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## Revisiting a Guilty Plea to Avoid Debarment from Public Contracts

Businesses facing criminal or regulatory charges may be tempted to plead guilty if the proposed fine is dwarfed by the costs that a defence and a trial would necessarily entail. However, a fine is only one of the consequences that a guilty plea may trigger. In fact, a guilty plea or a conviction for certain offences – such as corruption, antitrust and tax offences – can debar a business from entering into public contracts in Canada and abroad.

Can a business that has pleaded guilty too hastily revisit its decision and fight the charges in order to avoid debarment? It can – according to a recent decision of the Superior Court of Québec in [9060-1766 Québec inc. c Agence de revenu du Québec, 2015 QCCS 3339](#). In this case, a company had been charged with submitting inaccurate information to the tax authorities. Since the proposed fine was a trivial \$500, the company decided not to challenge the charges and pleaded guilty instead. When the company realized later that, as a result of the guilty plea, it was debarred from entering into contracts with the Québec government, it applied to the Superior Court of Québec for authorization to withdraw its guilty plea.

The authorization was granted. According to the Court, there was no evidence that the company – which had not sought legal advice – knew or could have known the “catastrophic” [translation] consequences of its guilty plea. The Court further suggested that, in the context of regulatory offences, prosecutors would be well advised to state the collateral consequences of a guilty plea in the statement of offence in order to ensure that the accused made an informed decision. Interestingly, the Court highlighted that debarment could constitute an “extreme sanction” and the “death” [translation] of a company that regularly contracts with the provincial government.

The decision demonstrates courts’ awareness of the challenges faced by businesses that regularly contract with the government in an environment in which regulatory investigations are on the rise. Nonetheless, it must be recognized that authorizations to withdraw guilty pleas are exceptional and rarely granted. Courts will not allow parties to revisit their decision simply because they have afterthoughts or regrets about plea consequences that were reasonably foreseeable. That is why businesses – especially those dealing with the government on a frequent basis – must be vigilant when analyzing the impact of a guilty plea. Otherwise, what might seem an easy way to put an end to a criminal or regulatory investigation could actually result in very onerous consequences.