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Revenu Québec May Seize Records Relating to Accounts Held Outside Québec by Banks Operating in Québec

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The Supreme Court of Canada has dismissed the appeal of 1068754 Alberta Ltd. (Alberta Ltd.) against a judgment rendered by the Court of Appeal of Québec, which in turn had upheld the decision rendered by the Superior Court.

The appeal originated from Alberta Ltd.'s contestation of a formal demand for information and documents (Demand) issued by the Agence du revenu du Québec (ArQ) to a branch of the National Bank of Canada (Bank) located in Calgary (Calgary Branch).

In a decision released on June 27, 2019, the Supreme Court found that the Demand was validly issued to the Bank and that the ArQ had not acted extraterritorially or beyond its jurisdiction by issuing the Demand to a branch of the Bank located outside Québec in compliance with requirements imposed by the *Bank Act*.

Background

Alberta Ltd. is the sole trustee of the DGGMC Bitton Trust (Trust), which was settled in 2003 and has at all times been governed by the laws of Alberta.

The ArQ initiated an audit of the Trust to determine whether its central management and control was exercised in Québec such that the Trust would be resident in Québec for tax purposes. As part of its audit, the ArQ sent the Demand to the Calgary Branch to request bank records and certain other information and documents relating to the Trust pursuant to section 39 of the Québec *Tax Administration Act*.

Alberta Ltd. sought to quash the Demand, arguing that according to the *Bank Act*, the Calgary Branch must be considered an entity distinct from the Bank for the purpose of any type of seizure, including a formal demand for information and documents such as the Demand. Alberta Ltd. further argued that the Demand was akin to a "writ" or "process" issued pursuant to a legal proceeding or an order issued by a court, which must be served on a specific branch of a bank pursuant to the *Bank Act* in order to bind a person's property or deposit accounts in the bank's possession. For the purpose of serving these specific documents, a branch is thus considered an entity separate from the Bank. As a result, Alberta Ltd. submitted that the ArQ acted outside its constitutional power of taxation within the province in serving the Demand on the Calgary Branch and therefore such service was invalid.

Supreme Court Ruling

The Supreme Court found that documents such as the Demand issued by an administrative agency are not writs and processes as such documents are exclusively issued by courts or as part of court proceedings. As a result, the Demand did not fall within the requests, processes and orders that are effective only when served on a specific branch, as opposed to the bank as a whole.

The Supreme Court added that in order for the Calgary Branch to be considered distinct from the Bank for the purpose of the Demand, the Demand must seek to bind property that belongs to a customer, in this case the Trust. However, while the Demand may have compelled the production of information about the Trust's property, it did not seek to encumber the property itself; and in any event, the Demand did not seek to bind property belonging to the Trust as banking records and information are the property of the bank, not the customer.

The Supreme Court further held that the Demand was served on the Calgary Branch in compliance with a provision of the *Bank Act* that requires that a notification sent to a bank with respect to a customer is effective only if sent to the branch where the customer has a bank account. Thus, once the Demand was served on the Calgary Branch where the Trust's bank account was located, it was binding on the Bank as a whole.

Finally, the Supreme Court held that the ArQ did not act extraterritorially by issuing the Demand to the Calgary Branch. It reiterated that the Demand was directed at the Bank, a corporate entity operating and headquartered in Québec, as a single entity. The requirement imposed by the *Bank Act* that the Calgary Branch be served with the Demand did not give the Demand an extraterritorial effect; it merely provided a practical means to notify the Bank as a whole. The Court added that enforcement of the Demand in the event of the Bank's failure to comply could have been effected in Québec.

However, it is important to note that the Supreme Court specified that it was not clear whether, in a different case, the ArQ would have the authority to issue a formal demand to a corporate entity having no operations in Québec.

Impact of the Decision

The Supreme Court's decision confirms that the ArQ may validly, for the purpose of enforcing Québec's tax laws, request and seize documents related to an account held at a bank branch located in a province other than Québec when the bank has operations in Québec. Therefore persons on whom duties are imposed under Québec's *Taxation Act* or any other fiscal law administered by the Minister of Revenue of Québec should be aware that documents related to their bank accounts situated in another province – but held with a bank operating in Québec – may be obtained through the exercise of the ArQ's administrative audit powers.

It must be noted, however, that the decision was rendered on the basis of the specific requirements imposed by the *Bank Act* with respect to the communication of requests and notices to Canadian banks. It should not be read as conferring upon the ArQ the jurisdiction to enforce Québec's taxation statutes outside its territorial boundaries, including by issuing formal demands for information and documents that are beyond its jurisdiction, since the *Tax Administration Act* does not provide for a specific power to require foreign-based information – contrary to the Canadian *Income Tax Act*.

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