassed later in these Reasons), that the Court has the authority to issue an order in relation to a portion of a Demand or application, the Minister refers to the Court's discretion to impose such conditions as it considers appropriate.

[18] Because of the potentially serious consequences flowing from the failure to obey a compliance order, including fines and/or imprisonment, the jurisprudence explains that the Court should be satisfied that the statutory conditions of section 231.7 have been "clearly met" before exercising its discretion to grant an order (see *Canada (National Revenue) v. Chamandy*, 2014 FC 354, 452 F.T.R. 261 (*Chamandy*), at paragraph 35; *Canada (Minister of National Revenue) v. SML Operations (Canada) Ltd.*, 2003 FC 868, [2003] 4 C.T.C. 201 (*SML Operations*), at paragraph 15).

[19] The respondents also rely on *Derakhshani* (at paragraphs 16–17) to support their position that the use of the phrase "if the judge is satisfied" in section 231.7 imposes on the Minister an onus to adduce and prove all the facts required to satisfy the conditions for the issuance of the compliance order. In my view, *Derakhshani* does not stand for this proposition. Paragraphs 16 and 17 rely on that phrase to conclude that the judge has discretion in an application under section 231.7, but do not speak to which party bears the onus in such an application.

[20] The respondents also rely on this Court's decision in *Ghermezian v. Canada (Attorney General)*, 2020 FC 1137, [2021] 1 F.C.R. D-12 (*Ghermezian*), at paragraphs 24–25, to support their position that the Minister bears the burden of proof. Again, that authority does not stand for the proposition that the respondents advance. *Ghermezian* involved a number of applications for judicial review, brought by some of the same parties who are respondents in the present applications, challenging a number of Requirements issued by the Minister under subsection 231.2(1) of the Act. Those applicants relied on *Capital Vision Inc. v. Canada (Minister of National Revenue)*, 2002 FCT 1317, [2003] 4 F.C. D-70 (*Capital Vision*) to support their position that the Minister bore the burden of proving her compliance with subsection 231.2(1). This Court rejected that contention, observing that *Capital Vision* held that the Minister must comply with the Act but did not state a conclusion on the applicable burden of proof.

[21] That said, I do not understand the Minister to dispute that, as the party seeking a compliance order under section 231.7, she has the burden of satisfying the statutory conditions as set out in *Lee*, although she submits that whether the requested material is privileged is relevant to the analysis only if a respondent actually asserts a claim of privilege (see *Lee*, at paragraph 9). I accept that the overall legal burden in the application resides with the Minister, and I concur that privilege factors into the analysis only if raised by a respondent, who then bears the burden on that issue (see *Redhead Equipment Ltd. v. Canada (Attorney General)*, 2016 SKCA 115 (CanLII), 402 D.L.R. (4th) 649, at paragraph 31; *Canada (National Revenue) v. Atlas Tube Canada ULC*, 2018 FC 1086, [2019] 4 C.T.C. 123 at paragraph 32).

[22] However, the location of the burden becomes more nuanced in connection with particular defence arguments raised by the respondents in these applications. Which party bears the applicable burden is potentially relevant to several of the issues raised in the respondents' arguments, including: (a) authority to issue the Demands; (b) proper notice of the Demands to the respondents; (c) the reasonableness of the time given for compliance with the Demands; and (d) whether the Demands improperly sought the production of foreign-based material. The respondents submit that the Minister bears the burden on all the issues. In contrast, the Minister urges the Court to be guided by a general evidentiary principle that the party who alleges a proposition, and with whom the evidence is likely to reside, bears the applicable burden. Where necessary, I will return to the question of the burden of proof when considering the individual issues.

B. *Whether the affidavits of Andrew Bowe should be struck out or, in the alternative, afforded little weight*

[23] The respondents in T-252-19 (Nader Ghermezian), T-254-19 (Marc Vaturi) and T-261-19 (Raphael Ghermezian) argue that the Court should strike the affidavits of the Minister's deponent, Andrew Bowe, in each of these applications. Relying on the fact that the Minister bears the overall legal burden in these applications, the respondents submit that, without these affidavits to support these three applications, the Court should dismiss these applications in full. In connection with other applications, the respondents submit that Mr. Bowe's evidence should be afforded little or no weight.

[24] The respondents' principal arguments in support of these positions fall broadly into two categories. First, they submit that Mr. Bowe's affidavits are outdated, incomplete and unreliable. Second, they submit that Mr. Bowe's affidavits offend the hearsay rule by providing evidence as to facts that are outside his personal knowledge. However, particular issues are also raised with respect to Mr. Bowe's Supplementary Affidavit in T-254-19. I will begin my analysis with the Supplementary Affidavit.

(1) Supplementary Affidavit in T-254-19 (*MNR v. Marc Vaturi*)

[25] The Supplementary Affidavit is a relatively brief document, affirmed on April 7, 2021, which appears intended to update the evidence provided by Mr. Bowe in his original affidavit in T-254-19, sworn on July 27, 2019. Mr. Bowe states that, subsequent to service of the July 27, 2019 affidavit, CRA received information and documentation from Mr. Vaturi and/or his representatives. Mr. Bowe then proceeds to identify, through attached exhibits, the information and documentation received and the items from the relevant Demands that CRA considered to be outstanding.

[26] The respondent's counsel refers to what he characterizes as two "bombshells" revealed through cross-examination of Mr. Bowe, conducted on November 17 and 18, 2021. First, in relation to a Demand identified as A-MV-0128, the respondent notes Mr. Bowe's evidence that, to the date of the Supplementary Affidavit, Mr. Vaturi had not provided the outstanding information and/or documentation identified in follow-up correspondence sent by CRA on March 10, 2020. In the course of cross-examination, respondent's counsel pointed out that Mr. Vaturi had, in fact, provided a response exceeding 150 pages on November 4, 2020.

[27] The November 4, 2020, response was addressed to Mr. Bowe and copied to the Minister's counsel. When presented with this response on the first day of his cross-

examination, Mr. Bowe stated he did not recall seeing it and explained that he was transitioning out of his role at the relevant time. The Minister's counsel subsequently investigated this issue and confirmed, on the second day of cross-examination, that Mr. Vaturi's submission had been received but was misfiled and therefore missed in the preparation of Mr. Bowe's Supplementary Affidavit. Both Mr. Bowe and the Minister's counsel confirmed that they were not able to state whether there was still information or documentation outstanding in relation to A-MV-0128. The Minister subsequently withdrew her request for a compliance order with respect to this Demand.

[28] The respondent submits that these events demonstrate that Mr. Bowe affirmed the Supplementary Affidavit, attesting to facts essential to the Minister's application, without knowing, or even making any effort to confirm, whether they were true. Relying on *Canada (Board of Internal Economy) v. Canada (Attorney General)*, 2017 FCA 43, 412 D.L.R. (4th) 336 (*Board of Internal Economy*), at paragraph 30, the respondent submits that the affidavit should be struck, because it is "…so clearly out of bounds … that it ought to be stopped in its tracks."

[29] I find little merit to the respondent's position that the affidavit should be struck. The evidence suggests that Mr. Bowe was unaware of the November 4, 2020, submission due to an administrative error. However, even if I were to ascribe to Mr. Bowe a higher level of culpability in connection with this error, I would find no basis to strike the Supplementary Affidavit as inadmissible. Certainly, this error could cast doubt on the reliability of his evidence and, if there was a dispute as to whether Mr. Vaturi had submitted a particular document to CRA, I might therefore afford more weight to evidence adduced by the respondent to establish the submission. However, there is no dispute of that sort raised in this application. Following her investigations, the Minister's counsel confirmed that the November 4, 2020, submission had been overlooked, and the Minister subsequently withdrew her request for a compliance order in connection with the relevant Demand.

[30] I agree with the Minister's submission that *Board of Internal Economy* is distinguishable, as the affidavit that was struck in that case was found inadmissible because it amounted to a legal opinion on Canadian law.

[31] The second issue that the respondent raises in connection with the Supplementary Affidavit surrounds Mr. Bowe's explanation during his cross-examination that, notwithstanding that the affidavit was affirmed in April 2021, it was prepared in June 2020, before he transitioned out of his role in November 2020. Because Mr. Bowe no longer had current personal knowledge of CRA's audit of Mr. Vaturi when he affirmed the Supplementary Affidavit, the respondent again argues that it should be struck.

[32] In response to this argument, the Minister explains that she was required to present a motion seeking an order allowing the filing of the Supplementary Affidavit. The Court issued the resulting Order on March 30, 2021, granting the motion and permitting the filing of the affidavit. It was then filed in largely the same form as presented in the motion and authorized by the Order—which included an appendix setting out the form of the Supplementary Affidavit—notwithstanding that several months had passed. The respondent takes issue with this explanation, noting that the introductory paragraphs of the affidavit were updated to explain the change in Mr. Bowe's role.

[33] Again, I find little merit to the respondent's argument that the Supplementary Affidavit is inadmissible and should be struck. I accept that the affidavit is misleading, as it amounts to testimony by Mr. Bowe that, other than as identified in the updates set out in the affidavit, the information and documentation sought in the Demands issued to Mr. Vaturi was still outstanding as of April 2021. It appears to have been Mr. Bowe's intention that his testimony to that effect apply as of June 2020 when the affidavit was prepared, but the affidavit does not read that way. If, in his cross-examination of Mr. Bowe, the respondent's counsel had not identified this irregularity, the Court could have been misled in relying on the Supplementary Affidavit. The benefit of his identification of this error obviously accrues to the respondent and, to the extent there was a dispute between the parties on whether Mr. Vaturi had submitted additional documentation between June 2020 and April 2021, the Supplementary Affidavit would not assist the Minister. However, there was no contention that Mr. Vaturi made additional submissions during this period and, in any event, these circumstances do not raise a basis for the Court to find the Supplementary Affidavit inadmissible.

(2) Staleness of Affidavits

[34] Turning to the respondents' principal inadmissibility arguments, related to the main affidavits sworn by Mr. Bowe in each of T-252-19, T-254-19 and T-261-19, they submit first that these affidavits are out of date and should be struck as inadmissible due to their staleness. As canvassed by the respondents' counsel in cross-examination, it is clear that (other than the Supplementary Affidavit in T-254-19) Mr. Bowe did not prepare additional affidavits to update his evidence after the original affidavits were sworn on July 27, 2019. Noting that noncompliance with the Minister's Demands is one of the statutory conditions for issuance of compliance order under subsection 237.1(1), the respondents submit that Mr. Bowe's affidavits should be struck because they are stale. They rely on *Fabrikant v. Canada*, 2017 FC 1115 (*Fabrikant*), in support of their argument.

[35] *Fabrikant* involved an appeal of a prothonotary's decision, which had refused to waive the Court's filing fee for a self-represented vexatious litigant wishing to file an application for judicial review. The prothonotary dismissed the motion for waiver of the fee on the grounds that the applicant's evidence of impecuniosity was *prima facie* deficient, being based on an affidavit nearly one year old. Justice Harrington upheld the prothonotary's decision on several grounds, including that a motion should be accompanied by a current affidavit and that the prothonotary was entitled to reject the applicant's affidavit as stale-dated (at paragraphs 23–24).

[36] I agree with the Minister's response that *Fabrikant* does not express a general principle that the passage of time alone stale-dates affidavits, requiring them to be struck. Indeed, it is not clear from *Fabrikant* that either the prothonotary or Justice Harrington considered the affidavit to be inadmissible, as opposed to concluding that, because it was outdated, the evidence simply did not support the relief requested.

[37] In the case at hand, the fact that Mr. Bowe did not file updated evidence does not make his original evidence inadmissible. Rather, the Court must consider whether Mr. Bowe's evidence, including the date as of which it speaks, supports issuance of the requested compliance orders. In that respect, it is clear from the records before the Court, including the Amended Notices, that circumstances have evolved since Mr. Bowe swore his affidavits on July 27, 2019. The respondents argue that it is improper for the

Minister to simply amend her Notices of Summary Application, so as to reduce the scope of the Demands to take into account additional documentation or information that has been received, without filing updated evidence reflecting the receipt of that material.

[38] I find nothing problematic in the Minister's approach. Particularly with the significant scope of the Demands at issue in the present applications, and the length of time that has passed in bringing these applications to a hearing, it is perhaps not surprising that the Minister has received additional material in response to certain Demands. In such circumstances, it is appropriate for the Minister to reduce the scope of the applications. If, for that reason or others, the Minister decides to abandon certain Demands or portions thereof, I see no basis for a strict requirement to file updated evidence explaining the reason for the reduction in scope.

[39] Of course, depending on the particular issues and supporting evidentiary basis raised by a respondent to a compliance application, the Minister may be unable to succeed without updated evidence. For instance, if the respondent had adduced evidence that particular responses had been provided subsequent to the filing of the compliance application, the Minister may be unable to resist that assertion without additional updated evidence of her own. However, I do not understand any of the respondents' arguments in these applications to be of that nature. As will be canvassed later in these Reasons, Mr. Vaturi argues in T-254-19 that he has fully complied with some of the outstanding Demands. However, the Court's analysis of that argument involves consideration of the details of the relevant Demands and of the material Mr. Vaturi provided in response. That argument does not engage a dispute as to whether certain submissions were actually made or received after the Minister filed her application and therefore will not turn on the absence of updated affidavit evidence.

[40] In each of the six applications before the Court, Mr. Bowe provided evidence as of July 26, 2019, as to the then outstanding Demands, and swore that the respondent had not provided the information and documents responsive to those Demands. As will be explained immediately below in my analysis of the respondents' arguments surrounding hearsay in Mr. Bowe's affidavits, any conflict in the evidence including meaningful challenge of Mr. Bowe's testimony would require the Court to consider the weight to be afforded to Mr. Bowe's evidence. However, with the exception of the November 2020 submission identified earlier in these Reasons, the respondents have not adduced evidence, through cross-examination of Mr. Bowe or otherwise, that they have provided responses to the Demands and portions thereof that the Minister is presently pursuing that have not been taken into account. The November 2020 submission identified through cross-examination was addressed through the Minister's subsequent withdrawal of the relevant Demand.

[41] As previously noted, noncompliance with the Minister's Demands is one of the statutory conditions for issuance of compliance order under subsection 237.1(1), and the Minister bears the onus of proof on this condition. However, in the absence of any conflicting evidence, I consider Mr. Bowe's evidence sufficient to meet this onus, notwithstanding that it has not been updated.

(3) Hearsay

[42] The respondents' second argument in relation to Mr. Bowe's original affidavits challenges their admissibility, or alternatively their weight, based on hearsay contained therein.

[43] The first paragraph of each of these affidavits is materially identical, reading as follows:

> I am an International and Large Business Case Manager with the Canada Revenue Agency ("CRA"), in the Edmonton Tax Services Office. In the normal course of my duties I have conduct of audit matters in respect of the Respondent. I have reviewed the files and have personal knowledge of the matters hereinafter deposed to, save and except that which is stated to be based on information and belief, and where so stated, I verily believe it to be true.

[44] In his cross-examination in each of T-252-19, T-254-19 and T-261-19, Mr. Bowe admitted that a large number of paragraphs in his affidavit contained facts that were not based on his personal knowledge. The respondents also submit, correctly in my view, that in most cases the affidavits do not state that these paragraphs are based on information and belief. In his cross-examination in T-252-19 (Nader Ghermezian), Mr. Bowe confirmed that, in some cases, his affidavit fails to identify which facts are based on information and belief.

[45] The respondents therefore argue that the affidavits should be struck as inadmissible, on the basis that they offend rule 81 of the *Federal Courts Rules*, SOR/98-106, and, more generally, include substantial amounts of inadmissible hearsay. Rule 81 provides as follows:

> **Content of affidavits**
>
> **81 (1)** Affidavits shall be confined to facts within the deponent's personal knowledge except on motions, other than motions for summary judgment or summary trial, in which statements as to the deponent's belief, with the grounds for it, may be included.
>
> **Affidavits on belief**
>
> **(2)** Where an affidavit is made on belief, an adverse inference may be drawn from the failure of a party to provide evidence of persons having personal knowledge of material facts.

[46] In support of the inadmissibility of hearsay evidence, the respondents rely on the following explanation in the recent decision by the Federal Court of Appeal in *Canada (Attorney General) v. Iris Technologies Inc.*, 2021 FCA 223, [2022] 4 C.T.C. 147 (*Iris Technologies*), at paragraph 32:

> The rules of evidence, both substantive and procedural, matter. They matter because they are the foundation of the truth-seeking role of the courts. They are also the foundation of fairness in the adjudicative process. They are not to be overlooked, and there are consequences if they are. Here, the affidavit was wafer thin. It did not comply with the *Ares v. Venner* exception to the hearsay rule, it did not measure up to the statutory exception specifically designed to facilitate the introduction of documents in the possession of the CRA and no notice was given under the *Canada Evidence Act* of an intention to rely on business records. Quite apart from the question of the admissibility of evidence in any individual case, courts have an over-arching concern to ensure that proceedings unfold in accordance with established laws of evidence and procedure. This is the foundation of fairness. This factor militates against admission of the affidavit.

[47] In *Iris Technologies*, the Federal Court of Appeal ultimately held that the affidavit at issue was admissible under the common law exception to the hearsay rule based on reliability and necessity (at paragraph 33). In the case at hand, the Minister does not rely on that particular exception but rather upon what it refers to as the corporate exception to the hearsay rule. The Minister refers the Court to *Twentieth Century Fox Home Entertainment Canada Limited v. Canada (Attorney General)*, 2012 FC 823, 414 F.T.R. 291 (*Twentieth Century Fox*), which considered the admissibility of an affidavit of a CRA official, filed in response to a judicial review of a decision under the *ETA*. Justice Phelan accepted into evidence the hearsay components of the affidavit, holding that the official's evidence was in the nature of "corporate" evidence, in that he acted in a supervisory capacity, was responsible for his subordinates, and was therefore in a position to know if the facts in his affidavit were true (at paragraphs 23 and 26). *Twentieth Century Fox* was affirmed on appeal (2013 FCA 25), although without any commentary on this particular issue.

[48] Subsequently, in *O'Grady v. Canada (Attorney General)*, 2016 FC 9 (*O'Grady*), Justice LeBlanc followed the approach of *Twentieth Century Fox* to the admissibility of hearsay evidence, concluding that the affiant in *O'Grady*, a Director General with Statistics Canada, was, based on her sphere of responsibility, in a position to know that the facts sworn in her affidavit were true (at paragraph 19). For similar reasons, Justice LeBlanc also concluded that the affiant was in a position to swear the affidavit without providing evidence of the persons having personal knowledge of the material facts (at paragraph 20). The Court declined to draw an adverse inference under Rule 81(2) and concluded that whether the respondent had provided the best evidence went to the weight to be accorded to the affidavit by the judge on the hearing of the application (at paragraph 22).

[49] On appeal, in *O'Grady v. Canada (Attorney General)*, 2016 FCA 221, the Federal Court of Appeal again relied on *Twentieth Century Fox* and found no error in Justice LeBlanc's decision that the affidavit evidence was admissible, because the affiant, by virtue of her responsibilities in the Government of Canada, was in a position to depose to the matters in question without necessarily having personal knowledge (at paragraph 10).

[50] In support of her reliance on this jurisprudence, the Minister refers to Mr. Bowe's affidavit and cross-examination evidence. In each of his affidavits, he swore that he was employed as an International and Large Business Case Manager with CRA. In his cross-examination in T-252-19 (Nader Ghermezian), he explained that this role involved the duties of a team leader in CRA's Audit and Compliance Programs Branch. In his cross-examination in T-261-19 (Raphael Ghermezian), in the context of questioning about the mailing by a student employee of a particular Requirement, Mr. Bowe described himself as the supervisor of the employee, as the individual with the conduct of the audit, and as therefore possessing knowledge of what happened within the audit file. In T-254-19 (Marc Vaturi), when questioned about Requirement A-NG-0127, addressed to Mr. Vaturi on June 27, 2018, under the signature of an individual named John Harasymchuk, Mr. Bowe referred to the Requirement being issued on his recommendation as the case manager with responsibility for the audit.

[51] In my view, this evidence is sufficient to support the Minister's reliance on the above jurisprudence for the admissibility of Mr. Bowe's affidavits under the corporate exception.

[52] In arriving at this conclusion, I have considered the respondents' submission that this case law supports only the ability of a manager to testify about tasks performed by subordinates. I disagree that the principle is as limited as the respondents suggest. I note that, in *Coldwater First Nation v. Canada (Attorney General)*, 2019 FCA 292 (*Coldwater First Nation*), the Federal Court of Appeal explained that evidence is admissible from departmental supervisors or similar individuals about the activities of their department, the conduct of their employees, and events taking place in relation to the department, where their knowledge is sufficiently direct and personal, without having to be directly involved in the conduct, activities, and events (at paragraph 42).

[53] *Coldwater First Nation* also explains that there is no general "department head" exception to hearsay that would permit a departmental supervisor to introduce particular statements made by departmental personnel for the truth of their contents (at paragraph 42). In that context, I note the respondents' submission that this principle does not permit Mr. Bowe to provide testimony about the various dealings of members of the Ghermezian family. However, I find compelling the Minister's submission that, in large measure, Mr. Bowe's affidavits serve to set out his understanding of facts that provide relevant contextual background to the issuance of the Demands. As the Minister is in some respects a stranger to these facts, which are known principally to the respondents themselves, CRA's understanding of such facts may be of limited significance to the outcome of these applications.

[54] Of course, some of the facts set out in Mr. Bowe's affidavits could be determinative of particular issues in these applications. For instance, as will be canvassed later in these Reasons, the respondents dispute whether the Demands were properly served upon them. Mr. Bowe's evidence explaining how CRA sent the Demands to the respondents will be significant to the outcome of this issue. However, his evidence on this issue falls well within the principle that a manager can testify to tasks performed by employees.

[55] Mr. Bowe's evidence as to particular relationships among members of the Ghermezian family or entities in which they are interested, or their respective business dealings, does not necessarily have the same significance. As the Minister submits, this evidence may provide context that assists the Court in understanding the background to the audits underlying the Demands and in understanding the Demands themselves. However, if the understanding of certain background facts set out in Mr. Bowe's affidavit were incorrect, this would not necessarily invalidate the Demand or a related application for a compliance order. Indeed, Demands represent a means of obtaining information or documentation from the respondents, who are the best source of material that would enable CRA to either verify or change its understanding.

[56] The respondents' arguments in support of their efforts to strike Mr. Bowe's affidavit challenge a large number of paragraphs, without identifying particular uses by the Minister of the evidence in those paragraphs that would offend the distinction identified in *Coldwater First Nation.* In the absence of such submissions, I find no basis to conclude that the affidavits, or particular portions thereof, are inadmissible as adduced for a hearsay purpose outside the scope of the jurisprudence upon which the

Minister relies. Of course, the absence of direct and personal knowledge on the part of Mr. Bowe could affect the weight to be afforded to his evidence, particularly in the context of any compelling conflicting evidence or meaningful challenge to his testimony in cross-examination. However, any such determinations as to weight should be made, in relation to particular components of Mr. Bowe's evidence upon which the Minister relies, in analyzing the individual issues in the applications.

C. *Whether the respondents were required to provide documents and/or information in response to a Request issued under section 231.1 of the Act*

[57] One of the principal issues raised by the respondents, which relates to most of the applications, involves the proper statutory interpretation of subsection 231.1(1) of the Act and the particular authority it affords to the Minister in her efforts to obtain information and documentation from the respondents. As will be explained in more detail below, the respondents submit that the Minister has conflated aspects of the authority provided by subsections 231.1(1) and 231.2(1). The respondents argue that many or all of the Requests purportedly issued under subsection 231.1(1) sought information and/or documentation that the Minister was authorized to compel only through a Requirement issued under subsection 231.2(1). The Requests do not comply with certain technical requirements of subsection 231.2(1), and the Minister does not seek to rely upon subsection 231.2(1) in support of those Requests. Therefore, the respondents argue that the Requests are invalid and cannot support the issuance of a compliance order under section 231.7.

[58] As a starting point, the respondents again emphasize the Minister's burden to satisfy the statutory conditions under section 231.7, one of which is that the person against whom a compliance order is sought was required under either section 231.1 or 231.2 to provide the access, assistance, information or documents sought by the Minister. The respondents submit that, if a Request falls outside the authority provided by section 231.1, then the recipient was not required to comply, the statutory condition is not met, and a compliance order cannot be issued in relation to that Request. I find no basis to disagree with this aspect of the respondents' argument.

[59] I therefore turn to the particular bases on which the respondents argue that Requests are not authorized by subsection 231.1(1). Later in these Reasons, I will address other arguments surrounding limitations on the Minister's authority to issue Requirements under subsection 231.2(1) related to unnamed persons and foreign-based information. However, for purposes of the present issue, the respondents accept that, through a Requirement properly issued and served under subsection 231.2(1), the Minister is authorized, for any purpose related to the administration or enforcement of the Act, to require any person to provide any information or document. In contrast, the respondents submit that subsection 231.1(1) affords the Minister only an inspection power, i.e., authority (again, for any purpose related to the administration or enforcement of the Act) to attend at the premises of a taxpayer or other person to inspect books and records or other documents. The respondents argue that subsection 231.1(1) does not grant the Minister power comparable to subsection 231.2(1), either to: (a) compel provision of documents outside the context of an inspection; or (b) compel the provision of information other than information about the location or provenance of documentation sought in the context of an inspection.

[60] As suggested by this explanation of the respondents' argument, there are two aspects to their position, both of which they say are offended by the Requests. First, the respondents submit that, while an "authorized person" (the meaning of which will be canvassed later in these Reasons) can rely upon subsection 231.1(1) to enter business premises and inspect documents that are kept there, that section provides no authority for the authorized person to issue a written demand compelling the provision of such documents. Second, the respondents submit that subsection 231.1(1) relates only to pre-existing documentation and does not authorize issuance of a written demand compelling the recipient to answer questions or otherwise provide substantive (but previously undocumented) information relevant to a taxpayer's tax position. The Minister disputes both aspects of the respondents' position, arguing that there is overlap in the powers afforded by sections 231.1 and 231.2 and that the Requests were all validly issued under subsection 231.1(1). In particular, the Minister relies on paragraph 231.1(1)(a) as authority for the Requests.

[61] While there is some overlap in the parties' arguments in relation to these two aspects of this issue, and I am conscious that the legislation must be interpreted holistically, in my view the required analysis can be most easily explained by addressing these aspects individually. I will first consider the question whether paragraph 231.1(1)(a) authorizes the compulsion of documentation through a written request, outside the context of a physical attendance at premises where an inspection is being conducted.

(1) Compulsion of Documents

[62] As this issue is one of statutory interpretation, the outcome must be governed by the modern approach to statutory interpretation, which requires that the words of the statute be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the statute, the object of the statute, and the intention of Parliament. This approach involves a textual, contextual and purposive analysis to find a meaning that is harmonious with the statute as a whole (see *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at paragraphs 10–11).

[63] Starting with the text of the statutory provision at issue, described as the point of departure for any interpretive exercise (see *eBay Canada Ltd. v. Canada (National Revenue)*, 2008 FCA 348, [2010] 1 F.C.R. 145 (*eBay*), at paragraph 32), section 231.1(1) reads as follows:

> **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.

[64] Focusing on this language, the respondents emphasize that section 231.1(1)(a), upon which the Minister relies, empowers an authorized person to "inspect, audit or examine…" certain books, records and other documents. The mid-amble in section 231.1(1) then states that "…for those purposes…", meaning the purposes set out in the preceding paragraphs including the right to inspect, audit or examine, the authorized person is given additional powers under paragraphs 231.1(1)(c) and (d). Paragraph 231.1(1)(c) entitles the authorized person to enter certain premises or places where business is carried on or where property, books or records are kept. Paragraph 231.1(1)(d) requires the owner or manager of the property or business and any other persons at the premises or place to give the authorized person assistance and answer questions. For that purpose, paragraph 231.1(1)(d) also requires that the owner or manager attend at the premises or place with the authorized person.

[65] Against that backdrop, the respondents emphasize that the only obligation expressly imposed by the language of subsection 231.1(1) is found in paragraph 231.1(1)(d), where the use of the word "require" mandates the provision of assistance, answering of questions, and attendance at the premises or place with the authorized person. There is no express obligation imposed upon a taxpayer or any other person to provide documents pursuant to a written demand in the nature of the Requests.

[66] The respondents also note the reference, in the introductory language of subsection 231.1(1), to the powers of that section being exercisable "at all reasonable times", which they submit is consistent with an inspection power but not a power to issue a written demand.

[67] Turning to context, the respondents' argument compares subsection 231.1(1) to subsection 231.2(1), which reads as follows:

> **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 served personally or by registered or certified mail, 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.

[68] Subsection 231.2(1) expressly empowers the Minister, for purposes including those related to the administration or enforcement of the Act, to require any person to provide any information or any document. Unlike subsection 231.1(1), this language expressly imposes such an obligation upon the recipient of a Requirement under subsection 231.2(1). The respondents submit this comparison suggests that, where Parliament intends to require a person to provide a document, it does so expressly and not by implication.

[69] The respondents also observe that the Minister's power in subsection 231.2(1) is subject to a number of express limitations. As will be canvassed in more detail in relation to other issues later in these Reasons, these limitations on the Minister's power include that it: (a) may be exercised only by the Minister (or a delegate duly authorized under subsection 220(2.01)); (b) cannot be exercised in relation to unnamed persons without prior judicial authorization; and (c) may be exercised only through a notice which specifies a reasonable time for compliance. The respondents refer to these limitations as "guardrails" intended to protect taxpayers and other recipients of requirements issued under subsection 231.2(1). They submit that the express but somewhat circumscribed power to demand documentation and information under subsection 231.2(1), and the absence of similar guardrails in subsection 231.1(1), suggest that subsection 231.1(1) is not intended to authorize the issuance of demands in the same manner as subsection 231.2(1).

[70] I note the Minister's reliance on *Redeemer Foundation v. Canada (National Revenue)*, 2008 SCC 46, [2008] 2 S.C.R. 643 (*Redeemer*), in which the majority of the Supreme Court of Canada rejected a somewhat similar argument. There, the Court found that the limitation in section 231.2, preventing the Minister from obtaining information about unnamed persons without judicial authorization, did not prohibit the Minister from seeking the same information under section 231.1 (at paragraphs 14–15). Nevertheless, in my view, there is logic to the respondents' submissions based on the text and context of the statutory provisions in issue and, in the absence of a purposive analysis, I might be persuaded by the respondents' arguments.

[71] However, as emphasized by the Minister, *eBay* explains the importance of statutory interpretation examining the purpose of the provision in question and the statute as a whole so that, whenever possible, the text of the statute is interpreted in a manner which furthers that purpose (at paragraph 32). In *Canada (National Revenue) v. Cameco Corporation*, 2019 FCA 67, [2020] 4 F.C.R. 254 (*Cameco*), one of the leading authorities on the interpretation of section 231.1, the Federal Court of Appeal states that the purpose of section 231.1 is to facilitate the Minister's unencumbered and immediate access to all books, records and information of the taxpayer (at paragraph 27). More broadly, *eBay* explains that the Minister's broad powers in supervising the regulatory scheme of the Act are a function of Canada's self-reporting tax system (at paragraph 34):

> … The Supreme Court of Canada has provided additional guidance which is relevant to the interpretation of the Act's enforcement powers. Thus, in *R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627, a case involving a challenge under section 8 of the *Canadian Charter of Rights and Freedoms* to the Minister's power to require the production of documents, Justice Wilson noted (at 648) that the major drawback of a self-reporting tax system such as ours is that some taxpayers will attempt to evade tax, by failing to report income, for example. Accordingly, she said:

> [T]he Minister of National Revenue must be given broad powers in supervising this regulatory scheme to audit taxpayers' returns and inspect all books and records which may be relevant to the preparation of these returns. The Minister must be capable of exercising these powers whether or not he has reasonable grounds for believing that a particular taxpayer has breached the Act. … A spot check or a system of random monitoring may be the only way in which the integrity of the tax system can be maintained.

[72] *Cameco* also recognizes that the legislative purpose, however important, cannot replace the language of the statute that Parliament has chosen (at paragraph 27). However, the Minister argues that the words "inspect, audit or examine…" in paragraph 231.1(1)(a) are broad terms encompassing a range of activities, which logically include requesting the provision of documents. This submission is consistent with the statutory interpretation analysis performed in *Tellza*, in relation to the comparable provision of the ETA (subsection 288(1)), which took into account not only the context and purpose of the ETA as part of Canada's self-reporting and self-assessing taxation regime, but also the plain, grammatical, dictionary meaning of "inspect, audit, or examine" (at paragraph 13). The Court concluded that the inspection power afforded by this provision necessarily entailed the power to request or require documents to be provided so that the authorized person can conduct an inspection, audit or examination effectively (at paragraph 18).

[73] Indeed, among the jurisprudence relied upon by both parties in support of their respective positions on the statutory interpretation issue, Justice Fuhrer's recent decision in *Tellza* is the authority which most directly addresses this aspect of the issue. While *Tellza* involved an application for judicial review under the ETA, challenging a written request to obtain electronic accounting data, rather than a compliance application under the Act, it is apparent from the decision that the applicant in that case advanced a position essentially identical to that taken by the respondents in the case at hand. Given the significance of this particular authority for the issue now before the Court, it is worthwhile to reproduce a substantial portion of Justice Fuhrer's description of the applicant's position and her reasons for rejecting it (at paragraphs 11–18):

> Contrary to Tellza's position that the October 4, 2019 letter was a "requirement" and not a "request" and hence, should have issued under the *ETA* s 289(1), instead of the *ETA* s 288(1), I am not persuaded that it was unreasonable for the CRA to issue the letter under the latter provision instead.
>
> The parties do not disagree that the statutory interpretation of a provision must be consistent with the text, context and purpose of the provision: *Vavilov*, above at paras 117-120; see also *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21. The role of the reviewing court, however, on a reasonableness review involving statutory interpretation is not to "undertake a *de novo* analysis of the question or 'ask itself what the correct decision would have been'": *Vavilov*, above at para 116, citing *Law Society of New Brunswick v Ryan*, 2003 SCC 20 at para 50.
>
> Taking into account the context and purpose of the *ETA*, as a self-reporting and self-assessing taxation regime, as well as the plain, grammatical, dictionary meaning of "inspect, audit, or examine", in my view the CRA's decision to rely on subsection 288(1) as the basis for issuing the October 4, 2019 letter was justified. I add that Tellza did not adduce any evidence contradicting that the letter was issued by an "authorized person," as contemplated in the relevant provision.

> Subsection 288(1) essentially permits the authorized person to "inspect, audit or examine the documents, property or processes" of persons with record keeping and reporting obligations under the *ETA*, including in connection with any claimed rebate or refund such as input tax credits or ITCs. Further, subsection 288(1) and the remainder of section 288 deal with the conditions under which the authorized person "may" enter business or commercial premises to carry out these functions.
>
> Tellza contends that the "inspection power" under subsection 288(1) is more limited in scope than the "requirement power" under subsection 289(1) of the *ETA*, in that the authorized person is not empowered to request or require information to be provided. Although I do not disagree with the general proposition about the more limited scope of subsection 288(1), I cannot agree with the latter contention for several reasons.
>
> First, the ability to inspect premises is permissive; the provision does not mandate in-person inspections, audits or examinations. In other words, the inspection power is not limited to a physical location or locations but rather, in my view, relates to the person or persons whose documents, property or processes can be inspected, audited or examined. The purpose of this activity also is more limited, as contrasted with subsection 289(1), to determining obligations under Part IX (GST) of the *ETA* or the amount of any rebate or refund to which a person is entitled. Subsection 289(1), on the other hand, operates "[d]espite any other provision of this Part" and applies more broadly to "any person" within the confines of the stated purpose. That purpose also is broader, however, and described as "…any purpose related to the administration or enforcement of a listed international agreement or this Part [i.e. Part IX (GST)], including the collection of any amount payable or remittable under this Part by any person…"
>
> Second, the applicable definitions of "document" and "property" in the *ETA* s 123(1) are not restricted to physical things. For example, a "document" is defined as including "money, a security and a record," while a "record" is defined as including "…any other thing containing **information**, whether in writing **or in any other form**." [Emphasis added.] In addition, "property" is defined as meaning "any property, whether real or personal, movable or immovable, tangible or intangible, corporeal or incorporeal, and includes a right or interest of any kind, a share and a chose in action, but does not include money."
>
> I thus find that on a plain reading of the applicable definitions, within the context and purpose of the *ETA*, subsection 288(1) indeed grants an authorized person the power to request or require a taxpayer to provide information in any form. The inspection power necessarily entails, in my view, the power to request or require documents to be provided so that the authorized person can conduct the inspection, audit or examination effectively. I further find that the authorized person is not limited, in a modern, electronic era, to an inspection, audit or examination of the taxpayer's documents and records at their premises.

[74] I find this analysis compelling and see no reason to depart from it or to decline to apply it to the provisions of the Act at issue in the case at hand. In so concluding, I have considered the respondents' argument that, because *Tellza* involved a judicial review, it assessed the relevant statutory interpretation on the standard of reasonableness, rather than arriving at a definitive interpretation on the standard of correctness. While the respondents' point is noteworthy, I agree with the Minister's response, explaining that *Tellza* is accompanied by a related decision in *Canada (National Revenue) v. Tellza Inc.*, 2021 CarswellNat 3964, 2021 CanLII 76055 (F.C.) (*Tellza No. 2*) on a compliance application.

[75] The judicial review application and compliance application, in *Tellza* and *Tellza No. 2* respectively, were argued on the same date, and both decisions bear the same date. In *Tellza No. 2*, the Court granted the compliance application, ordering the respondents in that matter to provide the electronic accounting data that was requested

by CRA under section 288(1) of the ETA in what appears to have been a follow-up to the request that was under judicial review in *Tellza*. *Tellza No. 2* is a recitals-type decision and therefore does not include detailed reasons. However, it states the Court's findings, including that, by requests made under subsection 288(1) of the ETA, the respondents were required to provide the electronic accounting data, and expressly describes the Court's satisfaction that this condition has been met as having regard to the findings in *Tellza*.

[76] I therefore agree with the Minister's submission that the combination of these decisions demonstrates Justice Fuhrer concluding not only that the statutory interpretation set out in detail in *Tellza* was reasonable but also that it is the correct interpretation of the relevant provision.

[77] The Minister cites a number of other cases, including appellate authority, in support of her position on this aspect of the interpretation of subsection 231.1(1) of the Act. While those cases may contain language or involve facts that are arguably consistent with the Minister's position, none of them other than *Tellza* demonstrates the precise issue being raised by the parties and subjected to judicial analysis. However, I consider the conclusion in *Tellza* (at paragraph 18), that the authorized person is not limited, in a modern, electronic era, to an inspection, audit or examination of the taxpayer's documents and records at their premises, to be consistent with appellate authority identified by the Minister. Interpreting the compliance provisions of the Act in *eBay* (at paragraph 42), the Federal Court of Appeal relied on *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, 2004 SCC 45, [2004] 2 S.C.R. 427, in concluding that courts should interpret legislation in light of contemporary technology and, if necessary, "transpose" its terms to take into account the changed technological environment in which it is to be applied.

[78] In conclusion on this aspect of the statutory interpretation issue, I am satisfied that subsection 231.1(1) entitles an authorized person to demand provision of documentation without physically attending at a place or premises where the documentation is kept.

(2) Compulsion of Information

[79] I therefore turn to the second aspect of the statutory interpretation issue, whether subsection 231.1(1) authorizes compulsion of only pre-existing documentation or whether it authorizes issuance of a demand compelling the recipient to provide, through written answers to questions, substantive information relevant to a taxpayer's tax position.

[80] Again, the respondents' submissions focus substantially upon the text of subsection 231.1(1) and in particular paragraph 231.1(1)(a), which I will reproduce again for ease of reference:

> **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

[81] The respondents emphasize that this text applies the power to inspect or examine to two categories of material. The first category is the books and records of the taxpayer, and the second category is any document of the taxpayer or of any other person that relates or may relate to certain types of information. While the language of this second category references information, the respondents submit that reference cannot be read in isolation from the immediately preceding language. The second category of material that can be compelled is "…any document of the taxpayer or of any other person that relates or may relate to the information…" [Emphasis added].

[82] The respondents submit that it is not possible to interpret this language as authorizing compulsion of information other than information that is contained in a document. They also compare this language with that of subsection 231.2(1), which expressly authorizes the Minister to require provision of information, as opposed to a document relating to information.

[83] As with the first aspect of the statutory interpretation issue, the respondents' submissions do not particularly engage with the statutory purpose, which the Minister again emphasizes involves the provision of broad powers to audit taxpayers in supervising Canada's self-reporting and self-assessing regulatory scheme. As with the first aspect, this purpose militates in favour of a generous interpretation of the scope of paragraph 231.1(1)(a), but achieving the purpose cannot replace the language of the statute that Parliament has chosen (see *Cameco*, at paragraph 27). Under the first aspect, I agreed with the Minister that the words "inspect, audit or examine…" in paragraph 231.1(1)(a) were sufficiently broad that, in keeping with the statutory purpose, they encompassed demands for the provision of documents. However, notwithstanding the importance of that purpose, I agree with the respondents' position that the words of paragraph 231.1(1)(a) are not capable of being interpreted to encompass demands for information that is not contained in a document.

[84] As the respondents submit, *Cameco* provides strong jurisprudential support for their position. That case is not completely on point, as it addressed whether the Minister can compel oral answers to questions posed by CRA auditors (see paragraph 1), as opposed to written answers as are at issue in the matters at hand. However, it is difficult to escape the conclusion that the reasoning of the Federal Court of Appeal, rejecting the Minister's position that paragraph 231.1(1)(a) provides authority to compel oral answers (see paragraphs 1 and 12), applies also to compelling written answers.

[85] As in the present matters, the respondent in *Cameco* argued that, relying on the plain and ordinary meaning of the text in paragraph 231.1(1)(a), the powers conferred under that section are in respect of documented information, not any information (see paragraph 10). In response, the Minister argued that the ability to compel oral responses to questions was implicit in the use of the word "audit" in that section (see paragraph 16). The Federal Court of Appeal rejected that submission, noting that the power is to "inspect, audit or examine" and that neither "inspect" nor "examine" suggests a power to compel a person to answer questions. The Court reasoned that, when two or more words that are capable of analogous meetings are coupled together, they take their colour from each other, the more general being restricted to a sense analogous to the less general (at paragraph 18).

[86] As part of its textual analysis, *Cameco* also references paragraph 231.1(1)(d). The parties disagree on whether *Cameco* engages in analysis of paragraph 231.1(1)(d).

In reliance on paragraph 21 of the decision, the Minister argues that it does not. In paragraph 21, the Court emphasizes that the disposition of the appeal turns on the scope of the power in paragraph 231.1(1)(a) and that the extent to which paragraph 231.1(1)(d) served as an independent power to compel attendance and answer questions of the nature proposed by the Minister in that case was not argued in the appeal.

[87] Similarly, in the case at hand, the Minister emphasizes that she relies on paragraph 231.1(1)(a), not paragraph 231.1(1)(d), in support of her position that she can compel written answers to questions. Thus, as in *Cameco*, the Court need not arrive at a definitive conclusion on the meaning of paragraph 231.1(1)(d). That said, I disagree with the Minister's submission that *Cameco* did not engage in analysis of paragraph 231.1(1)(d). Such an analysis is clearly present in the decision and to some extent informed the Court's interpretation of paragraph 231.1(1)(a). For that reason, it is worthwhile to canvas briefly that analysis.

[88] Paragraph 231.1(1)(d) requires the owner or manager, and any other person on the premises or place where subsection 231.1(1) powers are exercised, not only to give the authorized person all reasonable assistance but also "…to answer all proper questions relating to the administration or enforcement of this Act…". *Cameco* explains that this assistance is distinct from responding to general questions with respect to tax liability or issues arising from the audit. The obligation to assist is in aid of the inspection, search, examination or review of records (at paragraph 22). Questions may be asked, and the assistance of the Court can be sought to compel answers, but this relates to the taxpayer's knowledge of the provenance and location of records (at paragraph 13). *Cameco* relies on this interpretation of paragraph 231.1(1)(d) to support its conclusion that there is no implied requirement to answer questions in paragraph 231.1(1)(a). It reasons that such an interpretation would render unnecessary the obligation in paragraph 231.1(1)(d) to answer questions, even of the limited scope contemplated by that section, and interpretations that render any portion of the statute meaningless or redundant should be avoided (at paragraph 23).

[89] Turning to context, *Cameco* notes the significance of section 231.1 immediately following section 230, which imposes an obligation to keep books and records at a person's place of business. The Court reasons that the purpose of the two provisions when taken together is to allow the Minister to independently verify, based on such records, tax liability and compliance with the Act. The Court concludes that independent verification through an audit is different from compelling answers to questions (at paragraph 24).

[90] In its purposive analysis, *Cameco* emphasizes the point (cited earlier in these Reasons) that, however important the statutory objective of empowering the Minister to verify information received in the context of Canada's self-reported taxation system, that objective cannot replace the language of Parliament (at paragraph 27). The Court also notes that paragraph 231.1(1)(a) is not the only source of the Minister's investigative powers, citing other portions of the compliance provisions including the Minister's power to seek information and documents under section 231.2 (at paragraph 29).

[91] In countering the respondents' reliance on *Cameco,* the Minister notes that the Court's purposive analysis includes a reference to the purpose of section 231.1 including the facilitation of access to information of a taxpayer (at paragraph 27):

> … The purpose of section 231.1 is to facilitate the Minister's unencumbered and immediate access to all books, records and information of the taxpayer and, in section 231.7, to provide recourse to the authority of the Court in the face of a refusal. [Emphasis added]

[92] However, I do not read this statement in *Cameco* as suggesting that section 231.1 affords the Minister access to undocumented information, as that interpretation would be inconsistent with the overall conclusion in *Cameco*, that the Minister cannot compel oral answers to questions. Similarly, at the commencement of its textual analysis, *Cameco* describes the focus of the powers in paragraphs 231.1(1)(a) and (b) as squarely on the ability of the Minister to access "…information that is documented, or ought to be documented, in the books and records of the taxpayer" (at paragraph 15). Again, taken in context, I do not read this description as suggesting the Minister can access undocumented information. Indeed, immediately thereafter, the Court notes that references to "books and records" and "documents" course consistently through section 231.1(1) and cites *BP Canada Energy Company v. Canada (National Revenue)*, 2017 FCA 61, [2017] 4 F.C.R. 355 (*BP Canada*), at paragraph 58, describing the section as encompassing documents which relate or may relate to the information that is or should be in the records of the taxpayer.

[93] The statutory interpretation in *Cameco* concludes with consideration of the legislative history of paragraph 231.1(1)(a), which the Court notes resulted from 1986 amendments intended to provide clear limits to CRA's enforcement powers. At paragraph 32 the Court sets out portions of the predecessor to the current section 231.1(1) (then section 231) and focuses in particular on certain language in paragraph 231(c):

> (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 [Emphasis in *Cameco*]

[94] Referring to the language in section 231(c) that is no longer found in the current paragraph 231.1(1)(d), *Cameco* concludes that its reasoning in rejecting the Minister's position is supported by the elimination of the word "orally" from the duty to answer questions, as well as the elimination of the obligation to give answers under oath or by statutory declaration.

[95] As previously noted, I appreciate that the issue before the Federal Court of Appeal in *Cameco* related to demands for information to be provided orally, not in writing, and that the Court's analysis was undertaken, and its reasons written, in that context. However, the above analysis of the legislative history appears equally supportive of the conclusion that the Minister cannot compel written answers to questions. The language that Parliament eliminated in the transition from paragraph 231(c) to paragraph 231.1(1)(d) included not only the word "orally" but also the words "in writing" and, as *Cameco* notes, the reference to answers by statutory declaration.

[96] Moreover, the Minister has identified no point of principle that would militate in favour of a different result in the context of demands to answer questions in writing rather than orally. In my view, the distinction underlying the reasoning in *Cameco* is

between documented and undocumented information. Paragraph 231.1(1)(a) empowers the Minister to compel provision of the former but not the latter.

[97] The Minister cites a number of authorities in support of her position that the section authorizes demands for information, as distinct from documentation, and therefore compels the recipient of a demand to answer questions in writing. However, as with the first aspect of the statutory interpretation of subsection 231.1(1), while those cases may contain language or involve facts that are arguably consistent with the Minister's position, they do not (with one exception, which I will canvass shortly) demonstrate the issue presently before the Court having been raised by the parties and subjected to judicial analysis.

[98] For instance, the Minister relies on the recent decision of the Federal Court of Appeal in *Friedman v. Canada (National Revenue)*, 2021 FCA 101 (*Friedman*), which involved a demand issued by the Minister under subsection 231.1(1), enclosing a questionnaire which asked for details of the appellant taxpayers' property. The taxpayers sought judicial review of this demand, and the Minister sought a compliance order. The Minister prevailed before the Federal Court, and the Federal Court of Appeal dismissed the taxpayers' appeal (see paragraphs 1–3).

[99] The Minister cites *Friedman*, because it is apparent that the questionnaire that formed the basis of the Minister's subsection 231.1(1) demand sought, at least in part, answers to questions, i.e., information as distinct from documentation (see, e.g., paragraph 9). I do not disagree with this interpretation of the facts underlying *Friedman.* However, there is no indication in the decision that the issue presently before this Court, whether subsection 231.1(1) authorizes the Minister to compel answers to questions, was raised or argued in that appeal. *Friedman* provides no analysis of this issue and therefore cannot be regarded as authority supporting the Minister's position.

[100] The Minister also relies on the decision in *Redeemer*, referencing language employed by the Supreme Court of Canada in its interpretation of paragraph 231.1(1)(a) that she argues supports her position (at paragraphs 13 and 24):

> 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):
>
> ….
>
> As mentioned above, s. 231.1(1) is broadly worded. It allows access to "information that <u>is</u> or <u>should be</u> 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 in *Redeemer*]

[101] As the Minister submits, *Redeemer* refers to the Minister having access to "information" and does not state that such information must be contained in a document to be compellable. However, again, I do not read this decision as providing any analysis of the particular issue now before this Court. *Redeemer* does not refer to the fact that, in the paragraph 231.1(1)(a) description of what an authorized person may inspect, audit or examine, the phrase "information that is or should be in the books or

records of the taxpayer" is only part of the longer phrase "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". Nor is there any indication in the decision that this issue was raised and argued before the Court.

[102] Indeed, as pointed out by the respondents at the hearing of these applications, the decision of the Federal Court of Appeal (*Canada (Minister of National Revenue) v. Redeemer Foundation*, 2006 FCA 325, [2007] 3 F.C.R. 40 (*Redeemer FCA*)), which was under appeal in *Redeemer*, makes clear that this issue was not raised. The information at issue in *Redeemer* was a list of charitable donors to the appellant taxpayer. In *Redeemer FCA*, the Court explains as follows (at paragraph 36):

> Section 230(2) requires the Foundation to maintain certain records to enable the Minister to ascertain if there are grounds for revoking the Foundation's registration as a charity, and to verify that the donations which are made to it are eligible for deduction. The Foundation is specifically required to maintain duplicates of all receipts which it issues to donors, including the name and address of the donor. (See *Income Tax Regulations*, C.R.C., c. 945 at paragraph 3501(1)(*g*).) In short, the Foundation was required by law to maintain the information which the CRA auditor asked it to produce. As for whether the information was maintained in the form in which it was requested, i.e., a list, the demand was not resisted on that basis, perhaps because it is inconceivable that a charity would not maintain a list of its donors for various purposes related to fundraising. [Emphasis added]

[103] While it is not entirely apparent whether the list of donors was a pre-existing document when demanded by the Minister, it is clear that the appellant taxpayer was not raising the statutory interpretation issue that is presently before the Court in these applications.

[104] As I noted above, the Minister relies on one authority that arguably supports her position. In the recent decision in *Canada (National Revenue) v. Miller*, 2021 FC 851, 2021 D.T.C. 5104 (*Miller*), my colleague, Justice Walker, considered an argument similar to the one raised by the respondents in the case at hand. *Miller* involved an application for a compliance order, related to outstanding information and documentation sought in a demand issued by CRA under section 231.1 of the Act. Among other arguments raised by the taxpayer, he relied on *Cameco* to resist the Minister's submission that paragraph 231.1(1)(a) empowered her not only to access the taxpayer's books and records but also to request written information relating to such books and records (see paragraph 24). The taxpayer emphasized the references in *Cameco* to the Minister being entitled to ask questions related to the provenance, location and maintenance of books and records. He argued that this authority limited the Minister's ability to ask questions in reliance on section 231.1 to information relating to those concepts (see paragraph 31).

[105] The Court rejected this argument, concluding that it ignored two elements of the reasoning in *Cameco*. First, *Cameco* notes the importance of the words used by Parliament, including the reference in paragraph 231.1(1)(a) to information that should be in the books and records of the taxpayer. *Miller* concludes that, if the information should be in the taxpayer's books and records, the Minister must be able to gain access to that information in reliance on subsection 231.1(1) (at paragraph 31). Second, *Miller* notes that *Cameco* reflects a concern as to the scope of the Minister's intended oral questions in that case, which did not relate to information that should have been set out in the taxpayer's books and records (at paragraphs 32–33).

[106] *Miller* then applies its statutory interpretation analysis to the Minister's particular requests for information at issue in that case, arriving at different results depending upon whether the particular information could be characterized as that which should have been documented in the taxpayer's books and records. For instance, the Minister sought the terms and conditions of what appeared to be an oral contract to which the taxpayer was a party. Reasoning that this request related to information that the taxpayer should have documented in his records, the Court concluded that this information was proper subject matter for a compliance order (at paragraphs 44–45). In contrast, the Court declined to include in the order a request for a narrative regarding the development of the taxpayer's relationship with the other party to the contract, concluding that such a description is not information that should be in his books and records (at paragraph 54).

[107] The respondents note that *Miller* is under appeal and submit that its reasoning is inconsistent with that of the Federal Court of Appeal in *Cameco* and fails to properly parse the language of subsection 231.1(1).

[108] In my view, *Miller* correctly focused upon *Cameco* as the leading authority governing the statutory interpretation issue currently before the Court. However, I respectfully disagree with the conclusion in *Miller* that *Cameco* teaches that the governing consideration is whether the information sought by the Minister should have been in the taxpayer's books and records. As noted earlier in these Reasons, *Cameco* (at paragraph 15) cites the explanation in *BP Canada* (at paragraph 58), consistent with the text of subsection 231.1(1), that the section encompasses documents which relate or may relate to the information that is or should be in the records of the taxpayer.

[109] *Cameco* also notes the distinct references in section 231.1 to "books and records" and "documents" (at paragraph 15). As I read the compliance provisions of the Act, the meaning of "books and records" is informed by section 230, which requires taxpayers to keep records and books of account in such form and containing such information as will enable determination of, *inter alia*, taxes payable under the Act. The term "document" is in turn defined by section 231 to include money, security and a record. Therefore, "document" is a broader term than "record" and, at least potentially, encompasses records within the meaning of section 230 as well as other forms of documentation that may not fall within that meaning.

[110] Against that backdrop, if an authorized person seeks to compel the provision of documentation that does not qualify as "the books and records of the taxpayer", and is relying on the potentially broader power to compel "any document of the taxpayer or of any other person that relates or may relate to the information that…should be in the books or records of the taxpayer", then I would agree with the reasoning in *Miller* that it is essential to ask whether the nature of the information is such that it should be in the books or records. However, an affirmative answer to this question is a necessary but not a sufficient condition for reliance on that power. The authorized person must also be seeking a document that relates or may relate to this information, as it is clear from the language of paragraph 231.1(1)(a) that it is a document that the person is empowered to inspect, audit or examine. To the extent that *Miller* concludes otherwise, I respectfully decline to follow it.

[111] Having considered the various arguments and authorities, my conclusion on the second aspect of the statutory interpretation issue is that the respondents are correct in

their position that section 231.1 of the Act does not authorize issuance of a demand compelling the recipient to provide, through written answers to questions, substantive information relevant to a taxpayer's tax position.

(3) Conclusion on Statutory Interpretation of subsection 231.1(1) of the Act

[112] Before leaving this issue, I note that in some cases, the respondents have framed their arguments on this issue as a submission that the Requests are in "pith and substance" in the nature of Requirements. The respondents further argue that, if reframed as Requirements, they would nevertheless be invalid for various technical reasons (for instance, related to the authority of the issuing individual or the method of service). In my view, the appropriate analysis is not to identify the "pith and substance" of the Request and then potentially consider whether it complies with section 231.2 as a Requirement. Rather, the required analysis is that performed above, i.e., considering whether section 231.1 provides the authority for the Request. I note that I do not understand the Minister to be arguing that, to the extent she does not succeed in full on the statutory interpretation issue, the Requests can be rehabilitated by analyzing them as Requirements. Therefore, to the extent a particular Request may be invalid because, consistent with my conclusions above, it demands provision of previously undocumented information, I do not intend to examine whether that Request would be validly issued if treated as a Requirement under section 231.2.

[113] As will be apparent from the above analyses and conclusions, the parties have met with divided success on the issue surrounding statutory interpretation of the scope of subsection 231.1(1). As will be explained later in these Reasons when addressing the "severance" issue, my conclusion is that, if certain Demands include both valid and invalid items, I have discretion to order compliance with the valid portions, notwithstanding the invalidity of other portions. It will therefore be necessary for the Court to decide how the conclusions on the statutory interpretation issue apply to individual items in the Requests and, as a result, which items are valid because they represent a demand for documentation and which are not valid because they represent a demand for undocumented information.

[114] At the conclusion of the hearing, recognizing that some form of divided success on this issue was a possible result in these applications, I raised with counsel the question of whether the Court should perform this process, applying the statutory interpretation conclusions to the details of the individual items in the Requests, without receiving further submissions from the parties. There may be some items where this process is straightforward and others where it is less so, as there could be a debate on whether a particular item falls into the valid or invalid category.

[115] The Minister's counsel took no position on the process question but explained that the Minister was prepared to provide additional submissions if that would be of assistance to the Court. The respondents' counsel advised that they would prefer an opportunity to provide submissions. Now that the outcome of the statutory interpretation issue is known, my view is that seeking further submissions is appropriate and will be useful to the Court. As such, when I analyze the individual Requests and Requirements later in these Reasons, I will not be applying the statutory interpretation conclusions in that analysis. At the end of these Reasons, after addressing the other issues before the Court, I will return to the process for seeking further submissions to progress these compliance applications to conclusion.

D. *Whether the individuals who issued the Demands were authorized to do so*

[116] There is a distinction between those who are authorized to issue Requests under section 231.1 of the Act and those who are authorized to issue Requirements under section 231.2. Subection 231.1(1) confers such authority upon an “authorized person”, a term which is defined by section 231 to mean “a person authorized by the Minister for the purposes of sections 231.1 to 231.5”. In contrast, section 231.2 confers authority upon the Minister herself, although subsection 220(2.01) allows the Minister to authorize an officer or a class of officers to exercise powers of the Minister under the Act.

[117] For each of the Requests and Requirements at issue in these applications, the respondents submit that the applications must fail, because the Minister failed to adduce evidence that the Request or Requirement was authorized in accordance with the provisions described above. Essentially, the respondents take the position that the Minister bears a burden of proof on this point and has failed to meet that burden.

[118] In response, the Minister relies on a rebuttable presumption of validity identified in applicable jurisprudence. This presumption was explained in *Branigan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 245, 247 F.T.R. 305, which considered an argument that a report under subsection 44(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) and subsection 44(2) referral to the Immigration Division for an admissibility hearing were invalid, because they did not disclose that they were issued by persons designated by the relevant minister, or to whom the minister had delegated authority under IRPA. In rejecting this argument, Justice Lemieux held as follows (at paragraph 9):

> There is no merit to this argument because there is a presumption of validity and the applicant has adduced no evidence to impugn the authority of those persons who issued the documents. I need only cite a few paragraphs of what Justice Létourneau said in *Canada (Minister of Human Resources Development) v. W[ie]mer* [1998] F.C.J. 809 (C.A.).
>
> > 12. The approval of Mrs. Kukat’s application for division of earnings was given on an official form issued by the Division of Unadjusted Pensionable Earnings (“Pension Credits”) Canada Pension Plan and signed, in a section reserved to office use only, by a M. Ali under a heading called “Authorized Signature”. As Walsh J. said in *Kightley v. Registrar of Trade Marks et al.* [(1982), 65 C.P.R. (2d) 36, at p. 42 (F.C.T.D.)], “it would certainly require great temerity and irresponsibility on the part of a party signing such a letter purporting to be signed on behalf of a senior officer if he did not have the authority to so act”. [Emphasis mine]
> >
> > 13. The fact is that a person who signs, or purports to sign, for a senior officer in a department benefits from a presumption that he or she has the authority that he or she purports to exercise until such time as the presumption is rebutted [(*Ali v. Minister of Manpower and Immigration*, [1976] 1 F.C. 185 at pp. 188-89 (Fed. C.A.); *Molson Companies Ltd. v. John Labatt Ltd. et al.*, (1984), 1 C.P.R. (3d) 329, at p. 334 (F.C.T.D.))].
> >
> > 14. No evidence whatsoever has been adduced by the Respondent which could cast the slightest doubt that the person who signed was not authorized to sign the approval and which could have, if not rebutted, at least sufficiently undermined the presumption of validity which attaches to the signature of an official document so as to displace the burden and put on governmental officials the obligation to establish the validity of the signature as well as the existence of a proper authority

> vested in the signatory. Mere unsubstantiated allegations or speculations by the Respondent are not sufficient to displace the presumed authority under subsection 24(2) of the Interpretation Act and the presumption of validity of the signature.

[119] To the same effect, in the more recent decision, *Lim v. Canada (Citizenship and Immigration)*, 2019 FC 871, Justice Gleeson also relied on *Canada (Minister of Human Resources Development) v. Wiemer* (1998), 228 N.R. 341, [1998] F.C.J. No. 809, (QL) (C.A.) (*Wiemer*) in recognizing that, where an authority is exercised, the person doing so benefits from a strong presumption of having acted with proper authorization until such time as that presumption is rebutted with convincing evidence that the decision-maker in fact lacked the required authority (at paragraph 22).

[120] I find that the Minister bears no evidentiary burden on this point, at least not in the absence of any evidence from the respondents challenging the authority of those who issued the Requests and Requirements. In the words of *Wiemer*, the respondents' position amounts to unsubstantiated allegations or speculations, which are not sufficient to displace the presumption of authority and validity from which the Minister benefits.

[121] I note that, in relation to the Requirements and the delegation of the Minister's authority under section 231.2 of the Act, the Minister also seeks to rely on what she describes as CRA's delegation matrix, included in the Minister's Book of Authorities. The Minister points out that, under the heading of subsection 231.2(1), the delegation matrix refers to a number of positions including Manager, Audit, which is significant as all the Requirements at issue in these applications were issued by an individual named John Harasymchuk, with the title Manager, Audit.

[122] The respondents oppose the Minister's reliance on the delegation matrix, arguing that it does not have the status of a statutory instrument such that it can be included in a book of authorities without further proof. The respondents take the position that, if the Minister wished to rely on the delegation matrix, she was required to include it in the record as an exhibit to an affidavit. The Minister disputes this position, asserting that the delegations identified in the matrix are authorized by statute and that the delegation matrix is publicly available on CRA's website.

[123] I find the respondents' arguments on this subject somewhat inconsistent, as their own written submissions include an effort to rely on what appears to be an extract from the delegation matrix on CRA's website. Those submissions assert that the website indicates the Minister has authorized only certain categories of persons for the purposes of section 231.1, all at the Director General, Director, or Assistant Director level. The Minister has convincingly refuted that argument, explaining that this portion of the delegation matrix identifies not those positions that are authorized to issue demands under section 231.1, but rather those positions to which the Minister has delegated the authority to authorize persons to issue such demands.

[124] That said, as a matter of principle, in the absence of a more compelling legal argument from the Minister that the Court is entitled to rely upon the delegation matrix as a statutory authority, I agree with the respondents' position that the proper method to place this information before the Court, if necessary to address an issue in dispute, is through evidence. However, for purposes of the present applications, the Minister succeeds on this issue without needing to rely on the delegation matrix. In the absence

of any evidence or meaningful argument by the respondents challenging the authority of those who issued the Requests or Requirements, the Minister benefits from the presumption of validity, and I find that the persons who issued the Demands were authorized to do so. Given the breadth of this conclusion, it will not be necessary for me to revisit this issue when addressing the individual Demands later in these Reasons.

E. *Whether the respondents were properly given notice of the Demands*

[125] The respondents take the position, in particular in relation to the Requirements at issue in these applications but also in relation to Requests, that they were not provided to them in manner which represents proper notice. Subsection 231.2(1) expressly provides that a Requirement must be served personally or by registered or certified mail. The respondents take the position that the Minister has a burden to adduce evidence establishing proper service and that she has failed to do so. Subsection 231.1(1) does not prescribe particular methods of giving notice to the recipient of a Request. However, the respondents again raise arguments that particular methods employed by the Minister were not adequate.

[126] In relation to the Requirements, the Minister's position is that all Requirements in all six applications were sent to the relevant respondent by registered mail, a method that complies with section 231.2. The Minister relies on the evidence of Mr. Bowe in each application to establish that service was properly effected in this manner. In response, the respondents raise a particular argument based on subsection 244(5) of the Act, which prescribes as follows a method of proving service by mail:

> **244 (1) …**
>
> **Proof of service by mail**
>
> **(5)** Where, by this Act or a regulation, provision is made for sending by mail a request for information, notice or demand, an affidavit of an officer of the Canada Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered letter on a named day to the person to whom it was addressed (indicating the address) and that the officer identifies as exhibits attached to the affidavit the post office certificate of registration of the letter or a true copy of the relevant portion thereof and a true copy of the request, notice or demand, shall, in the absence of proof to the contrary, be received as evidence of the sending and of the request, notice or demand.

[127] The respondents take the position that compliance with subsection 244(5) is mandatory, i.e., that this is the only means by which the Minister can prove by affidavit service by registered mail for purposes of Requirements issued under subsection 231.2(1). To the extent Mr. Bowe's evidence does not comply with subsection 244(5), for instance by failing to attach as an exhibit the post office certificate of registration of the registered letter, the respondents argue that the Minister has not met her burden to prove service and a compliance order cannot be issued in relation to the relevant Requirement.

[128] In response, the Minister refers the Court to *Boroumend v. The Queen*, 2016 TCC 256, in which the Tax Court described subsection 244(5) as a simple mechanism by which the Minister can prove mailing by registered mail (at paragraph 8), but also stated that the fact the Minister does not have the evidence to rely upon subsection

244(5) does not mean that the Minister cannot prevail. Rather, it means that the Minister must use other means to prove, on a balance of probabilities, that the relevant notice was mailed (at paragraph 10).

[129] In support of their position, the respondents rely on *Luxury Home Landscape Construction Inc. v. The Queen*, 2021 TCC 4, 2021 D.T.C. 1008 (*Luxury Home*), at paragraph 24, in which Justice Russell of the Tax Court considered the Minister's efforts to prove through affidavit evidence service of a notice of confirmation of an excise tax assessment. That evidence did not meet the requirements of the ETA provision (subsection 355(1)) comparable to subsection 244(5), because it failed to attach the post office certificate of registration. The Court confirmed that the use of that provision was not the only means to prove that the relevant notice had been sent by registered mail, noting that the Minister could have called one or more witnesses to provide *viva voce* evidence based on personal knowledge. However, as the Minister had chosen the option of adducing the necessary evidence by affidavit, the Court held that subsection 335(1) was engaged, as this provision specifies what Parliament intended to be required in order to prove by affidavit that a notice has been sent by registered mail (at paragraph 24).

[130] The respondents therefore argue that, as the Minister seeks to rely on affidavit evidence in the applications at hand in order to prove service of the Requirements, that evidence is not sufficient unless it complies with subsection 244(5). However, I agree with the Minister's response that the analysis in *Luxury Home* must be considered in the context of the particular proceeding and issue that was before the Tax Court. That case involved a motion to quash a notice of appeal on the basis that it was filed out of time. As such, the date that CRA sent the notice of confirmation to the taxpayer was the date the appeal period began to run, and thus was essential to the determination of the issue before the Court.

[131] Following his observation that subsection 335(1) specified what Parliament intended to be required to prove by affidavit that a notice had been sent by registered mail, Justice Russell referred to the importance of this evidence, because it commences, effective the "sent" date, the running of the appeal period (at paragraph 24). The taxpayer had adduced evidence that it never received CRA's notice of confirmation. In addition, the affidavit adduced by the CRA appeals officer assigned to the matter included correspondence with Canada Post that raised questions as to what happened to the intended registered letter. It is therefore not surprising that, in dismissing the Minister's motion to quash the appeal, the Court was concerned that CRA's affidavit failed to include the post office certificate of registration as required by subsection 335(1) of the *ETA*.

[132] Against that factual backdrop, I do not read *Luxury Home* as a statement of general principle that, if the Minister chooses to establish service of a Requirement through affidavit evidence, that evidence will invariably be insufficient if it does not comply with subsection 244(5) of the Act, regardless of the other evidence or particular issue before the Court. Rather, in my view, it is necessary to consider the particular evidence upon which the Minister relies in these applications, in the context of the arguments raised by the respondents that the applications should fail based on the service issue.

[133] I agree with the respondents' submission that, in a compliance application, whether based on a Request or a Requirement, the Minister should bear the onus to prove service of the relevant Demand. As identified earlier in these Reasons, the statutory conditions include the existence of an obligation under sections 231.1 or 231.2 of the Act. This obligation does not exist unless the recipient has notice of the Demand.

[134] As noted above, the Minister relies upon the evidence of Mr. Bowe to establish service of the Requests and Requirements in all six applications. With respect to the Requests, the methods of service upon which the Minister relies vary somewhat in different applications. As such, I will address the service issue in connection with the Requests later in these Reasons, when considering other issues specific to the individual applications and Demands. However, with respect to the Requirements, the Minister relies upon service by registered mail in all applications, and the evidence of Mr. Bowe is relatively consistent across all matters. It is therefore efficient to address the service issue in relation to the Requirements at this juncture.

[135] In each application, and in relation to each Requirement that is the subject of the application, Mr. Bowe swears in his affidavit that CRA sent the Requirement to the relevant respondent by registered mail, noting the date of the Requirement and attaching a copy as an exhibit to the affidavit. The respondents cross-examined Mr. Bowe in each of the applications and, in some cases, focused specifically upon his knowledge of CRA's service of the relevant Requirements. For instance, as emphasized by both parties at the hearing, the respondents' counsel cross-examined Mr. Bowe in T-261-19 (Raphael Ghermezian) on his knowledge of the two Requirements at issue in that application, identified as A-RUST-0103 and A-GDT-0101.

[136] In relation to A-RUST-0103, Mr. Bowe confirmed that he did not witness the document leaving CRA's mailroom or going to Canada Post, i.e., he did not witness the physical mailing of the letter. However, he also testified that A-RUST-0103 was sent by registered mail, delivered on January 24, 2019, and accepted at what he referred to as the "Triple Five head office" at the address shown on the copy of the Requirement attached as an exhibit to his affidavit (i.e., 3000, 8882-170 Street, Edmonton, Alberta, T5T 4M2 (the Edmonton Address)). He also testified that he has in the audit file a registered mail confirmation and the outgoing mail request form, although he realizes that this documentation was not attached to his affidavit.

[137] When challenged that he did not know for a fact whether the registered mail was delivered to or signed for by Raphael Ghermezian, Mr. Bowe noted that the initials on the registered mail delivery slip were "R.G." (Raphael Ghermezian's initials) although he acknowledged he had no confirmation that R.G. was actually Mr. Ghermezian.

[138] When challenged as to his personal knowledge of the mailing of A-RUST-0103, Mr. Bowe testified that his student employee sent the letter to the mailroom with a registered mail request slip attached to it. He explained that, as the employee's supervisor, he has personal knowledge of what happened within the audit file, but he did not personally send it from the mailroom.

[139] When challenged as to his knowledge whether the registered mail was received by Mr. Ghermezian, Mr. Bowe responded that he believed Mr. Ghermezian received it, because he subsequently filed a judicial review application with respect to A-RUST-0103.

[140] I note that, in re-examination on the subject of A-RUST-0103, the Minister's counsel asked Mr. Bowe whether he or CRA had received a confirmation of the registered mail and sought to introduce into evidence a document purported to be a delivery confirmation for A-RUST-0103. The respondent's counsel objected to this line of questioning, on the basis that it was not appropriate for re-examination, and the delivery confirmation was marked as an exhibit on the basis that the Court would be asked to rule on the objection at the hearing of the applications. I will return to this point shortly.

[141] The respondent's counsel similarly cross-examined Mr. Bowe on his knowledge of the service of the Requirement identified as A-GDT-0101. He testified that one of his employees prepared a mailing slip, which would have come to his desk and was then placed in the outgoing mail slot and made its way to the mailroom, where they prepared a registered mail slip. Mr. Bowe explained that the copy of A-GDT-0101 attached as an exhibit to his affidavit includes a copy of the mail slip as well as the delivery confirmation from Canada Post.

[142] When asked what personal knowledge he had of whether A-GDT-0101 was received by registered mail by Raphael Ghermezian, Mr. Bowe explained his belief that Mr. Ghermezian had received it, because he filed an application for judicial review of the Requirement on November 28, 2018. However, he confirmed that he did not have personal knowledge of whether the registered mail was delivered to Mr. Ghermezian, on or about October 30, 2018, or otherwise.

[143] Turning to the above-noted objection, I agree with the respondent that it was not available to the Minister to introduce the delivery confirmation for A-RUST-0103 into evidence as an exhibit through the re-examination of Mr. Bowe. I appreciate that re-examination can be used to clarify, and in some circumstances respond to, evidence that is adduced through cross-examination. The relevant subject did arise on cross-examination, as Mr. Bowe referred to the delivery confirmation and the fact that it was not attached to his affidavit. However, the re-examination cannot be characterized as pursuing clarification, and re-examination should not serve as an opportunity for a party to bolster its case through evidence that could have been adduced, and could have been anticipated to be required, when presenting its case in chief. Mr. Bowe testified in cross-examination that he inadvertently failed to attach to this document to his affidavit. Clearly, it could have been included with his evidence in chief, and introduction of this document through re-examination deprives the respondent of an opportunity to cross-examine on it.

[144] I therefore find that the delivery confirmation for A-RUST-0103, currently attached to the transcript of Mr. Bowe's cross-examination in T-261-19 as an expanded version of Exhibit "O" to his affidavit, should not form part of the record in that application.

[145] However, little turns on this conclusion. In his cross-examination evidence, Mr. Bowe testified as to the existence of the delivery confirmation, and that evidence still has some probative value. This is not a situation where the respondent challenges this evidence or has otherwise introduced evidence or taken a position to the effect that Mr. Ghermezian did not receive A-RUST-0103. Indeed, I do not understand the respondents in any of the applications to be asserting that the Requirements were not received by registered mail when sent by CRA as Mr. Bowe deposes in his affidavits.

Certainly, the respondents have not sworn affidavits to that effect. Rather, the respondents' position is that Mr. Bowe's evidence is insufficient to affirmatively establish that the Requirements were sent by registered mail as and when they purport on the face of the documents attached to his affidavit.

[146] In that context, I have considered Mr. Bowe's evidence and find that it is sufficient to meet the Minister's burden. To be clear, I consider the evidence to be weak, not only because of the failure to consistently attach to Mr. Bowe's affidavits documentation confirming the registered mailings that would satisfy subsection 244(5) of the Act, but also because of Mr. Bowe's lack of direct involvement in the mailing process and the lack of detail as to the process employed by CRA to effect the mailings. I explained earlier in these Reasons that the absence of direct knowledge on the part of Mr. Bowe could affect the weight to be afforded to aspects of his evidence, particularly in the context of any compelling conflicting evidence or meaningful challenge to his testimony in cross-examination. However, on the service issue, there is no such conflicting evidence or meaningful challenge to that of Mr. Bowe. Therefore, notwithstanding its shortcomings, it is sufficient to meet the Minister's burden.

[147] This finding applies to all the Requirements at issue in the six applications. The evidence is not identical across all applications and Requirements. For instance, as noted above, for some Requirements, Mr. Bowe's affidavit evidence is somewhat bolstered by including or referencing a delivery confirmation. Also, in relation to each of the Requirements, the respondent commenced an application for judicial review of the Requirement within the 30-day limitation period. While this does not constitute evidence of the precise date on which a Requirement was sent or received, the commencement of a judicial review does suggest that the Minister's service was effective in giving the respondent notice of the relevant Requirement. However, even unassisted by this additional evidence, in the absence of conflicting evidence from the respondents, I find the affidavits attesting to CRA serving the Requirements by registered mail are sufficient to meet the Minister's burden.

[148] As previously noted, I will return later in these Reasons to the sufficiency of the evidence regarding the manner in which CRA gave the respondents notice of the Requests.

F. *Whether the Demands provided a reasonable time for compliance*

[149] The respondents take the position that the Minister has the burden to establish that the time period specified for the recipient's compliance in a Requirement is reasonable. In relation to the Requirements in the applications, the respondents argue that the Minister has not met this burden and that the specified time periods were not reasonable.

[150] The issue surrounding reasonable notice results from the language of subsection 231.2(1), which requires the recipient of notice under that section to provide the specified information or documentation "…within such reasonable time as is stipulated in the notice…".

[151] The respondents reference *R. v. MacDonald*, 2005 BCPC 398 (CanLII), 2005 D.T.C. 5652 (*MacDonald*), in which the British Columbia Provincial Court addressed a prosecution under subsection 238(1) of the Act for failing to provide information required

under section 231.2. Among his defences, the defendant argued that the 30-day period afforded by the section 231.2 requirement was not a reasonable timeframe within which to provide the volume of documents demanded. The Court concluded that the Crown had the onus to show that the time period was reasonable, which would depend on the relevant circumstances, including the nature, volume and custodial status of the documents or information demanded (at paragraph 31). Absent any evidence from the Crown that 30 days was reasonable, and based on an objective review of the nature and volume of documents demanded, the Court found that the time was not reasonable and acquitted the defendant (at paragraphs 34 and 36).

[152] However, I agree with the Minister's submission that *MacDonald* is no longer good law, as it was overruled by the British Columbia Court of Appeal in *R. v. Sedhu*, 2015 BCCA 92 (CanLII), 2015 D.T.C. 5038 (*Sedhu*). The Court of Appeal (at paragraph 21) noted the reasoning in *MacDonald* that the reasonableness of the time stipulated for compliance was an element of the *actus reus* of the offence but rejected that analysis and the position that the Crown bore the burden of proof on that issue (at paragraphs 36–37).

[153] I note that the respondents also rely on *Sedhu*, but in support of a proposition that, if the time for compliance stipulated in a Requirement is not objectively reasonable, a taxpayer is under no obligation to even attempt to comply. I find this proposition troubling, particularly when considered in the context of the respondents' position on the burden of proof and the time frames in the present applications. The respondents argue that time periods such as 30 days were unreasonable. However, they are asserting those arguments years after the Requirements were served. They submit that, when serving a Requirement, the Minister is to perform an assessment of the time required for compliance and provide the recipient with an objectively reasonable period to reply, based on the volume and details of the demand and circumstances then known to the Minister. I take no issue with that particular interpretation, which is consistent with the conclusions in *Sedhu* (at paragraph 33). However, it would follow from the respondents' broader position that, even in the absence of any affidavit evidence from the respondents explaining why a number of days or weeks afforded for compliance was unreasonable, the Minister may be unable to compel compliance even years after the Requirement was served.

[154] I do not read *Sedhu* to support that position. Like *MacDonald*, that authority addressed a prosecution for failure to comply with demands under section 231.2 of the Act and the comparable provision of the *ETA*. The respondents rely on the emphasized language in the following passage, in which *Sedhu* explained defences that may be available in responding to a prosecution (at paragraph 28):

> Second, because of the way they are worded, s. 231.2(1) of the ITA [*Income Tax Act*] and s. 289(1) of the ETA may be read as affording a defence to those who can establish that the time stipulated for compliance is not objectively reasonable (considering, for example, the questions posed by Stromberg-Stein P.C.J. in *Tait*) <u>regardless of whether or not they have used their best efforts to comply with the demand</u>. In the absence of the reference to "reasonable time" in the statutes defendants would, of course, be able to avail themselves of a due diligence defence but would have to adduce evidence of diligence. [Respondents' emphasis]

[155] This language must be read in the context of additional analysis in the decision (at paragraphs 33 and 36–37):

> In their grammatical and ordinary sense, the words used in these statutes suggest that the Minister is directed by Parliament, when making a demand, to stipulate a reasonable time for compliance. The offence, as described by the statute, is not failure to comply with a demand within a reasonable time (although that was the case in relation to one of the notices considered in *Richardson* where the Minister did not stipulate a date for compliance), but, rather, failure to comply with the demand. It does not state the individual must comply with a notice that contains a reasonable time to comply, but rather within the time specified in the notice. It does not express that the individual has an entitlement to a reasonable time to respond to the notice.
>
> ….
>
> Nor, in my view, was it Parliament's intention to require the Crown to establish objective reasonableness of the demand as an element of the *actus reus*. The scheme is consistent with a requirement that the Minister consider an objectively reasonable time for compliance on the basis of information in the hands of the Minister when the notice is served. In my view, it cannot have been the intention of Parliament to require evidence of the manner in which that period was determined or proof beyond a reasonable doubt that the time specified was reasonable at the time of the issuance of the notice in every case. The intention to do so might have been signaled by reference to "reasonableness" in the sections of the Acts creating the offences, or by specific reference in the Acts to factors for consideration when assessing the reasonableness of the timeline imposed, such as the factors enumerated for determining reasonableness under ss. 25.1 and 34 of the *Criminal Code*.
>
> For those reasons, I agree with the conclusion reached by the summary conviction appeal judge that convictions under s. 231.2(1) of the *ITA* and s. 289 of the *ETA* must rest upon proof beyond a reasonable doubt of identity, jurisdiction, service of the notice, and failure to comply with the notice. Once those are established on the evidence, an accused person must have an opportunity to demonstrate due diligence; that the time provided to comply with the requirement was unreasonable; or that the demand was not made for purposes related to the administration or enforcement of the *Act*.

[156] In my view, it is clear from these passages that, if the respondents wish to assert that the time afforded for compliance with the Requirements was either objectively or subjectively unreasonable, they bear the burden of proof on that issue.

[157] In support of their position that the deadlines afforded for compliance with the Requirements in the various applications were unreasonable, the respondents rely in part on Mr. Bowe's inability to explain in cross-examination the factors that were used to establish these deadlines. As the burden of proof on this issue resides with the respondents, I do not find this argument compelling.

[158] More significantly, none of the respondents has provided any evidence to support their position. They rely on the nature of the information and documentation sought in the various Requirements, inferences that could be drawn as to the overall volume of material involved, as well as the fact that, in some cases, multiple Requirements are engaged during the same time frame. Against that backdrop, the respondents refer the Court to authorities that identify particular time periods for the production of particular sets of information and documentation (see, e.g., *Lee*, revg *Canada (National Revenue) v. Lee*, 2015 FC 634, 481 F.T.R. 71; *Canada (National Revenue) v. 2276230 Ontario Inc.*, 2021 FC 242; *R. v. Tait*, [1992] B.C.J. No. 2693 (QL) (P.C.).

[159] I find little value in the respondents' reference to these authorities, which are necessarily fact-specific and, for the most part, do not actually speak to the issue

currently before the Court. I do not disagree with the respondents' submission that many of the Requirements, on their face, appear to seek large volumes of documentation and information. However, the Court does not have a sufficient evidentiary foundation to understand with any precision how much material is sought or, more importantly, how challenging or time-consuming the assembly of that material would be. It may be that the task would be a very significant one or, as the Minister's counsel submits hypothetically, it may be that the information exists or has already been assembled on one USB drive. The point is that the answers to these questions are available to the respondents, but they have adduced no evidence on this issue. As they bear the burden of proof on the issue, I find no basis to conclude that the time periods specified in any of the Requirements are unreasonable.

[160] Subsection 231.2(1), the statutory provision on which the respondents' argument is based, applies expressly only to Requirements. However, to the extent the respondents similarly argue that the time periods afforded for responding to Requests was unreasonable, the above analysis and finding again apply.

G. *Whether the Demands relate to one or more unnamed persons, requiring the Minister to seek prior judicial authorization under subsection 231.2(3) of the Act*

[161] The Minister's power to issue a Requirement under subsection 231.2(1) is subject to subsection (2). Subsections (2) and (3), which relate to "unnamed persons," provide as follows:

> **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)]

[162] As set out therein, when the unnamed persons provisions are engaged, the Minister must, before issuing a Requirement under subsection 231.2(1), apply for judicial authorization from the Federal Court under subsection 231.2(3), which prescribes the test to be employed by the Court when considering such an application.

[163] The respondents argue that there are Requirements in certain of the applications that engage the unnamed persons provisions. As the Minister has not sought judicial authorization under subsection 231.2(3) in relation to these Requirements, the

respondents submit that they are invalid. The merits of this argument can be assessed only by considering it in the context of each individual Requirement where it is raised. However, at a higher level it is useful to set out at this juncture some general jurisprudential guidance that will inform this analysis.

[164] As noted in the respondents' written submissions in T-259-19 (Paul Ghermezian) and T-262-19 (Joshua Ghermezian), this Court in *Ghermezian* reviewed principles applicable to the unnamed persons provisions, including by way of background (at paragraph 31) the following explanation by Justice Roy in *Canada (National Revenue) v. Hydro-Québec*, 2018 FC 622, [2019] 4 C.T.C. 31, [2018] 4 F.C.R. D-11 (*Hydro-Québec*) of the purpose of the unnamed persons provisions (at paragraph 68):

> It is obvious upon examination of the context in which subsections 231.2 (2) and (3) are found that Parliament wanted to limit the scope of the Minister's powers, extensive as they are. The purpose of the provision is to limit the scope of requests for information that can be issued. Thus, the fear of abuse that could be generated by the case law of *Canadian Bank of Commerce*, *Richardson*, *McKinlay* and *Jarvis* is seen in the obligation of judicial intervention in the case where the targeted individuals cannot be identified by name. Parliament wants to protect unnamed persons *ex ante*, so as to avoid undue invasions and not to remedy them later. The protection that Parliament wants to grant is based on a request made to administer or enforce the Act, which case law had interpreted as requiring a genuine and serious inquiry in the case of previously identified individuals, but especially, in the case of people who cannot even be named, that they be identifiable and that we want to verify whether this unnamed but identifiable person has respected duties and obligations outlined in the ITA. It is clear that Parliament is seeking a certain specificity if a request related to people who are unnamed may be targets. In this case, we are searching in vain for a criterion connected to the ITA that would turn the group into an ascertainable group for the purpose of administering or enforcing the *Act* and for which it would be permissible to seek information to thereupon verify compliance with the Act.

[165] After canvassing the leading authorities in *Canada (Customs and Revenue Agency) v. Artistic Ideas Inc.*, 2005 FCA 68, [2005] 2 C.T.C. 25, [2006] 2 F.C.R. D-15 (*Artistic Ideas*) and *Redeemer,* this Court in *Ghermezian* concluded as follows as to the effect of those authorities (at paragraph 39):

> The effect of *Artistic Ideas* was to clarify that the unnamed persons provisions are not engaged if the Minister serves a requirement seeking to identify unnamed persons who are not themselves being investigated as to their compliance with the ITA. Although not relying on *Artistic Ideas*, the Supreme Court subsequently confirmed this interpretation in *Redeemer* (see Chief Justice McLachlin and Justice LeBel for the majority at para 22 and Justice Rothstein in dissent, although not on this issue, at para 48).

[166] The Minister also emphasizes the explanation in *Redeemer* that judicial authorization is not required where the requested information is needed to verify compliance of the taxpayer being audited, regardless of whether the information obtained in the audit would include information about unnamed persons and potentially lead to investigation of those persons (at paragraph 22):

> The s. 231.2(2) requirement should not apply to situations in which the requested information is required in order to verify the compliance of the taxpayer being audited. Regardless of whether or not there is a possibility or a probability that the audit will lead to the investigation of other unnamed taxpayers, the CRA should be able to obtain information it would otherwise have the ability to see in the course of an audit. …

[167] The respondents draw the Court's attention to the recent decision in *Zeifmans LLP v. Canada (National Revenue)*, 2021 FC 363 (*Zeifmans*), in which Justice Walker addressed an application for judicial review by an accounting firm, challenging a Requirement that sought information related to clients of the firm, including two of the respondents in the present applications, Marc Vaturi and Nader Ghermezian. In that case, the information sheets underlying the Requirement referred to CRA wishing to verify whether unnamed offshore entities were managed and controlled from Canada by the taxpayers under audit. Based thereon, the applicants argued that, because CRA intended to use information obtained via the Requirement to determine whether unnamed persons were subject to taxation, judicial authorization was required.

[168] *Zeifmans* adopted (at paragraphs 42 and 44) the principles canvassed above from *Artistic Ideas* and *Redeemer*. Justice Walker concluded that the applicant had not established that CRA was engaged in an investigation of the unnamed persons' compliance with the Act and, applying the principles from *Artistic Ideas* and *Redeemer*, held that the possibility that one or more unnamed persons may be subject to audit in the future was not sufficient to require judicial authorization for the Requirement (at paragraph 59).

[169] I will apply these principles when considering the respondents' unnamed persons arguments, in relation to specific Requirements, later in these Reasons.

H. *Whether the Demands raise ambiguity as to whether their recipient is the same as the respondent*

[170] The respondents invoke a principle they refer to as the "same person principle", identified in relevant jurisprudence as providing that the Minister can obtain a compliance order against a person under section 231.7, in relation to an unsatisfied Demand under 231.1 or 231.2, only if it was the same person who was required to comply with the Demand. Justice Boswell explained and applied this principle in *Canada (National Revenue) v. Lin*, 2019 FC 646 (*Lin*), at paragraph 32, and found as a result that the Minister was not entitled to a compliance order:

> The Court must be satisfied that the person against whom a compliance order is sought is one who was required under section 231.1 or 231.2 to provide the access, assistance, information or document sought by the Minister. Because it is not at all clear whether the Letter was directed to the Respondents individually or their connected entities, the first requirement of section 231.7 (as noted above) for obtaining a compliance order has not been satisfied by the Minister (*Chamandy* at para 30, and *Canada (Minister of National Revenue) v SML Operations (Canada) Ltd*, 2003 FC 868 at para 16).

[171] As identified in this passage, this principle has also been applied in *Chamandy* and *SML Operations*, both cases in which the Court concluded that it was not clear whether the relevant Demand was directed to a corporation or its director. As is evident from the Court's analysis in *Chamandy*, which applied *SML Operations*, the uncertainty in both cases surrounded whether the Demand was directed to an individual in his personal capacity or as a representative of the corporation, i.e., whether the recipient of the Demand was actually the individual or the corporation.

[172] This principle flows from the statutory conditions that must be met to obtain a compliance order under section 231.7. As explained earlier in these Reasons, the Court must be satisfied that the person against whom the order is sought was required under

sections 231.1 or 231.2 of the Act to provide the access, assistance, information or documents sought by the Minister (see *Lee*, at paragraph 6). It follows that the respondent to the Minister's application for a compliance order must be the same person to whom the relevant Demand was directed.

[173] In applications now before the Court, not including T-258-19 (involving the corporate respondent, Gherfam), the respondents argue that certain of the Demands offend this principle because, in the respondents' submission, it was not the individual respondents, but rather a trust or corporation, to whom certain Demands were directed.

[174] As is evident from the recent decision in *Canada (National Revenue) v. Friedman*, 2019 FC 1583 (affirmed 2021 FCA 101), in which Justice Pamel declined to follow *Lin* notwithstanding very similar facts, the analysis required to consider this sort of argument is very fact-specific. I will therefore analyze this issue later in these Reasons in connection with individual Demands for which it is raised.

I. *Whether the Demands improperly sought the production of foreign-based information or documents within the meaning of section 231.6 of the Act*

[175] In relation to many Demands, the relevant respondent submits that the Demand improperly sought the production of foreign-based information or documents within the meaning of section 231.6 of the Act. The complete text of section 231.6 is set out in Appendix "A". This Court addressed arguments surrounding section 231.6 in *Ghermezian* and provided the following general explanation of the operation of its provisions (at paragraphs 84–85):

> These provisions relate to requirements to provide a "foreign-based information or document," which s 231.6(1) defines as any information or document that is available or located outside Canada and that may be relevant to the administration or enforcement of the ITA, including the collection of the amount payable under the ITA by any person.
>
> When the Minister serves a requirement under s 231.6, that section operates to afford the person served with certain protections. Under s 231.6(3), the requirement must afford the person no less than 90 days for the production of the information or document, provide a description of the information or document being sought, and set out the consequences of failing to comply. Under s 231.6(4), the person served has the right, within 90 days of service, to apply to the Court for a review of the requirement. Section 231.6(5) provides that the Court may then confirm the requirement, vary it as the judge considers appropriate in the circumstances, or set aside the requirement if the judge is satisfied that the requirement is unreasonable.

[176] The respondents argue that the Minister cannot compel the production of foreign-based information or documents, within the meaning of section 231.6, other than through section 231.6. They therefore take the position either that Demands that seek such material are invalid or that they must be read so as to exclude such material. The respondents urge the Court, if granting any compliance orders, to expressly exclude their application to foreign-based information and documents.

[177] The respondents rely significantly on *Ghermezian*, in which this Court was required to consider somewhat similar arguments by the applicants, surrounding whether the Requirements at issue in the relevant applications for judicial review were unreasonable, because they sought documents and information that were *prima facie* located or available outside Canada and therefore subject to section 231.6. In

responding to those arguments, the Minister took the position that the recipients of the Requirements were required to produce any information or documents requested that was in their power, possession or control, even if they were located outside Canada. That is, independent of the foreign-based information regime, if the information or documentation was within the applicants' power, possession or control, they were required to produce it, regardless of where it was located (see paragraph 87). The following excerpts from *Ghermezian* explain the Court's rejection of the Minister's position:

> Turning to more recent jurisprudence, the Respondent also relies on the decision of the Federal Court of Appeal in eBay. This case is closer to addressing the point in issue, as it considered an argument by the appellant, eBay Canada Inc [eBay Canada], that the Minister was unable to require production of information under s 231.2 because the information was located outside Canada and thus constituted foreign-based information under s 231.6. The Federal Court found, and Federal Court of Appeal affirmed, that the Minister was not required to resort to s 231.6, notwithstanding that the required information was stored on computer services located outside Canada. The Respondent refers in particular to paragraphs 50 to 53 of this decision, which the Respondent submits demonstrates the Federal Court of Appeal relying on a conclusion that the information was within eBay Canada's power, possession and control.
>
> Again, I disagree that this authority supports the Respondent's position. The result in eBay turned on the Federal Court's finding, affirmed by the Federal Court of Appeal, that the relevant information was located in Canada, because eBay Canada was able to access it from its computers in Canada. Indeed, the Federal Court of Appeal concludes its analysis by stating that, because the facts of that case did not engage s 231.6, it was unnecessary to consider whether the presence of that section in the statutory scheme reduced the Minister's powers under s 231.2 when the requirement related to foreign-based information (at para 53). I read this statement as expressly confirming that the Court was not addressing the proposition the Respondent is advancing in the present case.
>
> ….
>
> With the benefit of the parties' respective submissions on *Pierlot*, I conclude that it does not assist the Respondent. It does not stand for the proposition advanced by the Respondent that the Minister can obtain foreign-based information through a requirement issued under s 231.2, provided it is in the possession, power or control of the recipient of the requirement. Rather, somewhat like *eBay*, this case turned on a factual determination that the relevant information was available to the recipient in Canada. In other words, these authorities support the conclusion only that, if foreign-based information is also located in Canada, it can be compelled under s 231.2 by virtue of its Canadian location. They do not support a conclusion that information which is located only outside Canada can be compelled under s 231.2 because it is within the power, possession or control of the recipient of the requirement.
>
> Taking into account the parties' respective arguments on the point, the Respondent has not convinced me that the statutory scheme of the ITA permits the Minister to require production of foreign-based information through s 231.2(1). However, my role is not to arrive at a definitive conclusion on this point, and I need not do so in order to decide these applications for judicial review, as another argument advanced by the Respondent (canvassed next in these Reasons) satisfies me as to the reasonableness of the decisions to issue the RFIs without recourse to s 231.6.

[178] As explained at the conclusion of the above excerpts, *Ghermezian* did not make a definitive finding on the Minister's argument because, regardless of the outcome of that argument, the reasonableness of the Requirements turned on another argument

advanced by the Minister. The Minister argued that the possibility the requested material may be outside Canada did not translate into a conclusion that the Requirements issued under subsection 231.2(1) were invalid (see paragraph 101). The Court accepted the Minister's submission that, when seeking information and documentation through its powers under the Act, the Minister cannot necessarily be expected to know where the material is located. Nor must the Minister necessarily accede to the taxpayer's representation as to such location (at paragraph 104).

[179] *Ghermezian* explained that this does not mean that a Requirement issued under section 231.2 has extraterritorial application, only that the determination of the location of the requested material need not take place before the Requirement is issued. If the Minister concludes that a recipient has failed to comply with a Requirement, for instance by failing to disclose material that the Minister believed to be located in Canada, the Minister can bring a compliance application, which would afford an opportunity for the parties to adduce evidence relevant to the location of the material, to equip the Court to decide whether the compliance order should be issued.

[180] This brings us to the present applications. While, as noted above, *Ghermezian* did not reach a definitive conclusion on the Minister's position that the recipient of a Requirement is required to produce any material requested that is in its power, possession or control, even if located outside Canada, the Minister is not advancing that position in the current applications. Rather, relying on *eBay* (at paragraphs 50–53), the Minister takes the position that the Requirements oblige the respondents to provide the documents and information in their power, possession and control, <u>if accessible from Canada</u>. I consider that position to be consistent with *eBay* and the reasoning in *Ghermezian*.

[181] However, much like in *Ghermezian* (see paragraph 104), the Court is again without sufficient evidence to support a conclusion on the location of the information and documentation sought in the Requirements or whether it is accessible from Canada. While *Ghermezian* identified that a compliance application under section 231.7 would afford parties an opportunity to adduce such evidence, neither party has particularly availed itself of that opportunity in the present applications. As on many of the issues in these applications, the parties disagree about who bears the burden of proof on this issue.

[182] The Minister's evidence on the subject is very limited. For instance, in T-254-19 (Marc Vaturi), in relation to Requirement A-MV-0136 that sought banking records for certain Hong Kong registered companies, Mr. Bowe's affidavit states that information obtained by CRA showed that some of the statements for the bank accounts held by these companies were addressed to Mr. Vaturi's home address in Ontario or to his attention at what Mr. Bowe refers to as the Ghermezian Group's office address at the West Edmonton Mall. In relation to Requirement A-MV-0136, seeking documentation related to certain Gibraltar companies and their subsidiaries, Mr. Bowe testified on cross-examination as to his belief that the documents would be located in Canada, because one of the Gibraltar companies provided an Edmonton address to its corporate service providers in Hong Kong.

[183] In T-261-19 (Raphael Ghermezian), in relation to Requirement A-RUST-0103, requesting original United States (US) tax returns, Mr. Bowe testified in cross-examination as to his belief that the "Triple Five head office" in Edmonton would have

possession of business and business operations documentation. He noted that CRA had obtained documentation from this office relating to trusts and other business operations. However, Mr. Bowe later confirmed that he did not know one way or another whether the US tax returns were located within Canada. (I also note that the Minister is no longer seeking the US tax returns.)

[184] In T-252-19 (Nader Ghermezian), in relation to Request NUST-22, which sought accounting data for entities in the Mall of America Group and related entities that transacted with that group, the respondents' counsel asked Mr. Bowe in cross-examination whether he recalled receiving advice that the accounting records for the Mall of America Group were located in the US. Mr. Bowe noted a reference in Request NUST-22 (which he had issued personally) to an IT [Information Technology] interview on April 21, 2017, and explained that he had been told by a member of the IT staff at the West Edmonton Mall address that they had access to the Mall of America accounting data from within Edmonton and that it was stored on their server network.

[185] The respondents argue that this evidence is hearsay and inadmissible for purposes of establishing the location of the relevant records. The Minister responds that this evidence is admissible to demonstrate that the relevant statement was made by IT staff in Edmonton, arguing that the Minister cannot be expected to prove the location of the respondents' documentation through first-hand knowledge.

[186] As previously noted, the Minister's evidence on the location of the respondents' documents is limited. The above examples relate to only a small portion of the overall volume of documentation at issue in these applications and certainly do not serve to establish that all the documentation and information sought in these applications is located in or accessible from within Canada. However, the parties' positions on the above hearsay point illustrate the strength of the Minister's position that the burden of proof on this issue rests with the respondents. *Ghermezian* did not address the burden of proof on this issue. However, in my view it is an inescapable conclusion that the respondents must bear the burden. The location or accessibility of the material sought through the Demands is not one of the statutory conditions in section 231.7. Rather, it is a defence argument raised by the respondents and, more significantly, it is the respondents who would be privy to the evidence relevant to the argument.

[187] However, as previously noted, the respondents have not filed affidavit evidence in response to the compliance applications. In advancing their arguments that the Minister is seeking to compel foreign-based material, the respondents rely principally on the fact that, on the face of the Demands, many of them relate to foreign-based corporations, trusts, filings and business operations. As in *Ghermezian,* this is not sufficient evidence to support a conclusion on the location of the material. Certainly, this evidence does not allow the Court to assess whether the material is accessible from within Canada.

[188] In T-258-19 (Gherfam), the respondents also rely on a letter dated August 17, 2017, from Mr. Dan McKinley of the accounting firm Grant Thornton (GT) to CRA, attached to and referenced in Mr. Bowe's affidavit. Mr. McKinley's letter references Request GEI-17, seeking documentation with respect to an "Agreement of Partnership of Mall of America Associates", and points out that Mall of America Associates is located in the US and that the accounting for that entity is performed there. He further states that the documents are not maintained in Canada. However, the record before

the Court includes no affidavit from Mr. McKinley that would support reliance on this letter to meet the respondents' burden.

[189] In conclusion on this issue, in the absence of evidence sufficient to meet the respondents' burden, their arguments surrounding foreign-based information and documents raise no basis for resisting any of the applications. I note the alternative position expressed by the respondents that, if the Court is prepared to issue any compliance orders in these matters, they should be expressly limited to information located in Canada and should exclude foreign-based information as described in section 231.6. I am not convinced that any orders issued in these matters should include language intended to expressly tailor the orders to a defence argument that has not been made out on the evidence before the Court.

J. *If the Court determines that any compliance orders should be issued, whether such orders should contain an exclusion for documents and information protected by solicitor-client privilege*

[190] The outcome of this issue surrounding solicitor-client privilege turns on an analysis similar to my above analysis of the respondents' position that any compliance order should expressly exclude foreign-based information. As explained earlier in these Reasons, the respondents bear the burden of proof on any invocation of privilege. As with many other issues they raise in these applications, they have not adduced evidence to support a conclusion by the Court that any of the material sought by the Minister, in the Demands in any of the applications, is privileged.

[191] The respondents have raised limited privilege arguments in relation to particular language in particular Demands. For instance, in T-261-19 (Raphael Ghermezian), in relation to Request BUST-20v2, the requested documentation includes "wire transfer confirmations, confirmation of the deposit to Mr. Lamoreux's account, and any correspondence to Mr. Lamoreux discussing or explaining the transfers". Elsewhere in the record, the respondent points out that the title "ESQ" is employed after Mr. Lamoreux's name, indicating that he is a lawyer. On this basis, the respondent submits that the request for correspondence to Mr. Lamoreux seeks privileged documentation. I agree with the Minister's response that, even if the Court were to infer that Mr. Lamoreux is a lawyer, the respondent has not adduced evidence of the nature of Mr. Lamoreux's role, or the particular communications described in BUST-20v2, which would allow the Court to conclude that these communications are privileged.

[192] Similarly, in T-259-19 (Paul Ghermezian) and T-262-19 (Joshua Ghermezian), Requirements A-GDT-0103 and A-GDT-0102, respectively, demanded the production of various categories of documentation and information for a list of companies, including "Minutes, resolutions, memorandums and agreements in respect of any changes, whether direct or indirect, in the membership/ownership of the entity". The respondents note the reference to "memorandums" and argue that any compliance orders issued in these applications should expressly exclude any memoranda that may have been prepared by counsel. Again, there is no evidence to support a conclusion that there is privileged documentation that would otherwise be responsive to this item in these Requirements.

[193] I am not convinced that any orders issued in these matters should include language intended to expressly tailor the orders to a defence argument surrounding privilege that has not been made out on the evidence before the Court.

K. *If the Court concludes that a compliance order should not be issued in relation to a portion of a Demand, whether the Court has the authority to sever that portion and issue an order in relation to the remainder of the Demand*

[194] The respondents take the position that, if any part of a Demand is invalid, based on any of the defence arguments raised in these applications, the entire Demand is invalid. The respondents further argue that the Minister has attempted to pre-empt scrutiny of her Demands by selectively removing invalid items from her compliance applications. The respondents submit that the Minister may withdraw items from a Demand only after it has been determined that every item in the Demand is valid.

[195] In support of these positions, the respondents rely on *Ghermezian*, in which this Court addressed as follows the possibility of "severance" in relation to a Requirement, one item of which was found unreasonable on judicial review (at paragraphs 164–165):

> However, in relation to T-1501-18, I have found one component of the Gherfam RFI unreasonable, which raises the question of the appropriate remedy to impose. I find no basis to consider any of the heads of relief other than the possibility of quashing the RFI. The alternative to quashing the Gherfam RFI could possibly be some form of severance, in which the problematic paragraph four of the RFI is excised from the document, with the rest to remain in effect. I note that Justice Fothergill adopted such an approach in Bayer (at paras 49-52). However, that case involved an application under s 231.6 of the ITA. Section 231.6(5) expressly provides that, on such an application, the Court has various powers including varying the requirement as the judge considers appropriate in the circumstances.
>
> It may be that the Court could impose a similar remedy in a matter, such as the case at hand, involving judicial review of a s 231.2(1) requirement. However, at the hearing, I sought from the Respondent's counsel the Respondent's position on the appropriate remedy in the event I were to find a component of an RFI unreasonable. The Respondent took the position that the appropriate result was to quash the RFI, with supporting reasons. I understand it would then be the Minister's intention to re-issue the RFI without the unreasonable component or with the basis for the finding of unreasonableness otherwise addressed. As the Respondent has not sought severance, and neither party has made submissions in support of the availability or appropriateness of severance, my Judgment will quash the Gherfam RFI and return the decision to issue that RFI to the decision-maker to be re-determined in accordance with these Reasons.

[196] The respondents note the point identified in *Ghermezian* that, in an application under section 231.6 challenging a foreign information requirement, subsection 231.6(5) expressly provides that the Court has various powers including varying the requirement as the judge considers appropriate in the circumstances. The respondents submit that the absence of such language in section 231.7 suggests that the Court does not have comparable power in a compliance application. The respondents also argue that policy considerations favour their position, as recipients of Requirements should have the certainty of knowing that they face no obligations in relation to invalid Requirements.

[197] In response to the respondents' reliance on *Ghermezian,* the Minister notes that case involved an application for judicial review, in which the Minister did not consider the Court to have authority to set aside a Requirement only in part and therefore did not seek severance. The Minister argues that the Court has broader remedial authority in

compliance applications, because subsection 231.7(3) expressly provides that a judge making an order under subsection 231.7(1) may impose any conditions in respect of the order that the judge considers appropriate. The Minister therefore takes the position that, with the benefit of its discretion in addressing compliance applications, the Court may grant a compliance order in relation to valid items in a Demand, even if it finds other items in the same Demand to be invalid. The Minister also relies on *Miller*, in which the Court granted the Minister's compliance application in part and issued an order in respect of certain of the requested items, notwithstanding that others were found invalid.

[198] As I read *Miller*, the issue whether the Court had authority for "severance" was not argued and was not expressly addressed in the decision. I am therefore reluctant to rely on this authority for this purpose. However, I find the Minister's position on this issue more compelling than that of the respondents. For the reasons the Minister argues, *Ghermezian* does not represent a precedent adverse to her position. As noted earlier in these Reasons, the Court has discretion in addressing an application under section 231.7, including as informed by subsection 231.7(3), and I see no reason why this discretion would not extend to granting an order compelling compliance with a Demand in part. From a policy perspective, the interest in certainty advocated by the respondents is equally accommodated if recipients can operate on the basis that they must comply with valid items in Demands, even if other items are questionable.

[199] Therefore, after I have considered all the arguments raised by the respondents in challenging the various Demands or portions thereof in these applications, if I conclude that certain Demands include both valid and invalid items, I will exercise my discretion to order compliance with the valid portions.

L. *Whether certain Requirements were ineffective because the respondents are not residents of Canada*

[200] Unlike the issues canvassed above in these Reasons, which relate to many or all of the applications, the respondents raise this residency issue only in relation to T-259-19 and T-262-19, as they argue that the respondents thereto, respectively Paul Ghermezian and Joshua Ghermezian, are not residents of Canada and therefore are not subject to the Requirements at issue in those applications or to the compliance orders that the Minister seeks.

[201] The applications against Paul and Joshua Ghermezian involve just one Requirement each (on materially identical terms) and no Requests. These respondents submit that section 231.2 does not authorize the Minister to compel production of documents and information from non-residents and that section 231.7 does not authorize the Court to issue compliance orders against non-residents. The respondents assert that they are US residents and take the position that, if the Minister wishes to obtain information from them for the purposes of administering and enforcing the Act, then she must follow the procedure set out in Article XXVII of the *Convention Between Canada and the United States of America with Respect to Taxes on Income and on Capital*, 26 September 1980 (entered into force 16 August 1984) as amended (the US Treaty). The respondents submit that the Minister's efforts to obtain compliance orders against them through these summary applications is contrary to Canada's international obligations.

[202] In their written submissions in support of these positions, the respondents rely principally on *R. v. Hape*, 2007 SCC 26, [2007] 2 S.C.R. 292 (*Hape*), in which the Supreme Court of Canada considered whether section 8 of the *Canadian Charter of Rights and Freedoms* applied to searches conducted by the RCMP in the Turks and Caicos Islands in conjunction with local police. The respondents' submissions refer, *inter alia*, to the Supreme Court's identification of the principle that a state cannot act to enforce its laws within the territory of another state absent either the consent of the other state or, in exceptional cases, some other basis under international law (at paragraph 65).

[203] The respondents also refer to the Court to an excerpt from CRA's administrative directives, CRA Directives, AD-19-02R, which notes that the Minister cannot seek a compliance order under section 231.7 to compel compliance with a requirement under section 231.2 "…issued to a person outside of Canada unless the person is in Canada".

[204] The respondents explain their position that Article XXVII of the US Treaty provides a framework that allows the Minister to seek information from US revenue officials, including having them obtain depositions from witnesses in the US or original documents located in the US. Article XXVII sets out the terms and conditions under which such assistance may be obtained, as well as restrictions on how the Minister may use any information or documents so procured. The respondents submit that, in the context of a treaty of this nature containing exchange of information provisions, the Minister's pursuit of the compliance applications in these matters represent an effort to bypass the treaty and subvert the procedural protections available to foreign residents.

[205] Supported by these arguments, the respondents take the position that Parliament could not have intended sections 231.2 and/or 231.7 to apply extraterritorially and that, if that had been the legislature's intention, it would have stated so expressly in those sections. The respondents supplemented these arguments in oral submissions, taking the position that the word "person", employed in sections 231.2 and 231.7, is implicitly limited to persons in Canada. They referred the court to jurisprudence finding implicit jurisdictional limitations in Canadian taxation legislation (see, e.g., *Oroville Reman & Reload Inc. v. Canada*, 2016 TCC 75, [2016] 5 C.T.C. 2118; *Oceanspan Carriers Ltd. v. Canada*, [1987] 2 F.C. 171, [1987] F.C.J. No. 126 (QL) (C.A.); *Holiday Luggage Mfg. Co. v. Canada*, [1987] 2 F.C. 249, 86 D.T.C. 6601 (T.D.); *Canada (National Revenue) v. Stanchfield*, 2009 FC 99, 340 F.T.R. 150; *Marino v. The Queen*, 2020 TCC 50, 2020 D.T.C. 1039).

[206] The Minister takes the position that, based on a textual reading of the compliance provisions in the Act, whether the respondents are resident or non-resident for income tax purposes is irrelevant for purposes of sections 231.2 and 231.7, as both sections apply to any "person" and neither section expresses any limitation based on residency. The Minister argues that, if Parliament had intended to narrow the scope of these components of the compliance provisions, it would have done so explicitly as it has done in numerous other provisions of the Act. For instance, the provisions of section 231.6, related to the power to gather foreign-based information and documentation, expressly take residency into account in prescribing the scope of that power.

[207] The Minister relies on the purpose of the Act's compliance provisions, to give the Minister broad powers to investigate and audit taxpayers (see *McKinlay*, at paragraphs 35–36), and emphasizes that non-residents of Canada can be subject to Canadian tax.

The Minister argues that Parliament cannot have intended that individuals who are present in Canada can simply declare themselves non-resident for Canadian tax purposes and thereby deprive the Minister of any ability to verify that declaration through her compliance powers. The Minister also submits she is not bound by the respondents' reported residency status (see *Ludmer v. Canada*, [1995] 2 F.C. 3, 95 D.T.C. 5035 (C.A.), at paragraphs 12–14).

[208] Against the backdrop of those general principles, the Minister also emphasizes that the Requirements were served on Paul and Joshua Ghermezian in Canada, employing a method of service authorized by section 231.2 of the Act, and that they have led no evidence to support their position that they are no longer residents of Canada or that they are resident in the US. The Minister submits that the respondents' position should be rejected on the want of evidence alone as, despite being best placed to prove their residency, neither respondent has filed an affidavit in these applications. Rather, the respondents attempt to rely on evidence obtained from Mr. Bowe in cross-examination.

[209] Turning to the evidence, the respondents rely on Mr. Bowe's cross-examination, in which he confirmed that, according to CRA's records at the time of the cross-examination, neither Paul nor Joshua Ghermezian is currently a resident of Canada. They also note Mr. Bowe's confirmation that the Edmonton Address to which the Requirements were sent was a business address and not the home address of either of the respondents. The respondents' counsel referred Mr. Bowe to a December 11, 2015, letter from GT to CRA, which provided a residential address for each of Paul and Joshua Ghermezian in New York City.

[210] The respondents also refer to a contrast, related to their residency for Canadian tax purposes, between the Requirement served on Paul Ghermezian and that served on Joshua Ghermezian. The former, Requirement A-GDT-0103 dated October 30, 2018, states that, according to records obtained by CRA, Paul Ghermezian had been filing the T1 Income Tax and Benefit Return for Canadian tax purposes for the last 10 years (the last being for the 2017 tax year), indicating that he was a Canadian resident. The Requirement further states that Paul Ghermezian had never reported to CRA an emigration from Canada or filed a form NR73, Determination of Residency Status (Leaving Canada). The Requirement describes these as significant factors that lead CRA to consider Paul Ghermezian to be a current Canadian resident for Canadian tax purposes.

[211] In contrast, Requirement A-GDT-0102, also dated October 30, 2018, and served on Joshua Ghermezian, does not refer to him having previously made T1 tax filings indicating that he was a Canadian resident. Rather, the Requirement states that, according to records obtained by CRA, his birthplace is Edmonton and he currently holds a Canadian passport and an Alberta driver's license. The Requirement further states that Joshua Ghermezian had never reported to CRA an emigration from Canada and, when asked by CRA in May 2017 to complete form NR73, Determination of Residency Status (Leaving Canada) if he had left Canada, no form was filed. The Requirement explains that CRA has accordingly concluded that Joshua Ghermezian has been maintaining residential ties with Canada and is considered a Canadian resident for Canadian tax purposes. I also note that Mr. Bowe's affidavit in the application against Joshua Ghermezian states that, on May 14, 2019, he filed his 2018

T1 personal income tax return, which reported that he had emigrated from Canada on December 21, 2018. Mr. Bowe states that, prior to May 14, 2019, Mr. Ghermezian had not informed CRA that he was not a resident of Canada.

[212] Relying on the contrasts between the Requirements, the respondents emphasize the absence of any statement that Joshua Ghermezian has ever filed taxes as a Canadian resident, and they submit that maintaining residential ties and being a Canadian resident for Canadian tax purposes are not consistent with being a factual resident of Canada. In relation to Paul Ghermezian, the respondents note that, while the relevant Requirement attached to Mr. Bowe's affidavit refers to past tax filings as a Canadian resident, Mr. Bowe provides no direct evidence of this fact in his affidavit. They also submit that, even if Paul or Joshua Ghermezian was resident in Canada at the time the relevant Requirement was served upon him, this does not necessarily establish that he was resident at the time the Minister commenced her summary applications or at the time these applications are being heard or decided.

[213] I should note that I have concerns about this Court's jurisdiction to make a finding as to the respondents' residency. As observed in *Lin*, by virtue of section 18.5 of the *Federal Courts Act*, R.S.C., 1985, c. F-7, determining residency for purposes of the Act lies within the jurisdiction of the Tax Court of Canada (at paragraph 29). Leaving that point aside, I accept the respondents' position that there is little evidence that would support a finding that Paul and/or Joshua Ghermezian is or was a resident of Canada at any potentially relevant time. However, there is similarly little evidence that would support a finding that Paul and/or Joshua Ghermezian is not or was not a resident of Canada. This outcome of any determination of this issue (if this Court had the necessary jurisdiction) would turn on the burden of proof that, in my view, would have to rest with the respondents. The respondents' residency is not one of the statutory conditions in section 231.7. Rather, it is a defence argument raised by the respondents and, more significantly, it is the respondents who would be privy to the evidence relevant to the argument.

[214] In the absence of a finding that the respondents are not residents of Canada, their arguments surrounding the statutory interpretation of sections 231.2 and 231.7, including the potential relevance of the US Treaty and principles of international law, cannot affect the outcome of these applications. Therefore, exercising judicial restraint, I decline to make findings on those arguments.

V. **Applications**

[215] I now turn to the individual applications. The following section of these Reasons provides a brief summary of the nature of the documentation and/or information sought in each application. Together, the applications arise from a large number of Demands. I will summarize these under headings that employ the same identifiers used by the parties. To the extent that my general conclusions on the issues canvassed earlier in these Reasons have not already included findings as to the outcome of those issues for purposes of the applications, my analysis below will apply those conclusions to the individual Demands. I will also address other arguments that the respondents have raised in relation to specific Demands.

A. *T-252-19 – MNR v. Nader Ghermezian*

(1) Request A-NG-0105

[216] This Request, dated August 14, 2015, is addressed to Nader Ghermezian and states that it relates to an audit of his personal income tax returns for the years 2011–2014. It asks him to provide various categories of documentation and/or information pertaining to a number of principally foreign corporations.

[217] Mr. Bowe's affidavit in this application explains the history of CRA's audit of Mr. Nader Ghermezian and his brothers that, together with other related or economically connected individuals and entities, he refers to as the "Ghermezian Group". Mr. Bowe explains that, in the course of this audit, CRA made a number of requests of Mr. Ghermezian in the form of letters and queries for information and documents in connection with various entities related or economically connected to him. The first such letter he identifies is Request A-NG-0105, a copy of which is attached to Mr. Bowe's affidavit.

[218] The letter purports to have been sent to Mr. Ghermezian by registered mail at the Edmonton Address on August 14, 2015, and Mr. Bowe deposes that he received some responsive documentation and information from Mr. Ghermezian's counsel on December 21, 2015, and May 5, 2017. While this is not strong evidence that use of the Edmonton Address was an effective means for CRA to communicate with Mr. Ghermezian and that he received proper notice of this Request, there is no evidence to the contrary. I therefore find that he received proper notice.

[219] Other than the broad issues canvassed earlier in these Reasons, the respondent has raised no defence arguments specific to this request.

[220] The Minister asserts that Mr. Ghermezian provided some, but not all, of the requested documents and information and therefore seeks a compliance order in relation to a subset of the items originally specified in the Request. Subject to any portions of the Request that I may conclude to be invalid, following receipt of the parties' further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Mr. Ghermezian in relation to the items in the Request that the Minister is still seeking.

(2) Request NG-06

[221] This Request, dated August 5, 2016, is addressed to Nader Ghermezian to the attention of Dan McKinley of GT. It seeks documents and information regarding companies and other entities outside of Canada where Mr. Ghermezian or any of his family members was a shareholder, officer, director, trustee, or beneficiary of a trust.

[222] The respondent takes issue with the fact that this Request was sent to GT, arguing that it is untenable for the Minister to seek a compliance order with respect to a demand that was not even sent to him. However, Mr. Bowe's affidavit in this application refers to GT as the respondent's authorized representative and identifies information provided by CRA to GT and vice versa in the course of CRA's audit. In the absence of any evidence from Mr. Ghermezian to the effect that GT was not his authorized representative, or evidence or argument from him that he was not aware of the Request being sent to his representative at GT, I find that he received proper notice of it.

[223] The respondent also asserts that the Minister has failed to prove that this Request was issued for the purpose of the administration and enforcement of the Act as contemplated by subsection 231.1(1).

[224] In *Ghermezian* (at paragraphs 112–115), in considering a similar argument albeit in the context of subsection 231.2(1), this Court canvassed jurisprudence establishing relevant general principles, commencing with the explanation by the Supreme Court of Canada in *Canadian Bank of Commerce v. Attorney General of Canada*, [1962] S.C.R. 729, 35 D.L.R. (2d) 49, at page 739, that obtaining information relevant to the tax liability of a specific person or persons, whose liability to taxes is under investigation by CRA, is a purpose related to the administration or enforcement of the Act.

[225] In *Saipem Luxembourg S.A. v. Canada (Customs and Revenue Agency)*, 2005 FCA 218, 337 N.R. 213, [2006] 3 F.C.R. D-43, at paragraph 25, the Federal Court of Appeal observed that the required purpose is met even if much of the information requested ultimately turns out to be irrelevant. In *Canada (National Revenue) v. Kitsch,* 2003 FCA 307, *sub nom. Tower v. M.N.R.*, [2004] 1 F.C.R. 183, at paragraph 29, the Federal Court of Appeal further explained that a requirement is valid if the requested information may be relevant in the determination of the tax liability of the named taxpayer, which the Court described as a low threshold. As noted in *Nadler (Estate) v. Canada (Attorney General),* 2005 FC 935, [2005] 4 C.T.C. 7 (*Nadler Estate*), at paragraph 9, the Act does not require that the person from whom information is sought be given any details as to the purpose of the Demand.

[226] As noted above, this Request seeks documents and information regarding companies and other entities outside of Canada where Mr. Ghermezian or any of his family members were shareholders, officers, directors, trustees, or beneficiaries of a trust. Mr. Bowe's affidavit explains that CRA's audit included exploring foreign and domestic corporations under the control of Mr. Ghermezian or other persons not dealing with him at arm's length. Applying the jurisprudential principles canvassed above, and in the absence of any more detailed submissions from the respondent in support of this argument, I find it to be without merit.

[227] Finally, I note the respondent's observation that this Request does not expressly identify the provision of the Act under which it was issued. Taking this into account, I have considered the significance of the explanation in *Nadler Estate* (at paragraph 9) that the Requirement, which was the subject of an unsuccessful stay motion in that case, properly indicated the name of the taxpayer concerned, referred to the appropriate enabling provisions, and provided a description of the information required sufficient for the recipient to be able to prepare a response [Emphasis added].

[228] I understand the respondents' argument, in relation to this and a limited number of other Requests, to be that the absence of an express reference to an enabling provision supports an analysis the Request is in "pith and substance" a Requirement. As explained earlier in these Reasons, I do not consider it necessary to conduct such an analysis in these applications. Regardless, I do not regard *Nadler Estate* to stand for a general proposition that the absence of an express reference to the relevant enabling provision necessarily invalidates a Demand.

[229] The Minister asserts that Mr. Ghermezian has not responded to this Request. Subject to any portions of the Request that I may conclude to be invalid, following

receipt of the parties' further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Mr. Ghermezian in relation to this Request.

(3) Request A-NG-0125

[230] This Request, dated May 30, 2018, is addressed to Nader Ghermezian. It refers to a trust identified as the Ghermezian Family Trust (97GFT) in a trust deed dated February 15, 1997, and a determination by CRA that 97GFT has been factually resident in Canada since its settlement in 1997. The Request demands, for the period between 1997 and 2016, provision of various categories of documentation and/or information regarding 97GFT.

[231] Request A-NG-0125 is appended as an exhibit to Mr. Bowe's affidavit in the form of a letter purporting to have been sent to Mr. Ghermezian by registered mail at the Edmonton Address on May 30, 2018. While this is not strong evidence that Mr. Ghermezian received notice of this Request, there is no evidence to the contrary. I therefore find that he received proper notice.

[232] Other than the broad issues canvassed earlier in these Reasons, the only additional argument raised by the respondent, specific to this Request, is to note that it includes a demand for the filing of tax returns and other forms. I understand the respondent's position to be that section 231.1 does not authorize this component of the demand. However, the Minister seeks a compliance order in relation to only a subset of the items originally specified in the Request, which I understand does not include the demand for these filings.

[233] Subject to any portions of the Request that I may conclude to be invalid, following receipt of the parties' further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Mr. Ghermezian in relation to the items in the Request that the Minister is still seeking.

(4) Request 97GFT-02

[234] This Request, dated May 31, 2018, is addressed to Nader Ghermezian and asks him to provide, for the 1997 to 2016 period, provision of various categories of documentation or information regarding 97GFT and a company called Triple Five Worldwide Limited (T5WW).

[235] Request 97GFT-02 is appended as an exhibit to Mr. Bowe's affidavit in the form of a letter to Mr. Ghermezian at the Edmonton Address. Mr. Bowe deposes that this letter was sent to Mr. Ghermezian. Again, in the absence of evidence to the contrary, I find that he received proper notice.

[236] Other than the broad issues canvassed earlier in these Reasons, the respondent has raised no defence arguments specific to this request.

[237] The Minister asserts that Mr. Ghermezian has not provided any of the requested documents and information. Subject to any portions of the Request that I may conclude to be invalid, following receipt of the parties' further submissions on application of my

conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Mr. Ghermezian in relation to this Request.

(5) Request BUST-20v2

[238] This Request, dated September 8, 2017, is addressed to Mr. Nader Ghermezian, as well as his brothers, Raphael, Bahman and Eskander Ghermezian (all together, the Brothers), “As Trustees, Protectors, Beneficiaries and/or Contributors”. It requests from them, in their capacity as trustees, various categories of information and documentation related to four trusts settled on February 14, 2000 (referred to by the Minister in these applications as the V-Day Trusts), and a subsidiary company named Royce Holdings LLC (Royce Holdings).

[239] Mr. Bowe’s affidavit explains that, although dated September 8, 2017, Request BUST-20v2 was delivered by facsimile to GT on May 24, 2018. The respondent argues that this delivery to GT does not represent proper notice to him. However, the history of this Request, as set out in Mr. Bowe’s affidavit, demonstrates that this Request was issued as part of a series of Demands related to the V-Day Trusts and Royce Holdings, to which GT had been responding, and that Request BUST-20v2 itself was issued as a result of information provided at a meeting with GT. In the absence of any evidence or argument from Mr. Ghermezian that he was not aware of the Request being sent to his representatives at GT, I find that he received proper notice of it.

[240] I understand that the respondent also invokes the “same person principle” in relation to this Request. He submits that the Request demanded that he produce information and documents in his purported capacity as a trustee, protector, beneficiary and/or contributor (presumably of or to the relevant trusts), not in his personal capacity. I find little merit to this argument. The reference in the Request to it being directed to Mr. Ghermezian (and the other Brothers) as trustees, etc. represents an explanation of the basis on which CRA considered him to be in a position to respond to the Request. However, the Request was clearly directed to him, and he is the respondent to the compliance application before the Court. Also, while this Request seeks information and/or documentation from Mr. Ghermezian about the V-Day Trusts and Royce Holdings, rather than about him personally, I note that it is not improper to require that information be provided about a third party (see *Lee*, at paragraph 8).

[241] The Minister asserts that Mr. Ghermezian failed to provide most of the items in this Request and therefore seeks a compliance order in relation to those items. Subject to any portions of the Request that I may conclude to be invalid, following receipt of the parties’ further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Mr. Ghermezian in relation to the items in the Request that the Minister is still seeking.

(6) Request BUST-21

[242] This Request, dated January 4, 2018, was addressed to the Brothers as trustees and to Gherfam, to the attention of the trustees and Michael Oseen of GT. It requests that, in their capacity as trustees of the V-Day Trusts and four other trusts settled on August 15, 2002 (referred to elsewhere in the record before the Court as the Royce Trusts), and in their capacity as directors of Gherfam, they provide certain

documentation and/or information regarding the source of funds contributed to the trusts.

[243] The respondent takes issue with the fact that this Request was sent to GT, arguing that it is untenable for the Minister to seek a compliance order with respect to a demand that was not even sent to him. Again, Mr. Bowe's affidavit that demonstrates that Request BUST-21 forms part of a series of inquiries in which GT was involved. In the absence of any evidence or argument from Mr. Ghermezian that he was not aware of the Request being sent to his representatives at GT, I find that he received proper notice of it.

[244] The respondent also argues that this Request demanded that he produce information and documents in his purported capacity as a trustee and as a director of Gherfam, not in his personal capacity. This Request is directed to five recipients, i.e., the four Brothers and Gherfam. The reference in the Request to it being directed to Mr. Ghermezian (and the other Brothers) as trustees represents an explanation of the basis on which CRA considered him to be in a position to respond to the demands related to the trusts. In that respect, the Request was clearly directed to him, and he is the respondent to the compliance application before the Court. As such, it does not offend the "same person principle."

[245] In relation to its reference to Gherfam, I note that Gherfam is the respondent in T-258-19, in which the Minister again seeks a compliance order in relation to Request BUST-21, and I will address later in these Reasons whether an order should be issued against the corporation in relation to this Request. However, the information that the Request seeks from the Brothers and from Gherfam is the same. Therefore, the fact that the Request is also directed to Gherfam does not represent a basis for Mr. Ghermezian to defend the compliance application against him.

[246] The Minister asserts that Mr. Ghermezian has not provided any of the requested documents and information. Subject to any portions of the Request that I may conclude to be invalid, following receipt of the parties' further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Mr. Ghermezian in relation to this Request.

(7) Request GG-24

[247] This Request, dated June 26, 2018, was addressed to Nader Ghermezian, as well as to the other Brothers. It references the Royce Trusts and four trusts settled on September 1, 2002 (referred to as the Regent Trusts), and requests that, in their capacities as "trustees, protectors and/or default beneficiaries" of the Royce Trusts and Regent Trusts, they provide certain information and/or documents. The Minister is now seeking compliance with only item 7 of this Request.

[248] The respondent again takes issue with the fact that this Request was sent to GT, arguing that it is untenable for the Minister to seek a compliance order with respect to a demand that was not even sent to him. However, again Mr. Bowe's affidavit demonstrates GT's involvement on behalf of the respondent in relation to CRA's inquiries. In the absence of any evidence or argument from Mr. Ghermezian that he was not aware of the Request being sent to his representatives at GT, I find that he received proper notice of it.

[249] The respondent argues that, as this Request demanded that he produce information and documents in his purported capacity as a trustee, protector and/or beneficiary, the Minister's application offends the "same person principle". For the same reasons explained above in connection with other Requests in this application, I find no merit to this position.

[250] In relation to this particular Request, the respondent also raises an additional argument, that the Request included demands that were not sufficiently precise for Mr. Ghermezian to know what information and/or documentation he was required to provide. He refers to item 7(a), which demanded that he provide certain information and/or documentation related to trusts or similar arrangements in which he, a member of his family, or an entity controlled by them were involved in one of several capacities. One of those capacities was that of a "contributor", a term which the Request further references by a footnote that states as follows:

> For trusts or similar arrangements outside of Canada "contributor" is a defined term in section 94 of the *Income Tax Act*. For the purpose of this questionnaire, whether or not a contribution has been made to a trust or similar arrangement is to be determined in the context of that definition but without regard to "arm's length transfers." The deeming provisions of section 94 must also be taken into account. These encompass indirect transfers and other means of shifting value from Canada to the trust or similar arrangement.

[251] This submission is similar to the argument that this Court considered in *Ghermezian* in concluding that one paragraph of one of the Requirements under review in that case was unreasonable. As *Ghermezian* explained (at paragraphs 160–162):

> However, there remains one argument advanced by the Applicant, which, while not one of its principal submissions, resonates with me as undermining the reasonableness of a component of the Gherfam RFI. The last operative paragraph of GEI-29 sets out the following requirement:
>
> > 4. Provide any additional information or explanations that are relevant in determining whether or not the rules of former section 94 of the Act (for taxation years before 2007) applies to the Royce and Regent Trusts in respect of the transaction described in the background of this query.
>
> The Applicant argues that this paragraph is not sufficiently precise for the Applicant to understand what it is required to provide in response. The paragraph requires the Applicant to undertake a legal analysis surrounding the operation of former s 94, including potentially speculating on how the Minister would propose to invoke that section, and then make a determination as to what information could be relevant to informing that analysis.
>
> I agree that this paragraph is problematic. As previously explained, the Respondent relies on the analysis in *Nadler* (at para 9), in which Justice Gauthier found no serious issue with the requirement in that case, because it properly indicated the name of the taxpayer concerned, referred to the appropriate enabling provision, and gave a description of the information required which was sufficient to enable the recipient to prepare its response. In my view, paragraph 4 of GEI-29 does not give a description of the information required which is sufficient to enable the Applicant to prepare its response to that paragraph. I therefore find that the Gherfam RFI is unreasonable in this respect.

[252] Superficially, there are similarities in the paragraph challenged in *Ghermezian* and the footnote that the respondent references in the application at hand, as both engage the meaning of section 94 of the Act. However, I am not convinced that the

concern identified in *Ghermezian* applies in the case at hand. In *Ghermezian*, the lack of precision turned on the impugned paragraph asking the recipient of the Demand to provide unspecified information, the relevance of which to section 94 the Minister expected the recipient to determine, without the Minister having explained how she might propose to invoke that section. In contrast, in the case at hand, the Minister is simply drawing the respondent's attention to certain statutory definitions and deeming provisions in section 94, to assist the respondent in understanding the meaning of the term "contributor" as employed in the Request. I do not find this item in Request GG-24 to suffer from a lack of precision that undermines its validity.

[253] Finally, the respondent raises an unnamed persons argument in relation to this Request. As an initial point in considering this argument, I note that the Demand in relation to which the respondent is presently raising this argument is a Request, not a Requirement. There were references at the hearing to the possibility that the limitations on seeking information about unnamed persons, which arise from subsection 231.2(2), do not apply in the context of a Request. However, the Minister has not presented any substantive submissions in support of a position that she can avoid the need for subsection 231.2(3) judicial authorization, that would apply to a Requirement issued under section 231.2, by instead issuing a Request under section 231.1. I will therefore analyse this issue on the basis that the Request is problematic if it conflicts with the limitations on seeking information related to unnamed persons as reflected in the jurisprudence. I note that, in *Redeemer*, the Supreme Court performed an analysis of such principles, notwithstanding that the Demand in that case was issued under section 231.1.

[254] The respondent submits that in cross-examination Mr. Bowe admitted that this Request demanded information about unnamed persons so that the Minister could investigate their tax liability. This submission turns on counsel's questioning of Mr. Bowe on item 7 of the Request. Counsel referred Mr. Bowe to that item's request for identification of arrangements that could be considered trusts under the laws of Canada and then asked if CRA was seeking that disclosure so that it could investigate such entities as to their residency and potential tax liability. The transcript records this evidence as follows:

> Q. You were asking for that disclosure so that you could investigate that entity to make determinations regarding its residency and potential tax liability; correct?
>
> A. As well as the tax liability of Mr. Ghermezian and his spouse and his minor child.
>
> Q. So all of them; correct?
>
> A. Well, the primary purpose — yes, all of them, Mr. Sood.

[255] Counsel then asked Mr. Bowe whether the identities of these other arrangements were known to the Minister when the Request was issued. Mr. Bowe responded by referencing paragraph 105 of his affidavit, explaining that this paragraph listed trusts of which the Minister was aware, including several in relation to which the Minister had not obtained information from the Ghermezian family.

[256] On the basis of this evidence, the respondent submits that this Request seeks information and documentation related to unnamed persons, for purposes of

determining the tax position of those unnamed persons, and is therefore invalid without prior judicial authorization.

[257] In response to this argument, the Minister emphasizes that the analysis whether judicial authorization is required, when information or documentation is sought related to unnamed persons, is fact-dependent. Relying principally on *Redeemer* and *Artistic Ideas*, she submits that judicial authorization is required only when the record demonstrates that the information sought in relation to unnamed persons will be used primarily for purposes of verifying those persons' obligations under the Act. The Minister submits that the respondent's argument based on Mr. Bowe's evidence would lead to an absurd result, i.e., that the Minister cannot, without judicial authorization, obtain information about an unnamed person, even if that information is relevant to the audit of a named person.

[258] The jurisprudence canvassed earlier in these Reasons clearly establishes that the fact documents and information may, once provided, lead to investigations of other taxpayers does not invoke a need for judicial authorization. However, the analysis is not entirely straightforward when the record in a matter, such as the evidence elicited from Mr. Bowe on cross-examination, suggests that CRA has a present intention, when serving a Demand, to investigate the tax position of both entities that are known to the Minister and potentially unknown entities. The situation is further complicated in the case at hand by Mr. Bowe's explanation of the list of entities that were known to the Minister and which it appears could be the subject of at least components of the questions posed in item 7. That item is clearly not problematic to the extent it relates to known entities.

[259] In my view, the jurisprudence and policy considerations favour the Minister's position on this matter. Based on Mr. Bowe's cross-examination evidence and the explanation in his affidavit of the overall context of CRA's audit initiatives of which Request GG-24 forms a part, it was CRA's intention to investigate the tax position of Mr. Nader Ghermezian and his family, and CRA considered information and documentation related to possible unknown trusts or similar arrangements to be relevant to that investigation. As the Minister submits, *Redeemer* explains that the subsection 231.2(2) requirement should not apply to situations in which the requested information is required in order to verify the compliance of the taxpayer being audited (at paragraph 22). I agree with the Minister's position that the fact that the information may also be relevant to investigation of an unnamed person does not warrant departure from that reasoning.

[260] As noted above, item 7 is the only portion of this Request for which the Minister seeks a compliance order. Subject to any portions of that item that I may conclude to be invalid, following receipt of the parties' further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Mr. Ghermezian in relation to item 7 of the Request.

(8) Requests NUST-22 and NUST-23

[261] These Requests, both dated April 5, 2018, are addressed to Nader Ghermezian at the Edmonton Address. Mr. Bowe attaches these Requests as exhibits to his affidavit and states that they were sent as letters to Mr. Ghermezian. In the absence of any

evidence or argument from Mr. Ghermezian that he did not receive notice of the Request, I find that he did receive proper notice.

[262] NUST-22 refers to Mr. Ghermezian as a trustee of one of the Regent Trusts and asserts that CRA has found the trust to be factually resident in Canada since the date of its formation. The Requests demands filing of certain tax forms and seeks documents and/or information related thereto. NUST-23 is largely identical to NUST-22, except that it relates to one of the Royce Trusts.

[263] The respondent takes issue with the items in the Requests demanding the filing of tax forms. However, the Minister is pursuing only certain items (items 8 to 23) in the Requests, which do not include those demands.

[264] The respondent also raises a precision argument in relation to item 23 these Requests, seeking accounting databases. The respondent asserts that references therein to the "Ghermezian Group" and "Mall of America Group" were not sufficiently precise for him to know what information and documentation he was required to provide in response. Item 23 reads as follows:

> In addition to the above noted requests, we request a copy of each complete and unaltered electronic accounting database maintained for the Ghermezian Group that contains accounting in respect of:
>
> a. Each of the trusts, partnerships and corporations held directly or indirectly by each of the trusts;
>
> b. Triple Five MOA Holdings, LLC;
>
> c. Triple Five MOA Investments, LLC
>
> d. MOA Management, LLC;
>
> e. MOA Investments, LLC;
>
> f. Triple Five Minnesota, Inc.;
>
> g. Manchester Leasing Inc.;
>
> h. Gherfam Equities Inc.;
>
> i. GL data for any non-arm's length entity that maintains an intercompany account with one of the entities identified above;
>
> For clarity, we are requesting GL data for all entities in the Mall of America Group and any related entity that transacts with the Mall of America Group.

[265] Neither "Ghermezian Group" nor "Mall of America Group" is defined in either of these Requests. While Mr. Bowe's affidavit defines the term "Ghermezian Group" to mean the Brothers and other related or economically connected individuals and entities, the affidavit and therefore this particular definition of the term were not in the respondent's possession when he received the Requests. However, I agree with the Minister's submission that, while the undefined term "Ghermezian Group" appears in item 23, the necessary precision is afforded by the subsequent paragraphs (a) to (i), which identify the particular entities for which the accounting is sought. I do not find that

the use of the term “Ghermezian Group” precludes the respondent knowing what information or documentation is requested.

[266] I have more concern with the use of the term “Mall of America Group” in the final sentence of item 23. Mr. Bowe’s affidavit states what I understand to be CRA’s understanding that the Mall of America is owned 100 percent by the Ghermezian Group (as defined in his affidavit) via the Royce Trusts, the Regent Trusts, and Gherfam. In that context, the Minister relies on *Zeifmans*, in which Justice Walker explained that CRA cannot be expected to know the structure of a taxpayer’s holdings (at paragraph 78). While I agree with this principle, I note that the Demand language challenged as imprecise in *Zeifmans* was “entities owned, operated, controlled or otherwise connected” [emphasis omitted] with certain named persons (see paragraph 77). Justice Walker concluded that concepts such as “otherwise connected” or “operated by” were not easily defined and that, as it was the applicant taxpayer that had knowledge of the group’s business structure, the Demand was intelligible (at paragraphs 81–82).

[267] In my view, the term “Mall of America Group” does not benefit from the same level of intelligibility as the language considered in *Zeifmans.* While one might speculate as to the meaning of the term, as broadly encompassing all entities in some manner connected with the Mall of America, in my view the requirement for such speculation demonstrates that this portion of the Request is not sufficiently precise for the respondent to respond. As such, I find the final sentence set out above from item 23 of the Request to be invalid. To be clear, I find the rest of item 23 to be valid.

[268] Subject to those findings, and subject to any other portions of these Requests that I may conclude to be invalid, following receipt of the parties’ further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Mr. Ghermezian in relation to the portions of these Requests that the Minister is still pursuing.

(9) Request NUST2-01

[269] This Request, dated October 11, 2018, is addressed to the attention of Nader Ghermezian and the other Brothers, under cover of a registered letter to Nader Ghermezian at the Edmonton Address. Mr. Bowe’s affidavit states that CRA issued this Request, which is appended as an exhibit to his affidavit. In the absence of any evidence or argument from Mr. Ghermezian that he did not receive notice of the Request, I find that he did receive proper notice.

[270] This Requests demands that, in their capacity as trustees, protectors, and/or default beneficiaries of one or more of the V-Day Trusts, the Brothers provide various categories of information and/or documentation pertaining to the trusts, to be used to determine if the trusts are resident in Canada for income tax purposes.

[271] Because the Request seeks information from him in his capacity as trustee, etc., the respondent raises the “same person principle” as a defence. I find no merit in this argument, as the Request was clearly directed to Mr. Ghermezian (and the other Brothers) and he is the respondent to this application. The reference to his capacity as trustee, etc. merely identifies the basis for CRA’s expectation that he would have access to the information or documentation sought.

[272] The Minister asserts that Mr. Ghermezian has not provided any of the requested documents and information. Subject to any portions of this Request that I may conclude to be invalid, following receipt of the parties' further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Mr. Ghermezian in relation to this Request.

(10)Requirement A-NG-0126

[273] This Requirement, dated June 27, 2018, is addressed to Nader Ghermezian at the Edmonton Address and requires him to provide, for a number of companies identified in the subject line, various categories of information and documents pertaining to the period from January 1, 1997, to April 30, 2018. This includes: a list of all known accounts; copies of all bank statements for certain listed accounts and for accounts held at any other banks; and identification of the source of all deposits made to the accounts and the destination of all outgoing transfers.

[274] Other than arguments canvassed earlier in these Reasons, the only additional argument raised by the respondent in relation to that this Requirement is an assertion that the Minister has failed to prove that the Requirement was issued for the purpose of the administration and enforcement of the Act as contemplated by subsection 231.2(1).

[275] Mr. Bowe's affidavit explains that most of the information sought in this Requirement relates to the banking records of companies understood by CRA to be controlled by the respondent. He states that the Requirement was prepared for purposes related to the administration and enforcement of the Act, namely the audit of the residency and reported assets and income of 97GFT and T5WW (entities identified earlier in these Reasons). Applying the jurisprudential principles canvassed earlier in these Reasons, and in the absence of any more detailed submissions from the respondent in support of this argument, I find it to be without merit.

[276] The Minister seeks to obtain all information and documentation requested in this Requirement. I find that a compliance order should issue against Mr. Ghermezian in relation to this Requirement.

(11)Requirement A-NG-0127

[277] This Requirement, dated June 28, 2018, is addressed to Nader Ghermezian at the Edmonton Address and requires him to provide, for a number of companies and other entities identified, various categories of information and documents pertaining to the period from January 1, 1997, to April 30, 2018. This includes: the minute books including director resolutions, share register, financial reports, agreements, and contacts for the listed entities, and all bank statements for the listed entities.

[278] In addition to arguments canvassed earlier in these Reasons, the respondent argues that the Minister has failed to prove that this Requirement was issued for the purpose of the administration and enforcement of the Act as contemplated by subsection 231.2(1). In relation to this Requirement, Mr. Bowe's affidavit explains that CRA believes that 97GFT holds, or may have held, shares in corporations other than T5WW, and that the Requirement was prepared for purposes related to the administration and enforcement of the Act, namely the audit of the residency and unreported assets and income of 97GFT and T5WW. Applying the jurisprudential

principles canvassed above, and in the absence of any more detailed submissions from the respondent in support of this argument, I find it to be without merit.

[279] The respondent also notes that the subject line in this requirement employs the term “Gibraltar entities” and argues that, as the term is undefined, it is insufficiently precise for the Requirement to be enforceable. I find no merit to this argument. As the Minister submits, the body of the Requirement details the entities in relation to which the relevant information and documentation is sought.

[280] The Minister seeks to obtain all information and documentation requested in this Requirement. I find that a compliance order should issue against Mr. Ghermezian in relation to this Requirement.

(12)Requirement A-NUST-0103

[281] This Requirement, dated January 23, 2019, is addressed to Nader Ghermezian at the Edmonton Address. It notes that he is a trustee, protector, and/or beneficiary of one of each of the V-Day Trusts, the Royce Trusts, and the Regent Trusts and requires him to provide various documents and information in relation to those trusts, including: US tax returns and tax schedules for the three trusts at both the federal and state level; the books and records relied upon to prepare those US tax returns; and all Schedule K-1 Forms received by the trusts.

[282] Noting the reference to being a trustee, protector, and/or beneficiary of the trusts, the respondent invokes the “same person principle”. However, I read this reference as explaining the basis for CRA’s belief that Mr. Ghermezian has access to the relevant information and documentation. The Requirement is directed to Mr. Ghermezian, and he is the respondent to this application. Therefore, the “same person principle” represents no impediment to the validity of the Requirement.

[283] The respondent also raises another argument specific to this Requirement. He notes that it was issued on January 23, 2019, and, as it specified 30 days for response, that response was due on February 22, 2019, the day after the Minister commenced this summary application. He argues that he is prejudiced thereby and that it represents an abuse of process for the Minister to attempt to sweep this particular Requirement into this application, when the respondent was not in default of his compliance obligation when the application was commenced.

[284] I agree that these circumstances represent an irregularity. However, the respondent has not explained how he is prejudiced thereby, particularly as the Court is examining his lack of compliance years after the Requirement was issued. I find that this irregularity does not warrant dismissing the application in relation to this Requirement.

[285] The Minister seeks to obtain all information and documentation requested in this Requirement, with the exception of the US tax returns of the V-Day Trust. I find that a compliance order should issue against Mr. Ghermezian in relation to the remaining items sought by the Minister under this Requirement.

(13)Requirement A-GRDT-0100

[286] This Requirement, dated January 21, 2019, is addressed to Nader Ghermezian at the Edmonton Address. It refers to him as the manager (director) of corporations ultimately held by the Ghermezian Royal Discretionary Trust (GRDT) and requires him to produce various categories of information and documents pertaining to such corporations, their related corporations and shareholders, including certain categories of transactions.

[287] Noting the reference to being a manager or director of the relevant corporations, the respondent invokes the “same person principle”. However, I read this reference as explaining the basis for CRA’s belief that Mr. Ghermezian has access to the relevant information and documentation. The Requirement is directed to Mr. Ghermezian, and he is the respondent to this application. Therefore, the “same person principle” represents no impediment to the validity of the Requirement.

[288] The respondent also raises the argument that the Court canvassed above in relation to Requirement A-NUST-0103. Requirement A-GRDT-0100 was issued on January 21, 2019, and, as it specified 30 days for response, that response was due on February 20, 2019, i.e., after the Minister commenced this summary application. He argues that he is prejudiced thereby and that it represents an abuse of process for the Minister to attempt to sweep this particular Requirement into this application, when the respondent was not in default of his compliance obligation when the application was commenced. For the same reasons as explained above in relation to Requirement A-NUST-0103, I find that this irregularity does not warrant dismissing the application in relation to this Requirement.

[289] The Minister seeks to obtain all information and documentation requested in this Requirement. I find that a compliance order should issue against Mr. Ghermezian in relation to this Requirement.

B. *T-254-19 – MNR v. Marc Vaturi*

(1) Request A-MV-0144

[290] This Request, dated October 3, 2018, and addressed to Marc Vaturi at 357 Cortleigh Boulevard, Toronto, Ontario, M5N 1R4 (the Toronto Address), indicates that he has been selected for an audit for the 2016 and 2017 taxation periods and requests various categories of information and/or documentation. The only outstanding portions of this request are aspects of item 1 (regarding sources of Mr. Vaturi’s worldwide income) and item 8 (a list of all foreign and domestic personal banking accounts and certain information and/or documentation pertaining to such accounts).

[291] In relation to notice, Mr. Bowe attaches a copy of this Request including a Canada Post delivery receipt. Mr. Bowe explained in cross-examination that the Toronto Address, to which this Request was sent, was Mr. Vaturi’s home address at the time he had conduct of the audit. In the absence of any evidence or argument from Mr. Vaturi that he did not receive notice of the Request, I find that he received proper notice.

[292] In addition to broader arguments canvassed earlier in these Reasons, the respondent also argues, in relation to this particular Request, that he has already provided sufficient responses thereto. It appears that the remaining dispute between the parties on this subject surrounds the following information or documentation that the

Minister maintains is outstanding, representing a small subset of material requested in a March 10, 2020, letter from Mr. Bowe to Mr. Vaturi following up on Request A-MV-0144:

> **Question 1 – Information regarding sources of worldwide income (including details such as the type of income (investment, employment, business, etc.), dates when the income was earned and any supporting documentation (pay stubs, statement of wages, etc.))**
>
> We require supporting documentation for each of the sources of income listed below. Acceptable documentation may include contracts, agreements, pay stubs, statements of wages, invoices, etc. Sources of income:
>
> - The consulting fees received by [you] from [Triple Five World Properties Limited] in 2016 and 2017;
>
> - The interest collected from Royal Bank of Canada in 2016 and 2017.
>
> ….
>
> **Question 8 – A list identifying all foreign and domestic personal banking and investment accounts, held solely, jointly or otherwise, that have been operated by you, or on behalf of you. In addition to this, please include:**
>
> **a) Accounts held in trust for minors;**
>
> **b) Loan accounts and lines of credit;**
>
> **c) Credit card statements;**
>
> **d) Monthly statements that note all entries in respect to the period requested above for all accounts;**
>
> **e) Authorizations, powers of attorney for any account; and,**
>
> **g) A statement setting out the particulars of any safety deposit box rentals.**
>
> - Monthly statement from RBC Account [details redacted] for the period of May 24, 2017 to June 23, 2017 are missing.
>
> - Monthly statements for World Alliance Consulting Limited, a Hong Kong company controlled by you.
>
> - Monthly statements for any other accounts operated or controlled by you or on your behalf.

[293] In relation to Question 1, the respondent takes issue with the request for “acceptable” documentation, noting Mr. Bowe’s acknowledgement in cross-examination that he meant acceptable to him. The respondent argues that this does not provide a sufficient description of the information required to allow him to prepare his response. I disagree with this position. The request is for supporting documentation for the two specified sources of income. The March 10, 2020, letter provides examples of the sort of documentation that could serve this purpose. Mr. Vaturi is in the best position to know what sort of documentation he may have to satisfy the request. The language of this follow-up letter does not present a basis to resist this outstanding portion of the Request.

[294] Also in relation to Question 1, the respondent refers to an August 19, 2019, response from his counsel to one of the Minister's other Requests (MV-08, which is no longer being pursued). That response explained that the consulting arrangements between Mr. Vaturi and Triple Five World Properties Limited were oral and not reduced to writing. He submits that it follows from that response that there are no supporting documents to provide. I find little merit to this position, as the fact that the consulting arrangement itself is not documented does not mean that there is no supporting documentation for the resulting payments.

[295] In relation to the reference in Question 1 to interest from the Royal Bank of Canada (RBC), the respondent submits that supporting documentation is presumably found within the monthly statements for the RBC account referenced under Question 8. While that may be the case, the respondent has not presented evidence that would allow the Court to reach that conclusion.

[296] Turning to Question 8, I note that counsel for both parties confirmed at the hearing that the missing monthly RBC statement has been provided. It therefore appears that the only outstanding aspect of this question relates to the monthly statements for World Alliance Consulting Limited (WACL). In challenging this request, the respondent relies on Mr. Bowe's acknowledgement in cross-examination that he does not know for a fact that Mr. Vaturi controlled WACL. The respondent also points out Mr. Bowe's statement in his affidavit that the respondent has submitted documentation to CRA denying ownership of WACL.

[297] In response, the Minister relies on evidence in Mr. Bowe's affidavit, which she submits represents information acquired by CRA suggesting that Mr. Vaturi does control WACL. He has adduced no evidence to the contrary, and I find no basis for him to resist responding to this outstanding element of the Request.

[298] Subject to any portions of the Request that I may conclude to be invalid, following receipt of the parties' further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Mr. Vaturi in relation to this Request.

(2) Requirement A-MV-0136

[299] This Requirement, dated June 27, 2018, is addressed to Mr. Vaturi at the Toronto Address and requires him to provide, in relation to a number of companies identified in the subject line, various categories of information and documents pertaining to the period from January 1, 1997, to April 30, 2018.

[300] The respondent advances a "same person principle" argument. He submits that, in contrast with Request A-MV-0144, which referenced in its subject line Mr. Vaturi's personal tax returns, Requirement A-MV-0136 references various foreign corporations and seeks information relevant to their tax position. The respondent asserts that any access he may have to the requested information and documents would arise from his role, if any, in decision-making in relation to these corporations. On this basis, the respondent takes the position that the Requirement was in fact directed to the corporations, not to him personally.

[301] I find no merit to this position. The Requirement was addressed to and clearly directed to Mr. Vaturi, as is this application. The fact that the Requirement seeks information and documentation relevant to the tax position of the referenced corporations does not mean that it was directed to the corporations.

[302] The Minister seeks to obtain all information and documentation requested in this Requirement. I find that a compliance order should issue against Mr. Vaturi in relation to this Requirement.

(3) Requirement A-MV-0137

[303] This Requirement, dated June 28, 2018, is addressed to Mr. Vaturi at the Toronto Address and requires him to provide, in relation to a number of companies and other entities identified, various categories of information and documents pertaining to the period from January 1, 1997, to April 30, 2018.

[304] In response, Mr. Vaturi raises the “same person principle” argument on the same basis as in relation to Requirement A-MV-0136. For the same reasons set out above, I reject that argument.

[305] The Minister seeks to obtain all information and documentation requested in this Requirement. I find that a compliance order should issue against Mr. Vaturi in relation to this Requirement.

C. *T-258-19 – MNR v. Gherfam Equities Inc.*

[306] Although this application initially sought a compliance order related to a larger number of Requests, as well as one Requirement, the Minister advises that the Requirement (which was set aside in *Ghermezian*) is no longer being pursued and that the application now relates to only four of the Requests.

(1) Request GEI-20

[307] This Request, dated December 7, 2017, is addressed to Gherfam, to the attention of Michael Oseen of GT. It requests provision of certain information and documentation related to a list of entities of which Gherfam is asserted to have an indirect ownership or membership interest.

[308] I note that CRA provided this Request to Gherfam through GT as its representative. To the extent the respondent is raising any concern about notice, I note that Mr. Bowe’s affidavit in this application refers to GT as the respondent’s authorized representative and identifies information provided by CRA to GT and vice versa in the course of CRA’s audit. In the absence of any evidence or argument that Gherfam did not receive this request, I find that proper notice has been given.

[309] The Minister seeks all documents and/or information that are the subject of this Request. Subject to any portions of the Request that I may conclude to be invalid, following receipt of the parties’ further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Gherfam in relation to this Request.

(2) Request GEI-21

[310] This Request, dated December 7, 2017, is addressed to Gherfam, again to the attention of Michael Oseen of GT. It requests provision of certain information and documentation (including minute books) related to Royce Holdings and other entities.

[311] Again, I find no issue surrounding CRA's provision of notice of the Request to Gherfam through GT as its representative.

[312] The respondent also raises a precision argument, in relation to an item in the Request that reads as follows:

> 4) For entities that also maintain a "branch" or that have registered as a "foreign person" in other jurisdictions (ie. the LLC maintains registrations in DE, NY, FA, NJ …), please also provide the Minute Books for that entity for each of those jurisdictions.

[313] The respondent argues that this item is not precise enough for it to be able to respond, as neither "branch" nor "foreign person" is defined. While the use of those terms in the Request could perhaps benefit from further precision, the term "branch" is understandable through its ordinary meaning, and the Request gives examples to assist with the understanding of the meaning of a foreign person registration in another jurisdiction. I do not find this item in the Request invalid for want of precision.

[314] The respondent also argues that the Minister has failed to prove that this Request was issued for the purpose of administration or enforcement of the Act. Mr. Bowe's affidavit explains that this Request was issued to Gherfam, as one of the previously identified members of Royce Holdings, to obtain information and documents about Royce Holdings and its subsidiaries. Applying the jurisprudential principles canvassed above, and in the absence of any more detailed submissions from the respondent in support of this argument, I find it to be without merit

[315] The Minister seeks all documents and/or information that are the subject of this Request. Subject to any portions of the Request that I may conclude to be invalid, following receipt of the parties' further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Gherfam in relation to this Request.

(3) Request GEI-28

[316] This Request, dated June 28, 2018, is addressed to Gherfam, to the attention of its directors. It requests provision of certain information and documentation related to the investments and/or accounts of a company called Regent New York Fund Corporation (RNY), described as a controlled foreign affiliate of Gherfam.

[317] The respondent notes that this Request was addressed to the attention of unnamed directors of Gherfam and submits that the Minister has failed to prove that the Request was actually served on Gherfam. In response, the Minister relies on Mr. Bowe's affidavit, which attaches a copy of the Request as an exhibit to his affidavit and deposes that it was sent by fax to GT. The exhibit includes a copy of the fax transmission sheet. Noting my above conclusions as to GT's role as Gherfam's representatives, I find that Gherfam received appropriate notice of this Request.

[318] The respondent also argues that the Minister has failed to prove that this Request was issued for the purpose of administration or enforcement of the Act. Mr.

Bowe's affidavit explains that this Request was issued to Gherfam to obtain information about investments of RNY (described as a controlled foreign affiliate of Gherfam) and its subsidiaries, as part of CRA's examination of Gherfam's reporting of its income. Applying the jurisprudential principles canvassed above, and in the absence of any more detailed submissions from the respondent in support of this argument, I find it to be without merit.

[319] The respondent also raises imprecision arguments. It notes that the Request employs the undefined term "Ghermezian Group". In my view, this is not problematic, as this term appears in a description of CRA's activities, not in the delineation of the information or documentation requested.

[320] The respondent also raises imprecision surrounding the phrase commencing with "…and any other relevant documents…" in item 1(b) of the Request:

> 1. For each of the general ledger account listed in Appendix A:
>
> ….
>
> b. In the event that any of these investments were transferred or disposed of, please provide an explanation to why the transfer or disposition was not recorded in the general ledger. In addition, please provide documentation to support the transfer or disposition. The documentation should include trading slips, purchase and sale agreements, correspondence, bank statements, cancelled checks, wire transfers, and any other relevant documents that would provide a clear audit trail to verify the transfer or disposition and any tax consequences resulting from the transaction. [Emphasis added]

[321] The respondent submits that it cannot be expected to know what to provide in response to the language highlighted above. I agree with this submission, as this language would require the respondent to perform an analysis of unspecified tax consequences. Any compliance order issued in relation to this Request should exclude this language.

[322] Subject to that point and to any other portions of the Request that I may conclude to be invalid, following receipt of the parties' further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Gherfam in relation to this Request.

(4) Request BUST-21

[323] As noted above in relation to the application against Nader Ghermezian, this Request, dated January 4, 2018, was addressed to the Brothers as trustees and to Gherfam. It requests certain documentation and/or information regarding the source of funds contributed to the V-Day Trusts and the Royce Trusts.

[324] I need not canvass again the arguments that have been addressed above in relation to the application against Nader Ghermezian. However, to the extent that Gherfam raises the "same person principle" in the context of its role as respondent, I note that, while the Request was directed to the Brothers, it was also directed to Gherfam. As Gherfam was a recipient of the Request and is now a respondent to this application, the "same person principle" is not an impediment to the validity of the Request.

[325] The respondent raises an imprecision concern about the fact that the Request seeks information not only about the identified trusts but also “their subsidiaries”, which term is not defined in the Request. I do not find that term lacking in intelligibility.

[326] The respondent also raises an unnamed persons concern arising from this Request seeking information about the trusts’ subsidiaries, noting that the Request refers to CRA reviewing the contributions to the US trusts “and verifying the subsidiaries of the trust”. I do not read this language as suggesting that CRA intends to use information derived from the Request primarily for purposes of verifying the tax position of unnamed subsidiaries of the trusts referenced in the Request. Applying the principles governing the unnamed persons provisions canvassed above in these Reasons, I do not find this aspect of Request BUST-21 problematic.

[327] The Minister asserts that Gherfam has not provided any of the requested documents and information. Subject to any portions of the Request that I may conclude to be invalid, following receipt of the parties’ further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Gherfam in relation to this Request.

D. *T-259-19 – MNR v. Paul Ghermezian*

[328] This application relates solely to one Requirement.

(1) Requirement A-GDT-0103

[329] This Requirement, dated October 30, 2018, refers to Paul Ghermezian as one of the trustees of The Ghermezian Dynasty Trust (GDT) and seeks information and documents related to GDT. It also requests identification of any additional, separate trusts created under the terms of the GDT trust agreement, as well as various categories of information and documentation for a list of limited liability companies referred to as “Investee Corporations”.

[330] I have addressed earlier in these Reasons the respondent’s arguments surrounding Paul Ghermezian’s residency. I have also addressed his arguments surrounding the effectiveness of service under subsection 231.2(1) of the Act. For the sake of good order, I also note Mr. Bowe’s cross-examination evidence that the Edmonton Address, to which the Requirement was sent, was the address used on Paul Ghermezian’s prior tax filings with CRA.

[331] The respondent raises a “same person principle” argument, noting that the Requirement references his role as a trustee for GDT. I find no merit to this argument. While the Requirement seeks information related to GDT and reflects CRA’s understanding that, as a trustee of GDT, Mr. Ghermezian would have access to that information, the Requirement is directed to Mr. Ghermezian, as is the Minister’s compliance application.

[332] The respondent also raises an unnamed persons argument. In cross-examination, the respondent’s counsel asked Mr. Bowe questions about the Requirement’s inquiries regarding “additional, separate trusts” created under the terms of the trust agreement for GDT. Mr. Bowe confirmed that CRA did not know the identities of any such trusts. He also stated that, while the primary purpose for issuing

the Requirement was to determine the Canadian residency and tax liability of GDT, there may be secondary uses for that information such as determining the residency and tax liability of the additional and separate trusts. Relying upon the analyses earlier in these Reasons of the principles surrounding Demands related to unnamed persons, there is no basis for an invalidity finding in connection with Requirement A-GDT-0103, as Mr. Bowe's evidence is clear that the primary purpose of the Requirement relates to the tax position of the named entity, GDT.

[333] The Minister seeks only certain portions of the documents and information originally requested in this Requirement. I find that the Minister is entitled to a compliance order in relation thereto.

E. *T-262-19 – MNR v. Joshua Ghermezian*

[334] This application relates solely to one Requirement.

(1) Requirement A-GDT-0102

[335] This Requirement, dated October 30, 2018, is addressed to Joshua Ghermezian at the Edmonton Address, which Mr. Bowe confirmed in cross-examination was the address that Mr. Ghermezian had provided to CRA in his most recent tax filings. The information and documentation sought in this Requirement appear to be materially identical to that in Requirement A-GDT-0103 issued to Paul Ghermezian. I also understand the respondent to raise the same defence arguments in this application as in application T-259-19 against Paul Ghermezian. My reasoning rejecting the arguments in that application therefore applies in the present application as well.

[336] The Minister seeks only certain portions of the documents and information originally requested in this Requirement. I find that the Minister is entitled to a compliance order in relation thereto.

F. *T-261-19 – MNR v. Raphael Ghermezian*

(1) Request GG-24

[337] As noted above in relation to the application against Nader Ghermezian in T-252-19, this Request, dated June 26, 2018, was addressed to both Nader and Raphael Ghermezian, as well as the other Brothers. Raphael Ghermezian raises the same arguments in relation to this Request as did Nader Ghermezian in T-252-19. With one brief exception, I need not repeat my analysis of those arguments above.

[338] The one exception is that, in the present matter, the respondent refers the Court to different cross-examination testimony from Mr. Bowe. When asked to name the entity or entities that were under investigation through this Request, he referred to the four Brothers and other members of the Ghermezian family being under review to confirm the accuracy of their tax liabilities and identification of previously undisclosed trusts as detailed in item 7. He also stated that the item 7 request was to ascertain whether there were any trusts that at that time were unknown to the Minister.

[339] This evidence does not depart from the cross-examination evidence, considered in my analysis of the unnamed person argument in T-252-19, in a manner that would be

material to the outcome of that argument. For the same reasons as given above, I arrive at the same conclusion.

[340] As noted above, item 7 is the only portion of this Request for which the Minister seeks a compliance order. Subject to any portions of the Request that I may conclude to be invalid, following receipt of the parties' further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Raphael Ghermezian in relation to item 7 of the Request.

(2) Request BUST-20v2

[341] Again, this Request, dated September 8, 2017, is addressed to both Nader and Raphael Ghermezian, as well as the other Brothers. Raphael Ghermezian raises the same arguments in relation to this Request as did Nader Ghermezian in T-252-19. I need not repeat my analysis of those arguments above.

[342] The Minister asserts that Mr. Ghermezian failed to provide most of the items in this Request and therefore seeks a compliance order in relation to those items. Subject to any portions of the Request that I may conclude to be invalid, following receipt of the parties' further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Raphael Ghermezian in relation to the items in the Request that the Minister is still seeking.

(3) Request BUST-21

[343] This Request, dated January 4, 2018, was also addressed to all the Brothers. Raphael Ghermezian asserts the same arguments in this matter as did Nader Ghermezian in T-252-19, and my analysis is the same.

[344] The Minister asserts that Mr. Ghermezian has not provided any of the requested documents and information. Subject to any portions of the Request that I may conclude to be invalid, following receipt of the parties' further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Raphael Ghermezian in relation to this Request.

(4) Requests RUST-22 and RUST-23

[345] These Requests, both dated April 5, 2018, and addressed to Raphael Ghermezian at the Edmonton Address are materially identical to NUST-22 and NUST-23, addressed to Nader Ghermezian and analyzed above in relation to T-252-19. The present application raises the same arguments, and my analysis is the same. For the sake of good order, I note Mr. Bowe's testimony in cross-examination that the Edmonton Address is the address Mr. Ghermezian provided on his T1 tax return.

[346] I find that the final sentence of item 23 of Requests RUST-22 and RUST-23 is invalid, because it uses the imprecise term "Mall of America Group". I find the rest of item 23 to be valid.

[347] Subject to those findings, and subject to any other portions of these Requests that I may conclude to be invalid, following receipt of the parties' further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Raphael Ghermezian in relation to the portions of these Requests that the Minister is still pursuing.

(5) Request RUST2-01

[348] This Request, dated October 11, 2018, is issued to the attention of Raphael Ghermezian and the other Brothers, under cover of a registered letter to Raphael Ghermezian at the Edmonton Address. It is materially the same as Request NUST2-01 issued to Nader Ghermezian and analyzed above under T-252-19. The arguments are the same, as is my analysis.

[349] Subject to any portions of this Request that I may conclude to be invalid, following receipt of the parties' further submissions on application of my conclusions surrounding the statutory interpretation of section 231.1, I find that a compliance order should issue against Raphael Ghermezian in relation to this Request.

(6) Requirement A-RUST-0103

[350] This Requirement, dated January 23, 2019, is addressed to Raphael Ghermezian at the Edmonton Address. This Requirement is materially the same as A-NUST-0103, issued to Nader Ghermezian and analyzed above under T-252-19. Raphael Ghermezian raises the same arguments, and my analysis is the same.

[351] The Minister seeks to obtain all information and documentation requested in this Requirement, with the exception of the US tax returns of the V-Day Trust relevant to Raphael Ghermezian. I find that a compliance order should issue against Mr. Ghermezian in relation to the remaining items sought by the Minister under this Requirement.

(7) Requirement A-GDT-0101

[352] This Requirement, dated October 30, 2018, is addressed to Raphael Ghermezian at the Edmonton Address and appears to have contents largely identical to Requirement A-GDT-0103 issued to Paul Ghermezian and Requirement A-GDT-0102 issued to Joshua Ghermezian (described earlier in these Reasons).

[353] With one exception, the respondent's submissions in relation to this Requirement raise arguments that I have previously canvassed in these Reasons, and my analysis remains the same.

[354] The additional argument raised in this matter relates to the fact that the Requirement demanded that Raphael Ghermezian provide information and documents in his capacity as Joshua Ghermezian's father. This argument notes the following explanation in the Requirement, referencing the trust agreement for GDT:

> …The Trust Agreement states in Article 4.2 that "[a]n Investment Committee Member who is under the age of thirty (30) years must consult with his father regarding any decision as a Committee Member." According to the records obtained by CRA, Mr. Joshua Ghermezian is currently under 30 years of age and that he is a trustee and member of both the

> Investment Committee and the Approval Committee of GDT. The terms of the Trust Agreement indicate that you are privy to investment decisions made by GDT as a result of your consultative and father-and-son relationship with Mr. Joshua Ghermezian.

[355] The respondent raises this point both as a “same person principle” argument and in support of the position that the Minister has failed to prove that Raphael Ghermezian was actually privy to the material sought under this Requirement. As to the latter position, the respondent has cited no authority to support a conclusion that the Minister was required to prove that Mr. Ghermezian is privy to the material. The Requirement explains the basis for CRA’s belief that he has such access, and I see no resulting basis for the Court to find the Requirement invalid.

[356] As for the same person principle, the Requirement is directed to Raphael Ghermezian, and he is the respondent to this compliance application. The fact that the Requirement explains the basis for CRA’s belief that he has access to the requested material related to GDT does not offend this principle.

[357] The Minister seeks only certain portions of the documents and information originally requested in this Requirement. I find that the Minister is entitled to a compliance order against Raphael Ghermezian in relation thereto.

VI. **Conclusion**

[358] As will be apparent from the above analyses and conclusions, the Minister has been largely successful in resisting the defence argument raised by the respondents in these applications. However, I have accepted the respondents’ imprecision arguments in relation to particular portions of a small number of Requests. More significantly, the parties have met with divided success on the issue surrounding statutory interpretation of the scope of subsection 231.1(1). As previously noted, it will therefore be necessary for the Court to decide how the conclusions on the statutory interpretation issue apply to individual items in the Requests or portions thereof and, as a result, which items are valid because they represent a demand for documentation and which are not valid because they represent a demand for undocumented information.

[359] As also noted above, my view is that, now that the outcome of the statutory interpretation issue is known, it will be appropriate and useful for the parties to provide further submissions on the application of that outcome. My Judgment will provide the parties an opportunity to confer in an effort to reach agreement on a proposed form of compliance order, individually for each of the six applications, capturing the items required to be provided by the relevant respondent as a result of the outcome of these applications. Such draft order should take into account the outcome of the broad statutory interpretation issue, the more minor points resulting from the respondents’ successful imprecision arguments, and the reduction in the items sought by the Minister in many of the Demands.

[360] I will afford the parties 60 days to complete this process and either provide the Court with mutually agreed draft orders or advise the Court that agreement has not been achieved or has not been achieved in relation to particular applications or individual Demands or portions thereof. At a minimum, the Court will expect the parties to identify, and substantially narrow, any areas of disagreement between them. If any disagreement remains at the end of the 60 days, the Minister will have an additional 14

days to serve and file its proposed forms of compliance orders, accompanied by written submissions identifying all remaining areas of disagreement and the Minister's positions on those disagreements. The respondents will then have 14 days to respond, with its proposed forms of compliance orders accompanied by written submissions on their positions on those remaining areas of disagreement.

[361] Following conclusion of the above, the Court will issue compliance orders in the forms it considers appropriate. In the meantime, these applications remain subject to case management and, if the parties require any further direction surrounding the completion of this process, they can contact the Registry to request a case management conference.

[362] Finally, the Court notes the respondents' position in these applications that, if the Court were to determine that any compliance orders should be issued, the 10 days proposed by the Minister in the draft orders accompanying her application records does not represents reasonable time for the respondents to comply with the orders. The Court will reserve its conclusion on this issue, for determination when issuing the orders following completion of the process explained above.

VII. **Costs**

[363] At the hearing, the parties requested that they have a further opportunity to provide submissions on costs, following receipt of the Court's decisions on the substantive issues in these applications. My Judgment will therefore reserve the disposition of costs until after the parties have been afforded that opportunity. By way of initial process to address costs, with the benefit of knowing the outcome of the substantive issues explained in these Reasons, the parties shall attempt to reach agreement on costs in the 60 day period identified above and shall advise the Court of the outcome of those efforts when advising whether agreement has been reached on the draft compliance orders.

[364] The Court recognizes that, if agreement on costs cannot be reached, the parties may wish to make submissions thereon after knowing the determination of any disagreements on the form of the compliance orders. Therefore, my Judgment will provide that, if agreement on costs is not reached, the parties will be afforded that opportunity.

JUDGMENT IN T-252-19, T-254-19, T-258-19,

T-259-19, T-261-19, and T-262-19

THIS COURT'S JUDGMENT is that:

1. Subject to the remaining steps set out in this Judgment, these applications for compliance orders are granted.

2. The parties to each application shall confer in an effort to reach agreement, taking into account the Court's Reasons, on:

    a. a proposed form of compliance order; and

    b. the disposition of costs of the application.

3. Within 60 days of the date of this Judgment, the parties to each application shall jointly:

    a. either provide the Court with the agreed proposed form of compliance order or advise the Court that agreement has not been achieved or has not been achieved in full; and

    b. either advise the Court as to the agreed disposition of costs or advise the Court that agreement has not been achieved.

4. If the parties to any application advise the Court, in accordance with paragraph 3(a), that agreement on a proposed form of compliance order has not been achieved or has not been achieved in full, the Minister shall, within 14 days of so advising the Court, serve and file her proposed form of compliance order, accompanied by written submissions identifying all remaining areas of disagreement and the Minister's positions on those disagreements. The respondent shall then, within 14 days of such service, serve and file his or its proposed form of compliance order accompanied by written submissions identifying positions on the remaining areas of disagreement.

5. If the parties to any application advise the Court, in accordance with paragraph 3(b), that agreement on the disposition of costs has not been achieved, the resulting compliance order will reserve the disposition of costs pending further submissions from the parties in accordance with a process to be set out therein.

APPENDIX "A"

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*)

dwelling-house means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence and includes

(a) a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passageway, and

(b) a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence; (*maison d'habitation*)

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.

Prior authorization

(2) Where any premises or place referred to in paragraph 231.1(1)(c) is a dwelling-house, an authorized person may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant under subsection 231.1(3)

Application

(3) Where, on *ex parte* application by the Minister, a judge is satisfied by information on oath that

(a) there are reasonable grounds to believe that a dwelling-house is a premises or place referred to in paragraph 231.1(1)(c),

(b) entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and

(c) entry into the dwelling-house has been, or there are reasonable grounds to believe that entry will be, refused,

the judge may issue a warrant authorizing an authorized person to enter the dwelling-house subject to such conditions as are specified in the warrant but, where the judge is not satisfied that entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, the judge may

(d) order the occupant of the dwelling-house to provide to an authorized person reasonable access to any document or property that is or should be kept in the dwelling-house, and

(e) make such other order as is appropriate in the circumstances to carry out the purposes of this *Act*,

to the extent that access was or may be expected to be refused and that the document or property is or may be expected to be kept in the dwelling-house.

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 served personally or by registered or certified mail, 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.

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)]

....

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 served personally or by registered or certified mail, 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.

Review of foreign information requirement

(4) The person on whom a notice of a requirement is served under subsection 231.6(2) may, within 90 days after the service of the notice, 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.

Idem

(6) For the purposes of paragraph 231.6(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 served with the notice of the requirement under subsection 231.6(2) if that person is related to the non-resident person.

Time period not to count

(7) The period of time between the day on which an application for review of a requirement is made pursuant to subsection (4) and the day on which the application is finally disposed of shall not be counted in the computation of

(a) the period of time set out in the notice of the requirement; and

(b) the period of time within which an assessment may be made pursuant to subsection 152(4).

Consequence of failure

(8) If a person fails to comply substantially with a notice served under subsection 231.6(2) and if the notice is not set aside by a judge pursuant to subsection 231.6(5), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Act shall, on motion of the Minister, prohibit the introduction by that person of any foreign-based information or document covered by that notice.

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)).

Notice required

(2) An application under subsection (1) must not be heard before the end of five clear days from the day the notice of application is served on the person against whom the order is sought.

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.

Contempt of court

(4) If a person fails or refuses to comply with an order, a judge may find the person in contempt of court and the person is subject to the processes and the punishments of the court to which the judge is appointed.

Appeal

(5) An order by a judge under subsection (1) may be appealed to a court having appellate jurisdiction over decisions of the court to which the judge is appointed. An appeal does not suspend the execution of the order unless it is so ordered by a judge of the court to which the appeal is made.

….

244 (1) …

Proof of service by mail

(5) Where, by this Act or a regulation, provision is made for sending by mail a request for information, notice or demand, an affidavit of an officer of the Canada Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered letter on a named day to the person to whom it was addressed (indicating the address) and that the officer identifies as exhibits attached to the affidavit the post office certificate of registration of the letter or a true copy of the relevant portion thereof and a true copy of the request, notice or demand, shall, in the absence of proof to the contrary, be received as evidence of the sending and of the request, notice or demand.