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The Long Arm of Canadian Securities Laws: The Supreme Court of Canada Confirms the Cross-Border Reach of Securities Enforcement

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In its recent decision, *Sharp v Autorité des marchés financiers*, the Supreme Court of Canada (SCC) upheld the jurisdiction of Québec's Financial Markets Administrative Tribunal (FMAT)—a specialized provincial securities tribunal—over out-of-province defendants.

The majority (7-1) found that the FMAT had jurisdiction over the out-of-province defendants because (i) there is a “sufficient connection” with Québec due to the defendants’ alleged participation in a fraudulent securities manipulation scheme with important ties to Québec; and (ii) it is consistent with the principles of order and fairness for securities regulation to apply extraterritorially, particularly given the cross-border nature of securities manipulation and fraud.

Key Takeaways

- Although the SCC’s reasons focus primarily on a conceptual legal point—that the starting point for analyzing jurisdiction in Québec is the *Civil Code of Québec* (CCQ)—the key takeaway is that the cross-border nature of securities regulation in Canada can justify transnational enforcement proceedings.
- Accordingly, unless a statute provides otherwise, provincial securities legislation may apply to non-residents where there is a “sufficient connection” or “real and substantial connection” between the province and those persons; and the application of this legislation to non-residents does not offend the principles of order and fairness. In such circumstances, the provincial securities adjudicators or regulators may have jurisdiction over non-resident defendants.
- This legal test applies across Canada, thereby ensuring a uniform analytical approach to cross-border securities enforcement.

Decision

As a threshold matter, the SCC confirmed the status of the CCQ as the “foundation of all other laws” in Québec, including for the purpose of determining the jurisdiction of administrative authorities in Québec. However, in the present case, the SCC found that the CCQ did not grant the FMAT jurisdiction because the nature of the administrative proceeding was not subject to the CCQ’s rules concerning jurisdiction.

Nevertheless, the SCC found that the FMAT has jurisdiction over the out-of-province defendants at issue. First, the Court found that the FMAT had adjudicative jurisdiction by virtue of a statutory grant of jurisdiction to “exercise the functions and powers assigned to it” under the Québec *Securities Act*, among other statutes, and to do so “in the public interest.”

Second, applying the well-established test for the extraterritorial application of provincial laws, as decided in *Unifund Assurance Co. v Insurance Corp. of British Columbia*, the SCC concluded that Québec’s securities scheme could apply extraterritorially in the present case, for the following reasons:

- There is a sufficient connection between Québec and the out-of-province defendants:
 - They allegedly used Québec as the “face” of an alleged pump-and-dump scheme.

- They participated in marketing or financing efforts in relation to the scheme and partly targeted Québec residents.
- The company through which the scheme operated was a reporting issuer in Québec.
- The company's director was a Québec resident.
- Further, the SCC held that the sufficient connection analysis must recognize the transnational nature of securities regulation and the public interest in addressing international market manipulation.
- There is a sufficient connection between Québec and the out-of-province defendants:
 - It is fair to the out-of-province defendants who chose to enter Québec's securities marketplace.
 - It does not offend the principle of order or interprovincial comity, particularly because of the cross-border nature of securities manipulation and fraud; therefore, regulators from multiple jurisdictions may exercise jurisdiction over the same alleged scheme.
- Ultimately, because of the transnational nature of contemporary securities manipulation and fraud, a flexible and purposive approach is warranted.

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