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Québec Court of Appeal Says Current Civil Jurisdiction of the Court of Québec Is Unconstitutional

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A seven-member panel of the Québec Court of Appeal (QCA) recently rendered an important decision regarding the civil and administrative jurisdiction of the Court of Québec (CQ), a provincial court. The decision follows a reference submitted to the QCA by the Québec government in the wake of a legal proceeding filed by judges of the Superior Court of Québec (QSC) contesting the jurisdiction of the CQ. In its decision, the QCA examined (i) the constitutional limits on the civil monetary jurisdiction of provincially appointed courts; and (ii) the scope of administrative review by such courts. The decision, released on September 12, 2019, is expected to trigger legislative changes in Québec within the coming year.

The Civil Monetary Jurisdiction of the CQ

Unlike the provincial courts of other provinces, the CQ has long had broad civil jurisdiction. Since January 1, 2016, the CQ has had exclusive jurisdiction over civil claims of less than $85,000. As a comparison, the Alberta Provincial Court has jurisdiction for civil disputes not exceeding $50,000, and in other provinces the provincial courts have jurisdiction over matters far below that amount (between $25,000 and $10,000). In July 2017, the Chief Justice and the Senior Associate and Associate Chief Justices of the QSC filed proceedings to challenge the breadth of the CQ's exclusive jurisdiction, asserting that it violated the constitutionally guaranteed jurisdiction of the QSC. The QSC is a federally appointed court under the *Constitution Act, 1867*, with jurisdiction based on that of the royal superior courts of England.

In August 2017, the Québec government referred the matter directly to the QCA. In its decision, the QCA analyzed historical data and expert evidence regarding the structure of the Québec judiciary prior to Confederation, current statistical data and the current statutory landscape in Québec and in other Canadian provinces. The QCA held that the Constitution requires that all substantial civil disputes be adjudicated by the QSC. It further held that the breadth of the jurisdiction of the CQ presently exceeds this substantiality threshold.

However, the QCA did not decide what the threshold ought to be and chose to leave that precise determination to the Québec government, though it noted that the limit must currently be between $55,000 and $70,000. The QCA suspended the effect of its opinion for one year to allow Québec's National Assembly to fashion the appropriate amendments to the *Code of Civil Procedure*. The QCA also held that all decisions that have already been rendered by the CQ or that will be rendered in the coming year are to be considered valid.

Despite the one-year suspension, the decision creates uncertainties that may need to be addressed by the Québec courts in the future, including in respect of civil proceedings of a value between $70,000 and $85,000 (at the least) which will not be completed in the coming year. Such proceedings may apparently inevitably need to be transferred to the QSC. In our view, the questions of whether this transfer can occur prior to the expiration of the one-year suspension in certain circumstances or whether new proceedings of a value exceeding $70,000 can already be filed with the QSC remain to be further clarified by the courts. The decision may also be appealed to the Supreme Court of Canada (SCC). If it is not appealed, the National Assembly will have to act quickly to address the QCA's decision. The federal government may also wish to appoint new judges to help manage the civil caseload of the QSC, which will increase as a result of the QCA's decision.

Administrative Review by the CQ

The QCA also examined the administrative law jurisdiction of the CQ. In Québec, various provincial statutes provide that decisions of administrative decision-makers can be appealed to the CQ (i.e., a "statutory appeal"). Over the years, the case law has confirmed that the CQ must, when it decides a statutory appeal, adopt the same deferential approach used by the QSC in the context of judicial review.

While the QCA confirmed that statutory appeals are now functionally analogous to judicial review, it noted that the application of a deferential standard is warranted by binding precedent. The QCA further confirmed that the administrative jurisdiction of the CQ does not breach the Constitution as long as the QSC ultimately retains the power to review the administrative decision by way of a judicial review of the CQ's decision.

Therefore, as the law currently stands, a litigant may be required to undergo a functionally equivalent process twice: first in the context of a statutory appeal before the CQ and then in the context of a judicial review before the QSC. In its decision, the QCA expressly noted that neither party had presented evidence that this duplication made the possibility of judicial review in the QSC theoretical (thereby violating the jurisdiction of the QSC). Such constitutional argument therefore remains open for determination if any litigant were to gather the appropriate evidence.

That being said, the QCA's decision may not be the last word on statutory appeals in 2019. The SCC is expected to render three important administrative law decisions in the coming months (*Minister of Citizenship and Immigration v Vavilov*; *Bell Canada v Attorney General of Canada*; *National Football League v Attorney General of Canada*). In the course of the hearings, which were held in December 2018, numerous interveners (including the Attorney General of Québec and the *amici curiae*) submitted that the SCC should limit the deferential approach to judicial review proceedings and overturn its application in the context of statutory appeals.

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