SUPREME COURT OF CANADA

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Case in Brief: *Sharp v. Autorité des marchés financiers*

Judgment of November 17, 2023 | On appeal from the Court of Appeal for Quebec

Neutral citation: 2023 SCC 29

The Supreme Court dismisses the appeals of four British Columbia residents accused of stock price manipulation by a Quebec financial authority.

This case is about whether a Quebec administrative tribunal had jurisdiction over out-of-province residents accused of fraudulently manipulating the stock prices of a company with links to Quebec.

In 2017, l'Autorité des marchés financiers, an administrative agency that regulates Quebec's financial sector, brought an action before the Financial Markets Administrative Tribunal, an administrative tribunal in Quebec. It alleged that four residents of British Columbia (the defendants) took part in a transnational "pump-and-dump" scheme, and in doing so, breached Quebec's *Securities Act*, a law designed to protect the public interest in the securities market. In a pump-and-dump scheme, promoters boost the price of a stock by releasing false or misleading statements and then profit by selling their holdings in that stock at much higher prices. In this case, the defendants allegedly worked together to buy the shares of a shell company, give it a legitimate face, promote its business, sell its shares for a profit and distribute this profit among themselves.

Despite the defendants being from outside Quebec, the Autorité des marchés financiers alleged that their scheme had enough ties to the province to apply Quebec's securities regulatory scheme to them: the shell company was a reporting issuer in Quebec with a Montréal business address; its director was a Quebec resident when the scheme was implemented; its promotional activities were accessible to Quebec residents; and, ultimately, Quebec investors lost money. The defendants challenged the action, claiming the Tribunal did not have jurisdiction over them because they did not live in Quebec.

The Tribunal dismissed the defendants' challenge, ruling that it had jurisdiction over them under the *Act respecting the Autorité des marchés financiers*. Section 93 of that act says the Tribunal has jurisdiction to make determinations under the province's *Securities Act*. Together, these acts form Quebec's securities regulatory scheme. It also applied the Supreme Court of Canada's decision in an unrelated case, which held that a provincial regulatory scheme, such as the Quebec scheme currently before the Supreme Court in these appeals, can apply to an out-of-province defendant when there is a "sufficient connection" or a "real and substantial connection" between the province and the defendant. What constitutes a "sufficient" connection depends on the relationship between the province that enacted the legislation, the subject matter of the legislation and the individual or entity sought to be regulated by it.

The Superior Court of Quebec dismissed the defendants' requests to review the Tribunal's decision, concluding the Tribunal had properly assumed jurisdiction over them. The Court of Appeal of Quebec dismissed the defendants' subsequent appeals, but the three judges disagreed on the legal basis on which to do so. The majority agreed the Tribunal had jurisdiction because a real and substantial connection existed between the province and the defendants. The concurring judge would have dismissed the appeals based on the rules set out in the *Civil Code of Quebec* with respect to the international jurisdiction of Quebec authorities. On appeal before the Supreme Court of Canada, the defendants asked whether the Tribunal was correct in assuming jurisdiction, and if so, on which legal basis.

The Supreme Court has dismissed the appeals.

The Tribunal correctly concluded it had jurisdiction over the defendants.

Writing for the majority, Chief Justice Wagner and Justice Jamal said the Tribunal has jurisdiction to make determinations under the Quebec securities regulatory scheme. Its jurisdiction can extend to out-of-province defendants when there is a "real and substantial" connection (also described as a "sufficient connection") between them and Quebec. As Chief Justice Wagner and Justice Jamal wrote, "it would defeat the purpose of the cross-border nature of modern securities regulation to allow the [defendants] to escape the reach of Quebec's regulatory oversight".

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The allegations that the defendants used Quebec as the face of their securities manipulation and injured Quebec investors establish a sufficient connection to give the Tribunal jurisdiction over them. For these reasons, Chief Justice Wagner and Justice Jamal dismissed the appeals. This means the action brought by the Autorité des marchés financiers against the defendants before the Tribunal can proceed.

Breakdown of the decision: ***Majority*****:** Chief Justice Wagner and Justice Jamal dismissed the appeals (Justices Karakatsanis, Rowe, Martin, Kasirer and O'Bonsawin agreed) | ***Dissenting***: Justice Côté would have allowed the appeals.

More information: Decision | Case information | Webcast of hearing

Lower court rulings: Decision (Superior Court of Québec) | Appeal (Court of Appeal of Québec)
