

INCOME TAX**PRACTICE**

Motion to obtain judicial authorization for requirement addressed to respondent presented under *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1 (ITA), s. 231.2, *Excise Tax Act*, R.S.C., 1985, c. E-15 (ETA), s. 289 [1, 2, order p. 58]— Respondent third party, not taxpayer from whom information pertaining to ITA being sought — Persons with respect to whom applicant wanting to receive information held by respondent are unnamed persons, business customers — Applicant claiming this group ascertainable insofar as large hydro users, domestic rate users eliminated — Seeing virtually unlimited authority in ITA, s. 231.2(3) to obtain information from third parties for use for its own purposes — Claiming that once conditions of s. 231.2(3) met, Court having to grant authorization sought — Explaining that because group consisting of legal or natural persons not subject to large-power or domestic rate, definition of group sufficiently limited to be consistent with scheme of ITA, ETA — Whether judicial authorization should be granted even though requirement for information virtually limitless based on applicant's use of s. 231.2(2), (3) — Applicant wanting to do too much with otherwise vague text of s. 231.2 — Information sought not in itself making it possible to verify compliance with ITA — Aggressive use advocated by applicant not consistent with Parliament's intent — Interpretation of provisions such as s. 231.2 having to be strict — Parliament providing for judicial intervention when request made to third party in respect of unnamed persons — Court ultimately having to determine whether state's right more important than that of individuals to not be bothered by government — Court proceeding to examine case law development on scope of s. 231.2(3) — Authorization requested here concerning undefined group, information requested having nothing to do with tax status — Full-scale fishing expeditions such as this should not be permitted upon judicial authorization — Requirement must have limitations — Obvious upon examination of context wherein s. 231.2(2), (3) situated that Parliament wanting to limit scope of applicant's powers — Parliament seeking certain specificity if request related to unnamed people — Requirement must be for administration or enforcement of ITA — Thus, group must be ascertainable on basis of administration, enforcement of ITA — Here, audit in good faith not yet conducted — Group not ascertainable within meaning intended by ITA — Denunciations in this case in no way indicating how designation "business customer" attributed — S. 231.2(3) requiring judge to be convinced that group ascertainable — Second condition in s. 231.2(3)(b), considered in isolation, not met — Knowledge of who has business account with respondent not meeting requirement of more direct connection between information, documents, compliance with ITA — Applicant trying to discredit s. 231.2(3) by interpreting it as allowing applicant to request any information about any group — According to applicant's logic, impossible to see why "ascertainable group" would not be hydro consumers, all hydro consumers — If that is scope of s. 231.2(3), judicial intervention required to prevent such an invasion of privacy of many people in Quebec — Some form of fishing expedition may be allowed, but judicial authorization existing to limit, govern it — Applicant seeking interpretation where conditions in s. 231.2(3) becoming non-existent — Circumstances of case herein requiring that judicial oversight be exercised to prevent undue invasion of privacy of many people — Court declining to authorize requirements — Motion dismissed.

CANADA (NATIONAL REVENUE) V. HYDRO-QUÉBEC (T-1838-17, 2018 FC 622, Roy J., order dated June 15, 2018, 60 pp.)