IN THE SUPREME COURT OF NOVA SCOTIA

Citation: *Nova Scotia Securities Commission v. Canada (National Revenue)*, 2007 NSSC 51

Date: 20070222
Docket: CRH 273517
Registry: Halifax

IN THE MATTER OF a summary application pursuant to section 490(15) of the *Criminal Code of Canada*, R.S.C. 1985 for an Order to examine things seized under a search warrant issued pursuant to section 487 of the *Criminal Code of Canada*, R.S.C. 1985

- and -

IN THE MATTER OF the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended

- and -

IN THE MATTER OF ServiceWorld, Inc., Carey Rolfe, Donald H. Boone, Michael Feindel, Richard Scott Latta, 3034930 Nova Scotia Limited, Underway Technologies Incorporated, ServiceWorld (Canada) Incorporated, ServiceWorld (a Nova Scotia registered partnership), Don Weagle, C.A., D. Glenn Boone, and Thelma J. Boone

Between:

Staff of the Nova Scotia Securities Commission through Abel Lazarus

Applicant

v.

Her Majesty The Queen in Right of Canada Through the Minister of National Revenue

Respondent

Judge:	The Honourable Justice M. Heather Robertson
Heard:	December 18, 2006, in Halifax, Nova Scotia
Written Submissions:	December 22, 2006 and January 3, 2007
Written Decision:	February 22, 2007
Counsel:	Heidi Schedler, for the applicant Christa MacKinnon, for the respondent

Robertson, J.:

[1] Abel Lazarus an employee of the Nova Scotia Securities Commission ("NSSC") seeks an order to examine items seized in relation to seven search warrants issued pursuant to s. 487 of the *Criminal Code.* The items are located at the offices of Canada Revenue Agency ("CRA"), Investigation Division, 1557 Hollis Street, Halifax, Nova Scotia. This application is made pursuant to the provisions of s. 490(15) of the *Criminal Code*, R.S.C. 1985, c. 646.

[2] The CRA resists the application saying s. 241 of the *Income Tax Act* precludes disclosure on the basis that the material sought is confidential taxpayer information as defined by the *Act.*

STATEMENT OF FACTS

2. Abel Lazarus, an employee of the NSSC is currently conducting an investigation into the affairs of ServiceWorld Inc., Carey Rolfe, Donald H. Boone, Michael Feindel, Richard Scott Latta, 3034930 Nova Scotia Limited, Underway Technologies Incorporated, ServiceWorld (Canada) Incorporated, ServiceWorld (a Nova Scotia registered partnership), Don Weagle, C.A., D. Glenn Boone and Thelma J. Boone pursuant to Orders issued by the Commission on July 17, 2006 and August 11, 2006.

   In the process of conducting his investigation, Mr. Lazarus discovered that what is now the Canada Revenue Agency ("CRA") conducted searches in accordance with warrants issued pursuant to section 487 of the *Criminal Code*, at the law office of Michael Feindel, the personal residence of Donald H. Boone and Thelma Boone, the personal residence of Carey Dean Rolfe, and the business office of Don Weagle, C.A.

3. As is set out in his affidavit, Mr. Lazarus believes that the documents and things seized pursuant to the warrants issued to CRA are relevant to his investigation, and he is therefore requesting the authority to examine those documents and things under section 490(15) of the *Criminal Code.*

4. Donald Boone, Glenn Boone and Carey Rolfe were the subjects of an investigation of tax evasion by Canada Revenue Agency. In furtherance of this investigation searches were conducted at the residence of Donald Boone (14 Clearview Drive, Bedford, Nova Scotia), storage facilities occupied or controlled by Donald Boone, the residence of Glenn Boone (27 MacPherson Street, Liverpool, Nova Scotia), the residence of Carey

Rolfe (24 Allison Drive, Dartmouth, Nova Scotia), the business office of Don Weagle, CA (42 Baden Road, Hubbards, Nova Scotia) and the business office of Michael R. Feindel, Barrister & Solicitor (7020 Mumford Road, Halifax, Nova Scotia).

5. Documents were seized during the searches (conducted in accordance with search warrants issued pursuant to subsection 487 of the *Criminal Code*) in furtherance of the investigation. The documents seized include banking records and business records of the subjects of the investigation and their spouses. These documents were obtained for the purpose of administering and enforcing the *Income Tax Act,* R.S.C. 1985 c.-1 (*"Income Tax Act"),* and therefore, constitute "taxpayer information" as defined by subsection 241(10) of the *Income Tax Act.*

6. As a result of this investigation, Donald Boone was charged with six offences as defined by paragraph 239(1)(d) of the *Income Tax Act* and one offence pursuant to 239(1)(a) of the *Income Tax Act*. The documents seized constitute evidence of the commission by him of these offences.

7. The NSSC have not caused the commencement of any criminal proceedings. There has been no laying of any informations with respect to administration and enforcement of the *Securities Act,* R.S.N.S. 1989, c.418.

ISSUE:

1. Whether an order under s. 490(15) of the *Criminal Code* (permitting an interested Third Party to examine items seized under a s. 487 search warrant) can issue in respect of taxpayer information that is otherwise confidential pursuant to s. 241 of the *Income Tax Act?*

2. Does the exemption to the rule of taxpayer information confidentiality under s. 241(3) of the *Income Tax Act* permit access or use of that information by anyone who establishes that they are an interested party once criminal proceedings have been commenced or is the access restricted to the criminal proceeding itself?

RELEVANT LEGISLATION:

241. (1) Except as authorized by this section, no official shall

> (a) knowingly provide, or knowingly allow to be provided, to any person any taxpayer information;
>
> (b) knowingly allow any person to have access to any taxpayer information; or
>
> (c) knowingly use any taxpayer information otherwise than in the course of the administration or enforcement of this Act, the Canada Pension Plan, the Unemployment Insurance Act or the Employment Insurance Act or for the purpose for which it was provided under this section.

(2) Notwithstanding any other Act of Parliament or other law, no official shall be required, in connection with any legal proceedings, to give or produce evidence relating to any taxpayer information.

(3) Subsections 241(1) and 241(2) do not apply in respect of

> (a) criminal proceedings, either by indictment or on summary conviction, that have been commenced by the laying of an information or the preferring of an indictment, under an Act of Parliament; or
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> (b) any legal proceedings relating to the administration or enforcement of this Act, the Canada Pension Plan, the Unemployment Insurance Act or the Employment Insurance Act or any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty.

Section 241(10) of the *Income Tax Act* defines “taxpayer information” as

"taxpayer information" means information of any kind and in any form relating to one or more taxpayers that is

> (a) obtained by or on behalf of the Minister for the purposes of this Act, or
>
> (b) prepared from information referred to in paragraph 241(10) taxpayer information (a),

but does not include information that does not directly or indirectly reveal the identity of the taxpayer to whom it relates.

Sections 490(15) and (16) of the *Criminal Code* state:

> 490(15) Access to anything seized – Where anything is detained pursuant to subsections (1) to (3.1), a judge of a superior court of criminal jurisdiction, a judge as defined in section 552 or a provincial court judge may, on summary application on behalf of a person who has an interest in what is detained, after three clear days notice to the Attorney General, order that the person by or on whose behalf the application is made be permitted to examine anything so detained.
>
> (16) Conditions – An order that is made under subsection (1) shall be made on such terms as appear to the judge to be necessary or desirable to ensure that anything in respect of which the order is made is safeguarded and preserved for any purpose for which it may subsequently be required.

LAW AND ARGUMENT:

[3] The threshold test for the operation of s. 490(15) is (1) an interest in what is detained, i.e. a legal concern with matters referred to in the documents and (2) proper notice to the Attorney General. Any order granted under this section would provide for safeguards to preserve the items seized and such other terms as the court may deem appropriate. (*Canada (Attorney General) v. Ontario (Attorney General)*, [1998] 3 C.T.C. 41 (Ont. Cr. Jus.), 1997 CarswellOnt 5173 and *R. v. Angel Acres Recreation and Festival Property Ltd.*, [2005] B.C.W.L.D. 1864, 2004 CarswellBC 3100).

[4] The applicant is not required to show reasonable and probable grounds for the search under s. 490(15).

[5] In *Angel Acres (supra)*, Lander, J. noted:

> The privacy interests in evidence obtained by a validly executed search warrant is very much reduced when used for the purpose of law enforcement.

[6] Justice Lander cited with approval three cases that dealt with application by the *Income Tax Act* officials for application to view in matters that were regulatory rather than of a criminal nature.

10 In R. v. Murdock, [2003] O.J. No. 5736 (Ont. C.J.), the Ontario Superior Court of Justice, the Ontario Police provided information to Revenue Canada as a result of an investigation, materials seized pursuant to a search warrant. The defendant argued that the materials were obtained by Revenue Canada without prior judicial authorization and that this constituted a breach of his section 8 *Charter* rights. Mr. Justice McKinnon of that court rejected this argument and stated at paragraph 14:

> The sharing has occurred between sister law enforcement agencies. Both agencies are bound to uphold the laws of Canada, and no extra-territorial jurisdictions are involved. The information has been seized pursuant to a validly executed warrant and thus any expectation of privacy in the information is greatly reduced if not altogether extinguished, for the purposes of the administration of Canadian law.

11 In Minister of National Revenue, Re, [1993] B.C.J. No. 2934 (B.C. S.C.), also in the context of a request to view under s. 490(15) by Revenue Canada, Hall J. considered the privacy interest in documents seized by search warrant and stated at paragraph 22:

> While a person would expect their documents in police custody not to be shown to the public at large or to the press, for instance, I doubt that a person could have any particular high expectations that another investigative department of government would not be apprised in a general way that there might be matters of interest to them in the seized material.

12 Mr. Justice Hall also found that s. 490(15) envisaged that a party applying should have some general idea of what they were looking for and that sharing of information between the government investigation departments prior to an application to view under s. 490(15) was also justified.

13 In Vukelich, Re, [1993] B.C.J. No. 903 (B.C. S.C.), the court found that the Income Tax Act officials making an application to view documents seized under a valid police search warrant in relation to a narcotics offence were not required to demonstrate reasonable and probable grounds to view. Mr. Justice Wetmore of this court, as he then was, stated:

> Section 490(15) is not challenged, nor should it be, in this application. All that Parliament has decreed is that a party who has "an interest" may examine the documents. Whether that examination results in evidence sought to be adduced at trial will have to await the court's determination of its admissibility. All of that is speculative and totally dependent on

> whether evidence even exists to show reasonable and probable grounds for a charge.

[7] I agree that the affidavit of Abel Lazarus, an investigator for the NSSC sets out ample evidence of the Commission's legal interest in the documents seized. Having established this, the applicant's position is that once criminal proceedings have been commenced, as they were against Daniel Boone, the NSSC falls within the exception of s. 241(3)(a) and should be granted access to the documents seized by the CRA in furtherance of its own investigation, even though they are not the party who commenced the criminal proceeding.

[8] The respondent submits that s. 241(3) exemption as framed by the legislators in both French and English versions extends only to the criminal proceedings themselves and that the meaning sought by the applicant could only be justified if Parliament had said that the confidentiality provisions "do not apply to *any* proceedings once criminal proceedings have been commenced."

[9] Further, the respondent submits that s. 241(3)(a) is a means of allowing taxpayer information (that would not otherwise be disclosed) to be used in a prosecution already commenced not as a means of furthering another organization's investigation. They suggest the limited ability of Canada Revenue Agency to assist with investigations by another organization is evidenced by s. 241(4) of the *Income Tax Act* which provides when an official may disclose taxpayer information. They argue that neither the applicant nor the subject matter of its investigation is referenced in paragraph 241(4) of the *Income Tax Act.*

[10] The definitive case on s. 241 is that of *Slattery (Trustee of) v. Slattery*, [1993] 3 S.C.R. 430.

[11] Revenue Canada petitioned Raymond Slattery into bankruptcy in order to collect on its claim for income taxes owing of over $1 million. The trustee in bankruptcy, Doane Raymond, commenced an action seeking a declaration that certain assets which were registered in the name of Slattery's wife were in fact the property of the bankrupt's estate or were held in trust for that estate. At the trial the trustee sought to introduce evidence from the Revenue Canada officials who had participated in the investigation into Raymond Slattery's affairs. Counsel for his wife objected on the ground that the information was confidential by virtue of s. 241. However, the trial judge ruled that their testimony was not barred because

it fell within the exception of s. 241(3) in that the proceedings related to the administration and enforcement of the *Income Tax Act*. Raymond Slattery's wife appealed unsuccessfully to the New Brunswick Court of Appeal.

[12] The Supreme Court of Canada held the proceedings taken by the trustee in bankruptcy for which the evidence was to be used related to the enforcement provisions of the *Income Tax Act*, that is it was necessary for the collection of taxes owing by the bankrupt. Therefore the evidence collected in the course of the income tax investigation was admissible in that context.

[13] Iacobucci, J. detailed the legislative history of s. 241 of the *Income Tax Act*. The confidentiality provisions of the *Act* developed in two distinct legislative stages.

[14] Between 1917 and 1952, there was a simple prohibition against disclosure by a person employed in the service of the Crown to a person not legally entitled to it. (Section 11 of the *Income War Tax Act*, 1912, c 28, s. 81 of the 1927 *Income War Tax Act*, R.S.C. 1927, c 97 and s. 133 of the *Income Tax Act*, R.S.C. 1952, c 148.)

[15] The second legislative phase began in 1966 when specific exceptions to the general non disclosure rule were made.

[16] Iacobucci, J. references an article by J. Toope and Alison L. Young, "The Confidentiality of Tax Returns under Canadian Law" (1982), 27 McGill L.J. 479. The following is a succinct summary of the 1966 amendments at page 489:

> The general effect of these provisions is to make the section easier to apply. There is now a general prohibition against release of tax information to anyone. The subsections which follow the general prohibition set up exceptions to the rule, and the circumstances in which ministerial discretion may operate seem to be clear. The organization of the section is, in this respect, more amenable to application by common law courts as it resembles a set of rules rather than an abstract principle.

[17] Both the applicant and the respondent cite *R. v. Wilder*, [200] B.C.J. No. 62. In the *Wilder* case the taxpayer was charged with fraud and possession of property obtained by crime. Following an audit review, Revenue Canada's special investigation unit began an investigation to determine whether there was a basis for

charging Wilder under the *Income Tax Act* or the *Criminal Code*. The investigators obtained records from financial institutions pursuant to powers granted under the *Income Tax Act.* Search warrants issued under the *Act* were executed, with the result that records and documents were seized from the accused's home and business premises. *Criminal Code* charges were laid. The trial judge ruled that the transmission of taxpayer information from Revenue Canada investigators to Crown counsel, and the use of that information to lay criminal charges, did not breach Wider's right against self-incrimination under s. 7 of the *Canadian Charter of Rights and Freedom.* The judge then became aware of a decision by the Supreme Court of Canada that accident reports given by an accused under the statutory compulsion of a provincial *Motor Vehicle Act* could not be used against the accused in a *Criminal Code* hit and run prosecution. (*R. v. White* (1999), 174 D.L.R. (4th) 111). The judge then held that all the taxpayer information relied upon by the Crown was inadmissible.

[18] Esson, J.A. pointed out that nothing in the reasons of Iacobbuci , J. in *White* supports the broad proposition that no information obtained by statutory compulsion for the purposes of the statute' regulatory scheme can be used in proof of a charge under the *Criminal Code.* He stated:

> In my view, the trial judge erred in failing to have sufficient regard to the factual context of the case before him and, more specifically, in failing to weigh in the balance, in the words of Iacobucci J., supra, "the factors that favour the importance of the search for truth". I do not say that the judge overlooked those factors in the sense of making no reference to them. Indeed, at one point or another in his reasons, he mentioned most of the relevant factors but in the end dismissed them from consideration on the basis of an overly broad interpretation of what was held in White.

[19] With respect to the type of records at issue in *Wilder* he noted:

> In terms of the nature of the records, the records in this case were not merely "like" business records, but appear, for the most part, to be business records in the ordinary sense. As to the Crown's purpose in using the records, s. 241 expressly provides for the use of taxpayer information in litigation including criminal proceedings. This accords with Fitzpatrick where it was held that the intended use of the records in the prosecution of over-fishing was contemplated by, and indeed essential to, the regulatory scheme. This is, however, in sharp contrast to the language of s. 61 of the Motor Vehicle Act (at issue in White) which extended use

immunity to the contents of an accident report and thus revealed a legislative intent to use such reports only for "non-litigious purposes".

[20] Noting two other factors Esson, J.A. went on to say:

> First, the records in question here are not remotely like "confessions". That is one of the more obvious distinguishing features from White where the statement was made after the events which gave rise to the charge. A related consideration is that a true confession (as was the accident report in White) is generally tendered to prove the truth of what is said therein. These business records may not serve that purpose but any falsity in them may constitute the essence of the offence. Secondly, in Fitzpatrick there was emphasis on the consideration that the obligation to file the reports was one voluntarily assumed by the persons engaged in fishing because that was an activity they voluntarily entered into. That applies a fortiori to those who engaged in the SRTC scheme. They were necessarily persons of some sophistication in matters of business who had the constant assistance of lawyers, accountants and other advisors. They knew that they had to keep records. They knew that they had to produce them to the tax authorities and they knew, or should have known, that s. 241, while creating a right of confidentiality had a clear exception in s. 241(3) for proceedings such as these.
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> ...
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> ...the compelled information is sought to be used in proof of a charge of fraud against the regulatory scheme. The evidence sought to be introduced is, in large part, the records maintained by the accused in availing themselves of the statutory scheme and, the Crown alleges, in obtaining fraudulent benefits from that scheme. That circumstance, combined with the fact that Parliament expressly sanctions the use of the records in proof of such charges, makes it clear that this case is well outside any protection which could be provided by s. 7.

[21] With respect to the interpretation of s. 241, Esson, J.A. stated:

> ¶ 34 This issue turns in part on the interpretation which should be given to s. 241(3) of the Act which, as it now stands, ...
>
> ¶ 35 Subsections (1) and (2) are of course the confidentiality provisions. The Crown submits that s. 241(3)(b) applies both to civil and criminal proceedings which relate to the administration or enforcement of the Act. This prosecution, the Crown submits, is a proceeding "relating to the administration or enforcement of this Act" and is therefore not one to which s. 241(3)(a) applies. The submission is that that subsection applies to all criminal proceedings other than those relating to

the administration or enforcement of the Act. If that is so, it follows that there is no need to refer to s. 241(3)(a) to determine whether the confidentiality provisions are suspended. The significance of that is that, if the confidentiality provisions are suspended in this case under s. 241(3)(b), the suspension continued during the period from 1987 to 1993 when prosecutions brought by direct indictment were not included in s. 241(3). That, as I understand it, is the position which was taken by Wong J. on the trial of the co-accused. It does not appear that that was an issue on appeal.

¶ 36 The trial judge in this case, perhaps in an effort to reconcile the language of the section with his view of the scope of R. v. White, held that subsection (a) applies only to criminal proceedings which relate to the administration or enforcement of the Act and that subsection (b) applies only to civil proceedings relating to the administration or enforcement of the Act.

¶ 37 That view of the matter would result in the confidentiality provisions not being suspended for any criminal proceedings other than those which relate to the administration or enforcement of the Act. That conclusion, in my view, is entirely at odds with the plain language of s-s. (a) and, for the reasons I have already given, is not supported by the decision in R. v. White.

¶ 38 Nor is it supported by the legislative history. I referred earlier to the decision of the Quebec Court of Appeal in R. v. Thibault which had extended the words "criminal proceedings" in the pre-1987 version of s. 241(3) to applications for search warrants brought before any charge was laid. Parliament moved with some alacrity to bring in the amendment of 1987 to exclude pre-charge proceedings. R. v. Thibault was a drug prosecution entirely unrelated to the administration or enforcement of any of the statutes referred to in s. 241(3). Had it been the intention of Parliament that the words "criminal proceedings" be applicable only to proceedings for the administration or enforcement of the statutes referred to in s. 241(3), it surely would have amended the section at the same time to make clear that restriction.

[22] Citing the Supreme Court of Canada decision in *Slattery* he notes:

¶ 42 The issue which divided the Court was summarized thus by McLachlin J. at p. 5451:

> Focusing in part on the fact that the trial would ultimately result in the collection of unpaid taxes, [Iacobucci J.] finds that the trial was a proceeding "relating to" the administration or enforcement of the Act.

> In my view, the s. 241(3) exemption applies only in the case of proceedings specifically provided for in the Income Tax Act.

¶ 43 Iacobucci J., after stating that neither the text nor the context of s. 241 supported the narrow interpretation accepted by McLachlin J., went on to say at p. 5447:

> The connecting phrases used by Parliament in s. 241(3) are very broad. The confidentiality provisions are stated not to apply in respect of proceedings relating to the administration or enforcement of the Income Tax Act.
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> The phrase "in respect of" was considered by this Court in Nowegijick v. The Queen, [1983] 1 S.C.R. 29, at p. 39.
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> > The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters.

[Emphasis added]

> In my view, these comments are equally applicable to the phrase "relating to". The Pocket Oxford Dictionary (1984) defines the word "relation" as follows:
>
> > ... what one person or thing has to do with another, way in which one stands or is related to another, kind of connection or correspondence or contrast or feeling that prevails between persons or things;...
>
> So, both the connecting phrases of s. 241(3) suggest that a wide rather than narrow view should be taken when considering whether a proposed disclosure is in respect of proceedings relating to the administration or enforcement of the Income Tax Act.

¶ 44 This proceeding, unlike the proceeding in question in Slattery v. Doane Raymond, is not one for the collection of tax. But, in view of the broad interpretation given to the words "in respect of" and "relating to", I find this proceeding to be one relating to the enforcement of the Act. It is unnecessary to consider whether it is also a proceeding for the administration of the Act.

> ¶ 45 It is also unnecessary to decide whether the confidentiality provisions are also suspended by s. 241(3)(a) which, on its plain language, applies to all criminal proceedings. I am, however, inclined to the view that criminal proceedings relating to the administration or enforcement of the Act are impliedly excluded from subsection (a), which comes into effect only upon the laying of an information or the preferring of an indictment. Subsection (b) has no specific provision triggering the application of the suspension. As subsection (b), in relation to criminal proceedings relating to the administration or enforcement of the Act, covers all of the ground covered by subsection (a), but with the added flexibility that it covers proceedings before information or indictment, it seems a reasonable inference that subsection (a) was not intended to apply to criminal proceedings relating to the administration or enforcement of the Act. However, I need decide only that subsection (b) is effective to suspend the confidentiality provisions in respect of this prosecution.

[23] Esson, J.A. found that s. (b) was effective to suspend the confidentiality provisions with respect to the *Wilder* prosecution. His reflections on the breadth of the meaning of s. 241(3)(a) were therefore obiter.

[24] In my view each case seeking the exception must be examined through a contextual analysis, keeping in mind the Parliamentary intent in framing the whole of s. 241(1)-(4).

[25] The plain language of s. 241(3) makes it clear that the confidentiality provisions of the *Act* are suspended with respect to criminal proceedings that have been commenced under an *Act* of Parliament.

[26] As Iacubucci, J. Wrote in *Slattery*:

> ¶ 16 In my view, s. 241 involves a balancing of competing interests: the privacy interest of the taxpayer with respect to his or her financial information, and the interest of the Minister in being allowed to disclose taxpayer information to the extent necessary for the effective administration [page444] and enforcement of the Income Tax Act and other federal statutes referred to in s. 241(4).
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> ¶ 17 Section 241 reflects the importance of ensuring respect for a taxpayer's privacy interests, particularly as that interest relates to a taxpayer's finances. Therefore, access to financial and related information about taxpayers is to be taken seriously, and such information can only be disclosed in prescribed

> situations. Only in those exceptional situations does the privacy interest give way to the interest of the state.
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> ¶ 18 As alluded to already, Parliament recognized that to maintain the confidentiality of income tax returns and other obtained information is to encourage the voluntary tax reporting upon which our tax system is based. Taxpayers are responsible for reporting their incomes and expenses and for calculating the tax owed to Revenue Canada. By instilling confidence in taxpayers that the personal information they disclose will not be communicated in other contexts, Parliament encourages voluntary disclosure of this information. The opposite is also true: if taxpayers lack this confidence, they may be reluctant to disclose voluntarily all of the required information (Edwin C. Harris, Canadian Income Taxation (4th ed. 1986), at pp. 26-27).
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> ¶ 19 Parliament has also recognized, however, that if personal information obtained cannot be used to assist in tax collection when required, including tax collection by way of judicial enforcement, the possession of such information will be useless. Disclosure of information obtained through tax returns or collected in the course of tax investigations may be necessary during litigation in order to ensure that all relevant information is before the court, and thereby to assist in the correct disposition of litigation. But this necessity is sanctioned by Parliament in a very limited number of situations. Disclosure is authorized in criminal proceedings and other proceedings as set out in s. 241(3). Certain other situations are specified in s. 241(4), which have been described by the Ontario Court of [page445] Appeal as being "largely of an administrative nature" (Glover v. Glover (No. 1), supra, at p. 397).

[27] In the circumstances of this application although the NSSC has established that they are a third party who has an interest in what is detained pursuant to s. 490(15), they are not in the position of the CRA who have caused criminal proceedings to be commenced for breaches of s. 239 of the *Income Tax Act.*

[28] The NSSC cannot piggy back on the criminal proceeding commenced. The NSSC has not caused a criminal proceeding to be commenced under an *Act* of Parliament. They do not fall within the exception created by s. 241(3)(a).

[29] The NSSC is a creature of Provincial Statute with powers conferred by that statute, wholly unrelated to the enforcement or administration of the *Income Tax Act.*

[30] In balancing the competing interests at stake one must consider the primary consideration of preserving the integrity of the scheme of self assessment created by the *Income Tax Act* where its very success is dependent on the privacy of the information filed.

[31] Section 241 (3)(a) cannot be read so broadly, as to allow any investigative agency to have access to "taxpayer information" once any criminal proceeding has been commenced. That would defeat the clearly expressed intent to protect a taxpayer's privacy interest with limited exceptions.

[32] Clearly on the plain reading of ss. 241 (3)(a) and (b) the NSSC's application to view seized documents does not fall within these exceptions.

[33] The application is accordingly dismissed.

Justice M. Heather Robertson