

INCOME TAX

ADMINISTRATION AND ENFORCEMENT

Motion by applicant to vary prior compliance order by seeking to add condition that requirement “to provide” documents for audit include requirement that documents be “delivered” to applicant’s premises — Original order made pursuant to *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1 (ITA), s. 231.7, *Excise Tax Act*, R.S.C., 1985, c. E-15 (ETA), s. 289, in contemplation of pending audit by applicant, requiring respondents to provide applicant with certain documents — Respondents uncooperative from outset (when applicants first requesting material), found to be in contempt of compliance order — Dispute arising between parties regarding how expression “to provide” to be understood, applied — Applicant taking position that given circumstances, history of proceedings, respondents to provide, deliver materials to applicant’s offices — Respondents taking position that only required to provide access to material, make it available for review, at its own address — Meaning of “to provide” at ITA, s. 231.7(1) at issue — More specifically, when ordered “to provide” documents to applicant, must taxpayer simply make them available, or must taxpayer physically deliver them to auditors? — “Provide” not defined in ITA, s. 231.7, lack of case law interpreting meaning thereof in ITA, ETA, s. 289.1 — Wording of ITA, s. 237.1 speaking of judge ordering person to “provide any access, assistance, information or document sought by the Minister” — Had Parliament only wanted to provide access, words “assistance, information or document” would not have been added — Parliament intending that “provide” have flexible meaning — While audits ordinarily taking place at taxpayer’s premises, present matter not ordinary — Factors raised in *Canada (National Revenue) v. Cameco Corporation*, 2019 FCA 67 relating to “scope and manner” of audit applicable herein — Applicant entitled to determine “scope and manner” of audit — Preparing, planning how audit will be conducted squarely falling within this arena — Respondents’ lengthy tax history weighing against them — Material to be provided to applicant by delivery via courier pick-up at applicant’s expense — Motion granted.

CANADA (NATIONAL REVENUE) V. MONTANA (T-1147-16, T-1148-16, 2019 FC 900, Diner J., reasons for order dated July 8, 2019, 47 pp.)