

MNR v The Money Stop Ltd, 2013 FC 133

Contempt Proceedings - Failure to Comply with a Court Order of Compliance

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The MNR had required financial records in support of its conduct of an audit of the corporate taxpayer. Mr. S was the director of the taxpayer. The taxpayer failed to provide the information and the MNR applied to the FC for an order of compliance under section 231.7 of the ITA, which was granted. The taxpayer didn't comply with this order, and contempt proceedings were initiated, and the taxpayer and the director were held in contempt, and were given 30 days to provide the requested information. The taxpayer again failed to comply and the MNR asks the FC to pass sentence for the contempt.

The FC referred to Rule 427 of the *Federal Court Rules* which deal with the FC's jurisdiction regarding penalties for contempt, and referred to the FCA decision of *Canada (Human Rights Commission) v Winnicki*, [2007 FCA 52](#), to identify the relevant factors in determining what an appropriate penalty for contempt is, being:

1. the gravity of the contempt in the context of the particular circumstances of the case as they pertain to the administration of justice;
2. whether the contempt offence is the first offence;
3. presence of any mitigating factors such as good faith or an apology; and
4. deterrence of similar conduct.

The Court was also referred to the FC decision in *MNR v Marshall*, [2006 FC 788](#), where relevant factors in relation to the failure for contempt of an order of the FC to disclose information pursuant to section 231.7 of the ITA were identified as:

- i. The primary purpose of imposing sanctions is to ensure compliance with orders of the court. Specific and general deterrence are important to ensure continued public confidence in the administration of justice;
- ii. Proportionality of sentencing requires striking a balance between enforcing the law and what the Court has called "temperance of justice";
- iii. Aggravating factors include the objective gravity of the contemptuous conduct, the subjective gravity of the conduct (i.e. whether the conduct was a technical breach or a flagrant act with full knowledge of its unlawfulness), and whether the offender has repeatedly breached orders of the Court; and

iv. Mitigating factors might include good faith attempts to comply (even after the breach), apologize or accept responsibility, or whether the breach is a first offence.

The court highlighted the importance of having taxpayers comply with an order to produce information in relation to their income tax liability given the self-assessing nature of our tax system and the importance of tax revenue for governmental functioning. The FC said at paragraph 14:

In my view, ensuring compliance with orders made by the Court pursuant to the *Income Tax Act* is critical because most everyone in Canada pays tax, and reporting is largely self-reporting. If efforts by the Minister taken to ensure that taxpayers have complied and accurately reported income are ignored or thwarted, the taxation regime is seriously compromised and that affects every Canadian as we are dependant on tax revenue to fund most of our social and other programs, and indeed our government as a whole. In that sense, compliance with the *Income Tax Act* is a fundamental civic duty which cannot be taken lightly or ignored.

The Court's penalty imposed included:

- A fine of \$5,000 and the MNR's costs on a solicitor-client basis of \$19,905.74, to be paid within 30 days, failing which the director would have to serve 30 days in prison.
- Providing the required information within 30 days, failing which the director would be imprisoned for 3 years consecutive.
- An opportunity for the director to avoid imprisonment if he arranges for an oral examination under oath and provides satisfactory evidence that the fine and costs are such that they cannot be paid within the time period and more time is needed, or that the documents are not available and the failure to have them be available is not due to international actions, recklessness, or negligence.

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