Out-of-province bank accounts are no longer immune from scrutiny by Quebec tax authorities, says the Supreme Court of Canada

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In the recent decision in ***1068754 Alberta Ltd*. v. *Agence du revenu du Québec,*** the Supreme Court of Canada confirmed a Quebec Court of Appeal decision permitting Quebec's tax authorities to require the production of bank records of the Calgary branch of a financial institution doing business in Quebec.

As part of an audit of the Alberta trust DGGMC Bitton Trust (Trust), the Agence du revenu du Québec (ARQ) sought to determine whether the Trust was resident in Quebec and, if so, whether taxes were owed in Quebec. To do so, the ARQ sought the production of the Trust's bank records from a Calgary branch of the National Bank of Canada (National Bank) via a request under section 39 of the Quebec *Tax Administration Act*. The formal demand for information and documents was sent directly to the branch rather than to National Bank's head office in Quebec in order to comply with the requirements of subsection 462(2) of the *Bank Act*, which states that demands be sent to the branch where the account is located.

The debate focused on whether the ARQ was compelled by the *Bank Act* to send the demand to the Calgary ranch, and if in so doing the ARQ acted extraterritorially. The Superior Court of Quebec dismissed the Trust's application to strike the ARQ's demand, finding that the demand did not constitute a seizure. Thus, the ARQ could send demands in other provinces, such as Alberta. Subsequently, the Quebec Court of Appeal found, in favour of the ARQ, that the demand was indeed a seizure as it infringed on an expectation of the Trustee's privacy, but that the ARQ had not exceeded its territorial jurisdiction under the *Bank Act*.

The Supreme Court, in a unanimous decision authored by Justice Rowe, decided that the ARQ's demand addressed directly to the Calgary branch was indeed a seizure, but did not constitute an extraterritorial act. Subsection 462(2) of the *Bank Act* does not treat the branch as distinct from the larger National Bank. Most importantly, the National Bank, as a corporate entity, operates within the territory of Quebec. Thus, for the purposes of the analysis under subsection 462(2), the Supreme Court considered the National Bank to be a single entity, and its branches are not considered to be distinct corporate entities. On the other hand, if a corporate entity does not have operations in Quebec, the validity of the ARQ's demand would be less certain.

By

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