

THE CANADIAN BANK OF COM-  
MERCE (*Plaintiff*) \ . . . . . }

APPELLANT;

1962  
\*May 17, 18  
June 25

AND

THE ATTORNEY GENERAL OF  
CANADA (*Defendant*) \ . . . . . }

RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

*Taxation—Requirement by Minister for information and production of documents relating to accounts of bank's customer—Whether bank obliged to comply with requirement—Whether Minister's action subject to review—Income Tax Act, R.S.C. 1952, c. 148, s. 126(2).*

The Assistant Deputy Minister of National Revenue for Taxation, acting on behalf of the Minister, addressed a requirement to the plaintiff bank under s. 126(2) of the *Income Tax Act* for information and production of documents relating to the accounts of its customer, the Union Bank of Switzerland. The plaintiff applied for a declaration that it was not under any obligation to furnish the information or produce the documents called for by the requirement and that it was not subject to the penalty provided for failure to comply therewith. By agreement between the parties a special case was stated for the opinion of the Court. It was agreed that the requirement did not relate in any way to the administration or enforcement of the Act in respect to the liability for tax of the plaintiff, and that the information to be furnished to comply with the requirement would include a great deal of private information in respect of the business and affairs of many corporations and individuals, some resident and some not resident in Canada. It was admitted that the Minister was acting in good faith, that the requirement related to a genuine and serious inquiry into the tax liability of some specific person or persons and that the Minister had reason to believe that such person or persons was or were among those referred to in the special case. The trial judge gave judgment against the plaintiff; this judgment was affirmed by the Court of Appeal, and with leave obtained from that Court the plaintiff appealed to this Court.

*Held:* The appeal should be dismissed.

*Per Kerwin C.J. and Taschereau, Abbott and Judson JJ.:* The wording of subs. (2) of s. 126 of the *Income Tax Act* was very broad and comprehensive since the Minister "may, for any purpose related to the administration or enforcement of this Act," proceed in the manner indicated. So far as the Union Bank of Switzerland was concerned, if it carried on business in Canada, it was liable to tax under the Act and it was part of the administration or enforcement of the Act to discover if the Union Bank was subject to taxation.

The wording of the subsection was in such general terms that it could not be restricted to information as to the tax liability of the plaintiff itself. The fact that the information sought would disclose private transactions in which a number of persons were involved who were not

\*PRESENT: Kerwin C.J. and Taschereau, Locke, Cartwright, Fauteux, Abbott, Martland, Judson and Ritchie JJ.

1962  
 CANADIAN  
 BANK OF  
 COMMERCE  
 v.  
 ATTORNEY  
 GENERAL  
 OF CANADA

under investigation and might not be liable to tax, did not affect the Minister's power. Nor could the power be restricted to an inquiry for definite and limited particular information.

*Per* Locke, Cartwright, Fauteux, Martland and Ritchie JJ.: The purpose of the Minister's requirement was to obtain information relevant to the tax liability of some specific person or persons whose liability to tax was under investigation; this was a purpose related to the administration or enforcement of the Act.

On the question whether the test to be applied in determining the validity of a requirement is subjective or objective, here the condition was objective, and the question whether the Minister was acting for the purpose specified in the Act was subject to review, even though he might be acting in an administrative capacity. The question involved an interpretation of the Act and its application to the circumstances disclosed.

APPEAL from a judgment of the Court of Appeal for Ontario<sup>1</sup>, affirming a judgment of Morand J. Appeal dismissed.

*Hon. R. L. Kellock, Q.C.*, and *J. B. Tinker*, for the plaintiff, appellants.

*D. Guthrie, Q.C.*, and *J. D. Lambert*, for the defendant, respondent.

The judgment of Kerwin C.J. and of Taschereau, Abbott and Judson JJ. was delivered by

THE CHIEF JUSTICE:—By leave of the Court of Appeal for Ontario the Canadian Bank of Commerce appeals from a judgment of that Court<sup>1</sup> affirming the order of Morand J. That order answered the question asked in the special case in the negative; directed that the appellant furnish the information and produce the documents requested in a certain requirement of the Minister of National Revenue, dated August 17, 1960; and directed that the time for invoking the penalty for failure to comply with the requirement should commence from the date of the order, May 1, 1961.

The dispute hinges upon the proper construction of subs. (2) of s. 126 of the *Income Tax Act*, R.S.C. 1952, c. 148:

126. (2) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person

(a) any information or additional information, including a return of income or a supplementary return, or

<sup>1</sup>[1962] D.T.C. 1014, [1962] C.T.C. 39, 31 D.L.R. (2d) 625.

(b) production, or production on oath, of any books, letters, accounts, invoices, statements (financial or otherwise) or other documents,

within such reasonable time as may be stipulated therein.

The requirement reads as follows:

Special Investigations Section,  
J. M. Fell

1962  
CANADIAN  
BANK OF  
COMMERCE  
v.  
ATTORNEY  
GENERAL  
OF CANADA  
Kerwin C.J.

Department of National Revenue  
Canada  
Taxation Division

CONFIDENTIAL

REQUIREMENT FOR INFORMATION AND PRODUCTION  
OF DOCUMENTS

Ottawa, 17th August, 1960.

The General Manager,  
The Canadian Bank of Commerce,  
25 King Street West,  
Toronto, Ontario.

Dear Sir,

The Union Bank of Switzerland

1. For purposes related to the administration or enforcement of the Income Tax Act, pursuant to the provisions of Section 126(2) of the said Act, I require from you on or before 19th September, 1960, information and production of documents as follows:
  - (a) A statement setting out all entries in all accounts that are known to be or to have been operated or controlled by, for, or on behalf of the persons named above or any of them and all entries that are known to be or to have been related to the affairs of those persons or any of them in all other accounts including Casual, Manager's, Sundry and similar accounts for the period beginning 1st January 1955 and ending 31st December 1959, both dates inclusive.
  - (b) A statement setting out particulars of all transactions, including loans and discounts and collateral thereto, safety deposit box rentals and security dealings with, for, or on behalf of the persons named above or any of them, or any person or persons known to be or to have been acting on behalf of those persons or any of them for the period beginning 1st January 1955 and ending 31st December 1959, both dates inclusive.
  - (c) Production of all documents, including authorizations, powers of attorney, mail and telegraphic transfers, accounts, vouchers, letters, contracts, letters of credit and statements that are known to be or to have been related to the entries or transactions set out in the statements required under (a) and (b) above, for the period beginning 1st January 1955 and ending 31st December 1959, both dates inclusive.

1962

CANADIAN  
BANK OF  
COMMERCE  
v.  
ATTORNEY  
GENERAL  
OF CANADA

Kerwin C.J.

2. To comply with this requirement you should forward the information and documents hereby required to the Deputy Minister of National Revenue for Taxation, 444 Sussex Drive, Ottawa, Ontario, by registered mail, within the time specified in paragraph 1. Photostatic or certified copies of the documents will be sufficient.
3. If you so request in your acknowledgment of this requirement, arrangements will be made for an officer of the Taxation Division to attend at your office to receive the information and inspect the documents required. Provision of the information and production of the documents to that officer at the time of his attendance at your office will be considered as compliance with this requirement if your acknowledgment is received on or before 19th September 1960.
4. Your attention is directed to the penalty provided in subsection 2 of section 131 of the Income Tax Act for default in complying with this requirement.

Yours truly,

"D. Sheppard"

Assistant Deputy Minister of  
National Revenue for Taxation

REGISTERED

Although there are various references in this requirement to "the persons named above", the Union Bank of Switzerland is the only party named, and it is important to emphasize at the outset that from a consideration of the entire document the Union Bank of Switzerland is under investigation. The requirement is signed by the Assistant Deputy Minister of National Revenue for Taxation but it is admitted that under the power conferred upon the Governor in Council by s. 117(1)(f) of the *Income Tax Act*, R.S.C. 1952, c. 148:

117. (1) The Governor in Council may make regulations

\* \* \*

(f) authorizing a designated officer or class of officers to exercise powers or perform duties of the Minister under this Act.

the Assistant Deputy Minister of National Revenue for Taxation was authorized by Reg. 900 to exercise all the powers and perform all the duties of the Minister under the Act. It is convenient at this point, because of an argument advanced on behalf of the appellant, to note that under subs. (2) of the same regulation an official holding a position of "Director-Taxation" in a District Office of the Taxation Division of the Department of National Revenue may exercise the powers and perform the duties of the Minister under subs. (2) of s. 126 of the Act.

On September 15, 1960, the appellant issued a writ of summons in the Supreme Court of Ontario claiming "a declaration that it is not under any obligation to furnish the information or produce the documents relating to the accounts of its customer, The Union Bank of Switzerland, called for by the Requirement for Information and Production of Documents hereinafter described, that the said Requirement is unauthorized and is of no force or effect and that the Plaintiff is not subject to the penalty threatened therein for failure to comply therewith".

1962  
CANADIAN  
BANK OF  
COMMERCE  
v.  
ATTORNEY  
GENERAL  
OF CANADA  
Kerwin C.J.

On March 15, 1961, the solicitors for the parties agreed upon a special case for the opinion of the Court which is set out *in extenso* in the reasons for judgment in the Court of Appeal. It is sufficient to state that it is thereby agreed that the appellant is a large bank of Canada and a taxpayer under the *Income Tax Act* of Canada; the requirement does not relate in any way to the administration or enforcement of the Act as respects the liability for tax of the appellant; the Union Bank of Switzerland is one of the major banks in Switzerland and is a customer of the plaintiff; the requirement was duly received by the appellant which had failed to comply in whole or in part with it. The special case also shows that the appellant has numerous branches throughout Canada, twelve in the West Indies, five branches or agencies in the United States and two branches in London, England, and that it would require a great amount of clerical work to comply with the requirement. Paragraph 11 referred to particularly by counsel for the appellant reads as follows:

11. The information to be gathered together and produced to comply with the said Requirement includes a great deal of private information in respect of the business and affairs of the Union Bank of Switzerland and of many other corporations and individuals, some resident in Canada and some not resident in Canada.

Before Morand J. it was admitted that the Minister was acting in good faith and that the requirement relates to a genuine and serious inquiry into the tax liability of some specific person or persons; that the Minister had good reason to believe that such person or persons is or are among those referred to in the special case. The Minister refused to state who the person or persons was or were or to designate the person or persons in any way, shape or form.

1962  
 CANADIAN  
 BANK OF  
 COMMERCE  
 v.  
 ATTORNEY  
 GENERAL  
 OF CANADA  
 Kerwin C.J.

At the hearing before the Court of Appeal counsel for the bank submitted that certain inferences of fact should be drawn from the special case as follows:

- (a) The Minister is proceeding in good faith in the sense that he honestly believes he is proceeding in accordance with his powers.
- (b) The said Requirement relates to a genuine and serious inquiry into the tax liability of some specific person or persons.
- (c) The Minister has reason to believe that such person or persons under investigation are among those referred to in the Special Case.
- (d) Neither the Union Bank of Switzerland nor many of the persons referred to in the Special Case, para. 11 are among the person or persons under investigation.

Counsel for the Attorney-General agreed as to (a), (b) and (c) but not as to (d). I, therefore, proceed upon the basis that the first three are in the same position as if they were included in the special case.

The argument of counsel for both parties covered a wide field and submitted propositions with which it is unnecessary to deal because, as has already been pointed out, by the very terms of the requirement the Union Bank of Switzerland is under investigation. The wording of subs. (2) of s. 126 of the *Income Tax Act* is very broad and comprehensive since the Minister "may, for any purpose related to the administration or enforcement of this Act," proceed in the manner indicated. Section 2 of the Act enacts:

2. (1) An income tax shall be paid as hereinafter required upon the taxable income for each taxation year of every person resident in Canada at any time in the year.

(2) Where a person who is not taxable under subsection (1) for a taxation year

(a) was employed in Canada at any time in the year, or

(b) carried on business in Canada at any time in the year, an income tax shall be paid as hereinafter required upon his taxable income earned in Canada for the year determined in accordance with Division D.

(3) The taxable income of a taxpayer for a taxation year is his income for the year minus the deductions permitted by Division C.

Therefore, so far as the Union Bank of Switzerland is concerned, if it carried on business in Canada, it is liable to tax and it is part of the administration or enforcement of the Act to discover if the Union Bank was subject to taxation.

The wording of s. 126(2) is in such general terms that it cannot be restricted, as counsel for the appellant argued, to information as to the tax liability of the appellant itself. He also contended that the words in subs. (2) of s. 126

*"including a return of income or a supplementary return"* indicated that the requirement could only be directed to the question of liability to taxation of the appellant. The words italicized do not restrict the generality of the opening words in subs. (2). Although para. 11 of the special case shows that the information to be gathered together and produced to comply with the requirement includes a great deal of private information in respect of the business and affairs of the Union Bank of Switzerland and of many other corporations and individuals, some resident in Canada and some not resident in Canada, I agree with Chief Justice Porter that the fact that the information sought will disclose private transactions in which a number of persons were involved who are not under investigation and may not be liable to tax, does not affect the power. As the Chief Justice points out, much of the information obtained will turn out to be irrelevant. Neither of these probabilities take the case out of a purpose related to the administration or enforcement of the Act.

Subsections (1) and (3) of s. 126 provide:

126. (1) Any person thereunto authorized by the Minister for any purpose related to the administration or enforcement of this Act may, at all reasonable times, enter into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business or any books or records are, or should be, kept pursuant to this Act, and

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document which relates or may relate to the information that is or should be in the books or records or the amount of tax payable under this Act,
- (b) examine property described by an inventory or any property, process or matter an examination of which may, in his opinion, assist him in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records or the amount of any tax payable under this Act,
- (c) require the owner or manager of the property or business and any other person on the premises or place to give him all reasonable assistance with his audit or examination and to answer all proper questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration and, for that purpose, require the owner or manager to attend at the premises or place with him, and
- (d) if, during the course of an audit or examination, it appears to him that there has been a violation of this Act or a regulation, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court proceedings.

1962

CANADIAN  
BANK OF  
COMMERCE

v.

ATTORNEY  
GENERAL  
OF CANADA

Kerwin C.J.

(3) The Minister may, for any purpose related to the administration or enforcement of this Act, with the approval of a judge of the Exchequer Court of Canada or of a superior or county court, which approval the judge is hereby empowered to give upon *ex parte* application, authorize in writing any officer of the Department of National Revenue, together with such members of the Royal Canadian Mounted Police or other peace officers as he calls on to assist him and such other persons as may be named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things which may afford evidence as to the violation of any provision of this Act or a regulation and to seize and take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.

Certainly, those powers are stringent as well as the powers contained in s. 126A dealing with a solicitor-client privilege and the powers of a judge of a Superior Court or of the Exchequer Court of Canada but it is unnecessary to determine their exact limits.

The power conferred upon the Minister or Assistant Deputy Minister of National Revenue for Taxation cannot be restricted to an inquiry for definite and limited particular information; and the mere fact that by subs. (2) of Reg. 900 an official holding the position of "Director-Taxation" in a District Office of the Taxation Division of the Department of National Revenue might exercise the powers and perform the duties of the Minister under subs. (2) of s. 126 does not derogate from the wide powers conferred by this last-mentioned subsection. The cases cited by counsel for the appellant are quite distinguishable and I find it unnecessary to go over them in detail.

The final argument was that the Assistant Deputy Minister of National Revenue for Taxation is not authorized to act on his opinion, belief or decision, but must in fact have a purpose related to the administration or enforcement of the Act. I have already expressed the opinion, that, in view of the contents of the special case and the admissions of counsel, the Assistant Deputy Minister was in fact acting for a purpose related to the administration or enforcement of the Act. The decision of the Judicial Committee in *Nak-kuda Ali v. Jayaratne*<sup>1</sup>, relied upon by counsel for the appellant, is not applicable. In that case power to cancel a licence was conferred upon the Controller of Textiles where he "has reasonable cause to believe that any dealer is unfit to

<sup>1</sup>[1951] A.C. 66.



be allowed to continue as a dealer". The decision was that the requirement of the regulation there in question that the Controller must have reasonable grounds of belief was insufficient to oblige him to act judicially and that there was nothing else in the context or conditions of his jurisdiction which suggested that he must regulate his action by analogy to judicial rules. It was held that the respondent was not amenable to a mandate in the nature of *certiorari* in respect of his action under the regulation. Much that followed that holding was *obiter* and has since given rise to considerable discussion as to its validity.

1962  
CANADIAN  
BANK OF  
COMMERCE  
v.  
ATTORNEY  
GENERAL  
OF CANADA  
Kerwin C.J.

The appeal is dismissed, but counsel for the respondent suggested that a new time should be fixed for invoking the penalty for failure to comply with the requirement, which was dated August 17, 1960, and required the information and production of documents on or before September 19, 1960. The trial judge directed that the time for invoking the penalty should commence from the date of his order, May 1, 1961. During the course of the proceedings there was of course no attempt to proceed by the respondent. It would appear to be reasonable to fix August 1, 1962, as the date for compliance.

No order as to costs was made by Morand J., or by the Court of Appeal. The appellant might well have been satisfied that it had done all that it should in appealing to the Court of Appeal, but it applied for and obtained leave from that Court to appeal to this Court. The appellant must pay the costs of this appeal.

The judgment of Locke, Cartwright, Fauteux, Martland and Ritchie JJ. was delivered by

CARTWRIGHT J.:—The course of the proceedings in the Courts below and the relevant portions of the record are set out in the reasons of the Chief Justice.

I agree that the appeal fails.

I do not find it necessary to deal with all the arguments which were addressed to us as I have reached the conclusion that on the facts set out in the stated case read with the admissions of counsel as to the inferences which should be drawn therefrom it has been shewn that in addressing the requirement to the appellant the Minister was acting for purposes related to the administration or enforcement of the *Income Tax Act*.

1962  
 CANADIAN  
 BANK OF  
 COMMERCE  
 v.  
 ATTORNEY  
 GENERAL  
 OF CANADA

I do not base my judgment on the view that it has been established that the liability to tax of the Union Bank of Switzerland is under investigation, a view which I understood counsel for the respondent to reject; on the record it appears to me that the liability of that bank may or may not be under investigation.

Cartwright J.

Paragraphs 2 and 11 of the stated case are as follows:

2. The Requirement mentioned in the Writ of Summons herein does not relate in any way to the administration or enforcement of the Income Tax Act as respects the liability for tax of the plaintiff itself.

\* \* \*

11. The information to be gathered together and produced to comply with the said Requirement includes a great deal of private information in respect of the business and affairs of the Union Bank of Switzerland and of many other corporations and individuals, some resident in Canada and some not resident in Canada.

Inferences (b) and (c) which counsel agreed should be drawn are as follows:

- (b) The said Requirement relates to a genuine and serious inquiry into the tax liability of some specific person or persons.
- (c) The Minister has reason to believe that such person or persons under investigation are among those referred to in the Special Case.

When these are read together it appears to be common ground, (i) that the requirement addressed to the appellant relates to a genuine and serious inquiry into the tax liability of some specific person or persons, (ii) that the Minister has reason to believe that such person or persons are among those referred to in the special case, (iii) that the persons referred to in the special case are those mentioned in paragraph 11, "the Union Bank of Switzerland and many other corporations and individuals some resident in Canada and some not resident in Canada" and (iv) that the answer to the requirement will provide a great deal of private information in respect of the business and affairs of the persons referred to in item (iii) and therefore in respect of the business and affairs of the person or persons into whose liability to tax inquiry is being made.

I agree with the Chief Justice and with Porter C.J.O. that the circumstance that the answer to the requirement will disclose private transactions involving a number of persons who are not under investigation and may not be liable to tax does not invalidate the requirement.

The purpose of the requirement, then, is to obtain information relevant to the tax liability of some specific person or persons whose liability to tax is under investigation; this is a purpose related to the administration or enforcement of the Act. As I have reached the conclusion that the existence of this purpose is established by the material in the record, I do not find it necessary to examine the arguments addressed to us on the question of the incidence of the burden of proof.

On the question, fully argued before us, whether the test to be applied in determining the validity of a requirement is subjective or objective, I agree with and desire to adopt the following passage in the reasons of Porter C.J.O.

In the present case the condition is objective, and the question whether he (i.e. the Minister) is acting for the purpose specified in the Act is subject to review, even though he may be acting in an administrative capacity. This question involves an interpretation of the Act and its application to the circumstances disclosed. However, once it is established as in this case that the Minister is acting for the purposes specified in the Act, his acts within this scope are administrative and not judicial, and as such are not subject to review.

For these reasons I would dispose of the appeal as proposed by the Chief Justice.

*Appeal dismissed.*

*Solicitors for the plaintiff, appellant: Blake, Cassels & Graydon, Toronto.*

*Solicitors for the defendant, respondent: Cassels, Brock & Kelley, Toronto.*

---

1962  
CANADIAN  
BANK OF  
COMMERCE  
v.  
ATTORNEY  
GENERAL  
OF CANADA  
Cartwright J.