

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

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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

Subject: The Nova Scotia Securities Commission seeks an order pursuant to s. 490(15) of the *CCC* to examine items seized in relation to seven search warrants issued pursuant to s. 487 of the *CCC*. The items are in the possession of the Canada Revenue Agency who have caused criminal proceedings to be commenced against Donald H. Boone for offences as defined by s. 239(1)(a) and (d) of the *Income Tax Act*.

Summary: The Nova Scotia Securities Commission is investigating the affairs of named individuals and corporations as they relate to the administrative and enforcement of the *Nova Scotia Securities Act*. They believe the documents seized by the Canada Revenue Agency may be of assistance in their investigation.

Issue:

1. Whether an order under s. 490(15) of the *CCC* permitting an interested third party to examine “taxpayer information” seized by the Canada Revenue Agency otherwise confidential, pursuant to s. 241 of the *Income Tax Act*?
2. Does the exemption to “taxpayer information” confidentiality created by s. 241(3) of the *Income Tax Act* permit access by the Nova Scotia Securities Commission once criminal proceedings have commenced or is access restricted to the criminal proceeding itself?

Result: The Nova Scotia Securities Commission cannot access the items seized by the Canada Revenue Agency. They do not fall within the confidentiality exception created by s. 241(3)(a) as they have not commenced a criminal proceeding under an *Act* of Parliament nor is their investigation related to the enforcement or administration of the *Income Tax Act*.

Cases cited: *Canada (Attorney General) v. Ontario (Attorney General)*, [1998] 3 C.T.C. 41 (Ont. Cr. Jus.), 1997 CarswellOnt 5173; *R. v. Angel Acres Recreation and Festival Property Ltd.*, [2005] B.C.W.L.D. 1864, 2004 CarswellBC 3100; *Slattery (Trustee of) v. Slattery*, [1993] 3 S.C.R. 430; *R. v. Wilder*, [200] B.C.J. No. 62; *Attorney General of Canada v. Thibault* (1980), 87 D.T.C. 5085 (Q.C.A.); *Re Vukelich*, [1994] 1 C.T.C. 152 (B.C.S.C.), 1993 CarswellBC 1214; *R. v. Sutherland*, 38 C.C.C. (2d) 252 (Ont. Co. Ct.) 1977 CarswellOnt 1062; *Glover v. Minister of National Revenue*, [1980] C.T.C. 531, 29 O.R. (2d) 392, 18 R.F.L. (2d) 116, 16 C.P.C. 77, 113 D.L.R. (3d) 161, 43 N.R. 273, 80 D.T.C. 6262, 1980 CarswellOnt 634; *Glover v. Minister of National Revenue*, [1982] C.T.C. 29, 25 R.F.L. (2d) 335, 130 D.L.R. (3d) 383n, [1981] 2 S.C.R. 561, 43 N.R. 271, 82 D.T.C. 6035, 1981 CarswellOnt 597; and *M.N.R. v. British Columbia*, [1988] B.C.J. No. 694;

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