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CRA Use of Information Obtained in Criminal Investigation

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Piersanti v Canada, 2014 FCA 243

The taxpayer appealed from the TCC decision, 2013 TCC 226, where the court did not vacate the Notice of Reassessments.

The FCA noted that the issue before the Tax Court of Canada is only determining the taxpayer's income tax liability, and not the taxpayer's penal liability (para 5). *Charter* rights only become engaged when a tax audit becomes a criminal investigation: *R v. Ling*, 2002 SCC 74, decided on the principles in *R. v. Jarvis*, 2002 SCC 73. The issue in this case is whether the taxpayer's *Charter* rights are violated when the documents obtained through requirements were later used to assess tax liability.

The FCA stated:

> [9]   The Judge did not err in law when concluding that the appellant's rights under sections 7 and 8 of the *Charter* were not violated by the CRA when it used the information gathered in the course of the criminal investigation to reassess the appellant's income tax liability for the years in question. The Judge's legal finding accords with *Jarvis* and with the self-assessment and the self-reporting nature of the income tax regime. Whether the CRA could properly use such documents to prosecute the appellant for criminal offences under the *ETA* is irrelevant to the current civil proceedings. A found by the Judge, whether the appellant's *Charter* rights were violated by using the information from the requirements to prosecute the appellant under the *ETA* was a question for the Ontario Superior Court of Justice where the criminal matter was heard and disposed of. In any event, even if the appellant was right in distinguishing between the civil audit and criminal investigation, we are all of the view that the facts of this case, which raise at best a technical breach, do not call for a remedy under subsection 24(2) of the *Charter*. [emphasis added]

-Sas Ansari, JD LLM PhD (exp)

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