OSLER

Québec Court of Appeal limits the Court of Québec's jurisdiction

SEPTEMBER 20, 2019 7 MIN READ

Related Expertise

- Corporate and Commercial Disputes

Authors: François Laurin-Pratte, Éric Préfontaine

Will this prove to be an obstacle to Québec's efforts to encourage access to justice?

Québec's Court of Appeal rendered its long-awaited ruling on the scope of the Court of Québec's jurisdiction on September 12, 2019. Essentially, it concluded that the Court of Québec's exclusive jurisdiction to hear civil cases in which the value is less than $85,000 is unconstitutional, because it usurps the powers reserved to the Superior Court.

Background

In July 2017, the Chief Justices of the Superior Court of Québec filed an application for declaratory judgment challenging the jurisdiction of the Court of Québec on two levels.

First, they challenged the monetary ceiling of the Court of Québec in civil matters. Article 35 of the *Code of Civil Procedure* (CCP) has given the Court of Québec exclusive jurisdiction to hear civil cases in which the value is less than $85,000 since 2016. Second, they challenged the power that several statutes attributed to the Court of Québec to review the decisions of a number of administrative bodies. They argued that both instances usurped the powers reserved to the Québec Superior Court by section 96 of the *Constitution Act, 1867* (the Constitution).

On August 30, 2017, the Government of Québec availed itself of the referral process to seek the opinion of Québec's Court of Appeal. It was this proceeding that gave rise to the *Reference to the Court of Appeal of Québec pertaining to the constitutional validity of the provisions of article 35 of the Code of Civil Procedure which set at less than $85,000 the exclusive monetary jurisdiction of the Court of Québec and to the appellate jurisdiction assigned to the Court of Québec*, 2019 QCCA 1492.

Reasons and conclusions

The monetary jurisdiction of the Court of Québec in civil matters

The legislator can limit the Superior Court's inherent powers in favour of the Court of Québec. At the time of Confederation in 1867, some lower courts — the predecessors of the Court of Québec — were already hearing certain civil cases up to a value of $100. Since then, the Supreme Court of Canada has ruled that the Constitution allows that limit to be raised occasionally; the important thing is to preserve the jurisdiction of the superior courts to hear

what are known as substantial claims (i.e., those that raise serious difficulties and among which the superior courts can ensure consistency across Canada). But how high can the limit be raised?

The Québec Court of Appeal considered the following factors for defining substantial claims:

- Using the nominal GDP method, the $100 ceiling of 1867 would be worth between $55,000 and $60,000 in 2017, the year article 35 CCP was passed.
- The monetary ceiling for automatic appeals to the Court of Appeal is $60,000, which suggests that the legislator deems claims of that amount or over that amount to be substantial.
- The successive increases that led to the $85,000 ceiling have caused an exponential decrease in the number of cases filed in the Québec Superior Court, which indicates that its jurisdiction is being eroded accordingly.

The Court of Appeal concluded that article 35 CCP violates the Constitution because it encroaches on the Québec Superior Court's inherent jurisdiction in civil matters. The ceiling should be between $55,000 and $70,000 instead.

The Court of Québec's power to review administrative decisions

Several specific laws provide the right to appeal decisions made by administrative bodies such as the Autorité des marchés financiers (a financial markets authority), the Commission d'accès à l'information (a freedom of information commission) and others. Those appeals are heard by the Court of Québec. However, section 96 of the Constitution gives the superior courts the power to control the legality of administrative decisions. Does that mean the Court of Québec's appellate powers usurp a function peculiar to the Superior Court?

The Québec Court of Appeal conducted two tests in order to respond to that question. First, the nature of the power conferred on the Court of Québec had to be characterized to determine whether it is a judicial power reserved to the superior courts under the Constitution. Second, it had to be determined whether the power at issue was removed from the Superior Court when it was granted to the Court of Québec.

The first test raised three questions with regard to the nature of the power:

1. Is the power attributed to the Court of Québec one that the superior courts exercised at the time of Confederation in 1867?
2. If so, is it a judicial power?
3. If it is, is the power in question merely subsidiary or ancillary to a mainly administrative function, or does it support the administrative system more broadly?

The Court of Appeal confirmed that the Court of Québec is acting as a court of justice when it hears appeals of administrative decisions, not as an administrative body. That means that the deference which courts of justice owe to administrative bodies when reviewing their decisions is also owed by the Court of Québec. The Court of Québec must therefore follow judicial review standards, not appeal standards. That entails affirmative answers to the first two questions above. When it hears appeals of administrative decisions, the Court of Québec is exercising a judicial power that corresponds functionally to the superintending and reforming powers which the superior courts have exercised since Confederation.

With regard to the third question, the Québec Court of Appeal concluded that the Court of

Québec is in no way a part of the systems governing administrative bodies. It is neither subsidiary nor ancillary to those systems, nor is it a mechanism for accomplishing the legislator's objective in creating such systems. To sum up, when the Court of Québec hears administrative appeals, it is in fact exercising a judicial power that is attributed to superior courts.

The analysis, however, does not end there. The second test involved examining whether the Superior Court was stripped of this power. All the regimes analyzed preserve the Superior Court's jurisdiction to review the legality of administrative decisions. The appeal to the Court of Québec takes place somewhere between the administrative decision and the application for judicial review to the Superior Court. However, it does not remove any of the latter's power. The superintending and reforming powers of the Superior Court are therefore not usurped. The right to appeal to the Court of Québec is thus considered to be in conformity with the Constitution.

Comments

By broadening the jurisdiction of the Court of Québec every year, the legislator sought to improve access to justice. The decision of the Québec Court of Appeal is a reminder that access to justice is important but that the legislator's solutions must comply with the Constitution. This means that, since the Constitution requires superior courts to ensure a certain degree of national consistency with respect to the most important decisions, the legislator cannot transfer to the Court of Québec the powers reserved to the Québec Superior Court in the name of access to justice.

That said, the Court of Appeal confirmed the validity of appeals of administrative decisions to the Court of Québec. However, it doubts the usefulness of these appeal channels. Inasmuch as the Superior Court must retain its power to review the legality of administrative decisions, the result is duplication between the application for judicial review before the Superior Court and the appeal to the Court of Québec, all the more so since both courts apply the same standard of judicial review. Considering that the goal is to facilitate access to justice, one can't help but wonder about the usefulness of this duplication. Given the multiplication of administrative bodies and channels to appeal to the Court of Québec, we should ensure that this results in a real benefit for litigants, in terms of both cost and timeliness.

Note that the Québec Court of Appeal suspended its decision on the invalidity of the monetary jurisdiction of the Court of Québec for one year to give Québec legislators time to amend article 35 CCP to lower the $85,000 ceiling. The Court of Appeal accordingly made a point of specifying that all decisions rendered prior to its decision remain valid until expiry of the suspension.