



**SUPREME COURT OF CANADA**

**CITATION:** Sharp v. Autorité des  
marchés financiers, 2023 SCC 29

**APPEAL HEARD:** January 18, 2023

**JUDGMENT RENDERED:**

November 17, 2023

**DOCKET:** 39920

**BETWEEN:**

**Frederick Langford Sharp**

Appellant

and

**Autorité des marchés financiers**

Respondent

- and -

**Attorney General of Quebec, Shawn Van Damme, Vincenzo Antonio  
Carnovale, Pasquale Antonio Rocca and Ontario Securities Commission**

Interveners

**AND BETWEEN:**

**Shawn Van Damme, Vincenzo Antonio Carnovale and Pasquale Antonio**

**Rocca**

Appellants

and

**Autorité des marchés financiers**

Respondent

- and -

**Attorney General of Quebec, Frederick Langford Sharp and Ontario  
Securities Commission**  
Intervenors

**OFFICIAL ENGLISH TRANSLATION:** Reasons of Côté J.

**CORAM:** Wagner C.J. and Karakatsanis, Côté, Brown,\* Rowe, Martin, Kasirer,  
Jamal and O'Bonsawin JJ.

**JOINT REASONS FOR JUDGMENT:** Wagner C.J. and Jamal J. (Karakatsanis, Rowe, Martin,  
Kasirer and O'Bonsawin JJ. concurring)  
(paras. 1 to 138)

**DISSENTING REASONS:** Côté J.  
(paras. 139 to 212)

**NOTE:** This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

\* Brown J. did not participate in the final disposition of the judgment.

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**Frederick Langford Sharp**

*Appellant*

v.

**Autorité des marchés financiers**

*Respondent*

and

**Attorney General of Quebec,  
Shawn Van Damme,  
Vincenzo Antonio Carnovale,  
Pasquale Antonio Rocca and  
Ontario Securities Commission**

*Intervenors*

- and -

**Shawn Van Damme,  
Vincenzo Antonio Carnovale and  
Pasquale Antonio Rocca**

*Appellants*

v.

**Autorité des marchés financiers**

*Respondent*

and

**Attorney General of Quebec,  
Frederick Langford Sharp and  
Ontario Securities Commission**

*Intervenors*

**Indexed as: Sharp v. Autorité des marchés financiers**

**2023 SCC 29**

File No.: 39920.

2023: January 18; 2023: November 17.

Present: Wagner C.J. and Karakatsanis, Côté, Brown,\* Rowe, Martin, Kasirer, Jamal and O’Bonsawin JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

*Constitutional law — Extraterritoriality — Jurisdiction — Constitutional applicability of Quebec regulatory scheme to out-of-province residents — Quebec administrative tribunal claiming jurisdiction over out-of-province defendants in securities enforcement proceeding — Whether tribunal properly assumed jurisdiction — Civil Code of Québec, preliminary provision — Act respecting the Autorité des marchés financiers, CQLR, c. A-33.2, s. 93 — Securities Act, CQLR, c. V-1.1.*

Four British Columbia residents (the “defendants”) are alleged by the administrative agency that regulates Quebec’s financial sector, the Autorité des marchés financiers (“AMF”), to have engaged in a transnational “pump-and-dump”

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\* Brown J. did not participate in the final disposition of the judgment.

securities manipulation scheme. The defendants allegedly acted in concert to (1) acquire the shares of a shell company, (2) give it a legitimate face, (3) promote its business, (4) sell their shares for a profit, and (5) distribute this profit among themselves. The AMF also alleged that the scheme had several ties to Quebec sufficient to apply Quebec's securities regulatory scheme to the defendants: 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 AMF brought an originating pleading before Quebec's Financial Markets Administrative Tribunal ("FMAT") alleging that the defendants contravened the Quebec *Securities Act*. It asked the FMAT to make various orders against the defendants. The defendants filed motions for a declinatory exception challenging the FMAT's jurisdiction over them as out-of-province defendants. The FMAT dismissed the defendants' motions. It ruled that it had jurisdiction over them under s. 93 of the *Act respecting the Autorité des marchés financiers*, which grants the FMAT jurisdiction to make determinations under the *Securities Act*, in light of the Court's decision in *Unifund Assurance Co. v. Insurance Corp. of British Columbia*, 2003 SCC 40, [2003] 2 S.C.R. 63, which held that a provincial regulatory scheme constitutionally applies to an out-of-province defendant when there is a "sufficient connection" or a "real and substantial connection" between the province and the defendant.

The Superior Court of Quebec dismissed the defendants' applications for judicial review and held that the FMAT properly assumed jurisdiction. The court stated that the FMAT correctly recognized the limits of its extraterritorial reach by applying the "real and substantial connection" test set out in *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572, and that the FMAT correctly applied the *Unifund* test for the constitutional applicability of provincial legislation. The majority of the Court of Appeal of Quebec dismissed the defendants' appeals. It concluded that the real and substantial connection test in *Unifund* addresses the constitutional applicability of the Quebec securities scheme to non-residents who allegedly engaged in a securities manipulation scheme with connections to Quebec, and that the FMAT correctly concluded there is a real and substantial connection between Quebec and the defendants and properly assumed jurisdiction. The majority also ruled that although the *Civil Code of Québec* ("C.C.Q.") acts as suppletive law for many matters, including certain aspects of public law, the private international law rules in Book Ten of the *C.C.Q.* do not apply when no private rights are at issue. The concurring judge would have held that the FMAT has jurisdiction over the out-of-province defendants under the rules of private international law in Title Three of Book Ten of the *C.C.Q.*, either by analogy under art. 3148 para. 1(3) *C.C.Q.*, or, alternatively, under art. 3136 *C.C.Q.*

*Held* (Côté J. dissenting): The appeal should be dismissed.

*Per* **Wagner** C.J. and Karakatsanis, Rowe, Martin, Kasirer, **Jamal** and O'Bonsawin JJ.: The FMAT has jurisdiction over the defendants under the Quebec

securities scheme, which constitutionally applies to them. The FMAT has jurisdiction to make determinations under the *Securities Act*, including when there is a “real and substantial” connection, also described as a “sufficient connection”, between Quebec and out-of-province defendants. The allegations that the defendants used Quebec as the face of their securities manipulation and injured Quebec investors establish such a connection to give the FMAT jurisdiction over the defendants. The Quebec legislature has exercised its prescriptive legislative jurisdiction — its power to enact binding rules applicable to out-of-province parties with a real and substantial connection to Quebec. Those rules are engaged in the circumstances of the instant case. As a result, the FMAT also has adjudicatory jurisdiction, or the authority to hear this matter involving the defendants.

Under Quebec civil law, all interpretive exercises of laws governing persons, relations between persons, and property must begin with the *C.C.Q.*, although special legislation can derogate from the *C.C.Q.* when the legislature expresses its intention to do so. As its preliminary provision announces, the *C.C.Q.* lays down the *jus commune*, or the law of general application, of Quebec in all matters within the letter, spirit, or object of its provisions. It has a suppletive role and can fill gaps in special statutes to the extent that legislation is silent on a given matter, thus preventing a legal vacuum. The proper interpretive methodology in determining the relationship between the *C.C.Q.* and special statutes governing persons, relations between persons, and property is to start with the *jus commune* in the *C.C.Q.*, and then to ask whether the special statute complements or derogates from the *jus commune*.

The *C.C.Q.* does not simply lay down rules of private law on a narrow compass. The preliminary provision of the *C.C.Q.* provides that the *C.C.Q.* lays down the *jus commune*, and the *C.C.Q.* contains rules of public law and is an important source of administrative law in Quebec. As a result, the proper way to determine whether the *C.C.Q.* applies does not involve characterizing the right at issue as either a private law or public law matter. Book Ten of the *C.C.Q.*, which codifies the rules of private international law in Quebec, therefore applies as the *jus commune* beyond matters of private law to all matters within the letter, spirit, or object of the *C.C.Q.*'s provisions, and it applies to administrative tribunals like the FMAT regardless of whether private rights are at issue, unless otherwise provided by law. Furthermore, Title Three of Book Ten applies not just in cases of conflict of jurisdiction; it applies more broadly to determine the "International Jurisdiction of Québec Authorities".

The application of the interpretive methodology regarding the relationship between the *C.C.Q.* and special statutes in the instant case leads to the conclusion that the *C.C.Q.* does not grant the FMAT jurisdiction over the defendants. The FMAT's jurisdiction does not arise from art. 3148 para 1(3) or from art. 3136 *C.C.Q.* Article 3148 para. 1(3) *C.C.Q.* does not apply directly because the proceeding before the FMAT does not involve a personal action of a patrimonial nature, which implies the assertion of rights that by their very essence have a monetary value and are transmissible as property. Rather, the AMF has brought an action before the FMAT in the public interest, rather than in a strictly personal capacity. Its action aims to prevent future harm to the Quebec securities market and is neither restorative nor punitive. It



does not involve a person taking legal action against another based on personal rights that are transmissible as property. In addition, art. 3148 para. 1(3) *C.C.Q.* cannot be applied by analogy because there is no tenable analogy between a personal action of a patrimonial nature, which seeks the enforcement of a debt under private law, and a regulatory prosecution by the state, which seeks public interest remedies rather than simply private reparation. Such proceedings are of a fundamentally different legal character. As for art. 3136 *C.C.Q.*, it does not provide a basis for the FMAT's jurisdiction for two reasons. First, the AMF did not seek to rely on it — the Court has previously confirmed that it may be applied only if one of the parties raises it. Second, for it to apply, a Quebec authority must otherwise have no jurisdiction to hear a dispute. The FMAT, however, does have jurisdiction under the special jurisdictional rules of the Quebec securities scheme.

The FMAT has jurisdiction under two special statutes: the Quebec *Securities Act* and the *Act respecting the Autorité des marchés financiers*, now known as the *Act respecting the regulation of the financial sector*. Section 93 of the *Act respecting the Autorité des marchés financiers* provides that the FMAT's function is to make determinations regarding matters brought under the *Act respecting the Autorité des marchés financiers* and other Acts listed in the provision, including the *Securities Act*. It thus grants the FMAT jurisdiction over the adjudication of matters brought under the *Securities Act*. Section 94 grants the FMAT jurisdiction to take any measure to ensure compliance with any of the Acts referred to in s. 93. Sections 265, 273.1, and 273.3 of the *Securities Act* empower the FMAT to act in a broad range of

circumstances. These provisions must be read in conjunction with the *Act respecting the Autorité des marchés financiers*, which explicitly provides for the FMAT's jurisdiction to make determinations over matters brought under the two Acts.

Neither the *Securities Act* nor the *Act respecting the Autorité des marchés financiers* expressly provide for the FMAT to assert jurisdiction over out-of-province parties, or otherwise limits the territorial reach of the Quebec securities scheme over interprovincial or international transactions. To evaluate whether these statutes may be applied in such circumstances, the Quebec securities scheme must be interpreted to determine its territorial reach. This involves consideration of the Court's decision in *Unifund*, which holds that the permissible territorial application of provincial legislation is determined by assessing the sufficiency of the connection among the enacting jurisdiction, the subject matter of the legislation, and the individual or entity sought to be regulated, subject to the principles of order and fairness. The "real and substantial connection" test in *Unifund* is the accepted test for discerning the presumptively intended reach of federal legislation as well as the constitutionally permissible application of provincial legislation. It is concerned with the constitutional applicability of legislation and not with its constitutional validity. Moreover, it functions as a principle of statutory interpretation: it limits, or reads down, the territorial reach of otherwise broadly framed provincial legislation, consistent with the territorial restrictions on provincial legislative power in ss. 91 and 92 of the *Constitution Act, 1867*, by insisting on a "sufficient connection" between the legislation and the out-of-province defendant. It also relates to prescriptive legislative jurisdiction, rather

than adjudicatory jurisdiction. Furthermore, it is distinct from the “real and substantial connection” tests that the Court has developed elsewhere in the domain of conflicts of laws. The “real and substantial connection” test is a family of tests and requires different considerations in each of the varying contexts in which its formula is employed. For example, the “real and substantial connection” test set out in *Van Breda* applies in the context of tort claims at common law and does not apply in Quebec.

Interpreted in light of the *Unifund* test, the Quebec securities scheme provides for jurisdiction over out-of-province parties with a “sufficient connection” or “real and substantial connection” with Quebec. The “sufficient connection” analysis must recognize the transnational nature of modern securities regulation and the public interest in addressing international market manipulation. Securities regulation raises unique considerations that highlight the need for transnational enforcement. In the instant case, there is a sufficient connection between Quebec and the out-of-province defendants. The defendants allegedly used Quebec as the face of their alleged pump-and-dump scheme. They participated in marketing or financing efforts and partly targeted Quebec residents. The shell company through which the defendants operated their scheme was a reporting issuer in Quebec, and its director was a Quebec resident. 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. Applying the Quebec regulatory regime is fair to the defendants: their entrance into Quebec’s market was not accidental or irrelevant, but rather was an integral part of their securities manipulation operation. Moreover, applying the Quebec regulatory scheme does not

offend the principle of order or the related concept of interprovincial comity. Because contemporary securities manipulation and fraud are often transnational and extend across provincial and national borders, courts and tribunals must take a flexible and purposive approach when applying the principles of order and fairness in the securities context.

*Per Côté J. (dissenting):* The appeals should be allowed. At this stage of the proceedings, this case raises no issue regarding the constitutional applicability of the *Securities Act* but rather concerns the FMAT's adjudicative jurisdiction. The limits of that jurisdiction must be analyzed in light of the rules of private international law set out in Title Three of Book Ten of the *C.C.Q.* The application of those provisions in this case leads to the conclusion that the FMAT does not have adjudicative jurisdiction over the defendants and therefore cannot hear the matter.

The majority's approach conflates the concepts of adjudicative jurisdiction of a court or tribunal and constitutional applicability of legislation, as it deals interchangeably with the constitutional applicability of the *Securities Act* under the *Unifund* framework and the FMAT's jurisdiction under the rules of private international law. Both concepts involve the existence of a real and substantial connection. In the constitutional context, the real and substantial connection test affirms the constitutionally imposed territorial limits that underlie the requirement of legitimacy in the exercise of the state's power of adjudication. Thus, the applicability of provincial legislation to a defendant domiciled outside the province in question

depends on there being a sufficient connection between the enacting jurisdiction and the out-of-province individual or entity. Although this test relates more specifically to the connection between a province and an action, the purpose of the *Unifund* analysis is essentially to determine whether there is a viable cause of action on the merits. Conversely, from a private international law perspective, the real and substantial connection test relates to the exercise of the state's power of adjudication. The rules of private international law in force in a province are what confer adjudicative jurisdiction on a decision maker. In Quebec, these rules are set out in Book Ten of the *C.C.Q.* To be able to assume jurisdiction over a dispute, a provincial court or tribunal must have adjudicative jurisdiction under provincial legislation, which must itself have been validly enacted by the province in the exercise of its legislative jurisdiction. The jurisdiction of courts and tribunals of the Canadian provinces, the appropriateness of exercising that jurisdiction and the law that should apply to a dispute are all different concepts.

The adjudicative jurisdiction of a court or tribunal has two components: jurisdiction *ratione materiae* (subject-matter jurisdiction) and jurisdiction *ratione personae* (territorial jurisdiction). The subject-matter jurisdiction of a court or tribunal is that given to it to hear a case by reason of its subject matter, whereas territorial jurisdiction is assessed on the basis of a geographical connection. To have jurisdiction to hear a dispute, a court or tribunal must have the necessary subject-matter jurisdiction and territorial jurisdiction. In this case, the objection raised by the defendants in their motions for declinatory exception relates not to the FMAT's lack of subject-matter

jurisdiction but rather to its lack of territorial jurisdiction over them. The appeals therefore relate not to the extraterritorial applicability of the *Securities Act* but rather to the FMAT's territorial jurisdiction under private international law.

The rules of private international law set out in the *C.C.Q.* apply to all proceedings that may be heard by Quebec authorities pursuant to the jurisdiction conferred on the province by the Constitution. Accordingly, the rules in Title Three of Book Ten of the *C.C.Q.* must be considered in this case unless a special law complements, makes exceptions to or derogates from them. Article 3076 *C.C.Q.* in fact provides that Book Ten applies subject to those rules of law in force in Quebec which are applicable by reason of their particular object. Those rules might include the *Securities Act* and the *Act respecting the Autorité des marchés financiers*, but these statutes do not themselves make exceptions to, derogate from or complement the *C.C.Q.*'s rules of private international law when it comes to the administrative proceedings brought by the AMF. It is clear from reading the provisions of these statutes that the legislature intended them to be supplemented by the *C.C.Q.*'s provisions on the international jurisdiction of Quebec authorities. Section 93 of the *Act respecting the Autorité des marchés financiers* establishes the FMAT's subject-matter jurisdiction in administrative proceedings instituted by the AMF under the *Securities Act*; it does not give the FMAT territorial jurisdiction. As for s. 94 of the *Act respecting the Autorité des marchés financiers*, it is not concerned in any way with territorial jurisdiction but relates rather to the measures that the FMAT may take once it is established that it has jurisdiction *ratione personae* to deal with a matter. This is also

the case of ss. 265, 273.1, and 273.3 of the *Securities Act*. The FMAT can take the measures contemplated in those provisions only where it has jurisdiction under the rules of private international law set out in the *C.C.Q.*

The issue of the FMAT's adjudicative jurisdiction must therefore be decided by applying the rules on international jurisdiction set out in Title Three of Book Ten of the *C.C.Q.*, that is, arts. 3134 to 3154. The *C.C.Q.* contains a well-developed set of rules and principles of private international law and codifies the "sufficient connection" test. However, no provision of the *C.C.Q.* can ground the FMAT's jurisdiction in the proceedings brought by the AMF. There is agreement with the majority that no analogy can be drawn between a personal action of a patrimonial nature and the proceedings brought by the AMF. Article 3148 para. 1(3) *C.C.Q.* therefore cannot confer jurisdiction on the FMAT. As for art. 3136 *C.C.Q.*, it recognizes the "forum of necessity" doctrine, which can serve as an exceptional basis for the jurisdiction of Quebec authorities. However, it can be applied only if one of the parties raises it, which the AMF did not do in this case. The AMF did not demonstrate that proceedings abroad had proved impossible or that it could not reasonably require the institution of proceedings abroad. Nor did it explain why it had not applied to the authorities having jurisdiction, in accordance with the provisions of the *Securities Act* concerning interjurisdictional cooperation. As a result, the AMF cannot rely on art. 3136.

Where the *C.C.Q.* does not establish the territorial jurisdiction of a court or tribunal and the legislature has not otherwise conferred territorial jurisdiction on it through special legislation, that must be the end of the analysis. *Unifund* cannot serve as a safety net, because it concerns an entirely different situation: it applies once it is established that a court or tribunal has jurisdiction to deal with a matter. It cannot give the FMAT territorial jurisdiction over the defendants, who are domiciled outside Quebec, in a manner that derogates from the well-developed set of rules in the *C.C.Q.* The *Unifund* test is therefore of no assistance to the AMF and cannot ground the FMAT's adjudicative jurisdiction over the defendants in this case.

### **Cases Cited**

By Wagner C.J. and Jamal J.

**Overruled:** *Donaldson v. Autorité des marchés financiers*, 2020 QCCA 401; **applied:** *Unifund Assurance Co. v. Insurance Corp. of British Columbia*, 2003 SCC 40, [2003] 2 S.C.R. 63; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653; **considered:** *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572; **referred to:** *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78, [2002] 4 S.C.R. 205; *Air Canada v. McDonnell Douglas Corp.*, [1989] 1 S.C.R. 1554; *McCabe v. British Columbia (Securities Commission)*, 2016 BCCA 7, 394 D.L.R. (4th) 197; *Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 S.C.R. 900; *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software*



*Association*, 2022 SCC 30; *Fédération des producteurs acéricoles du Québec v. Regroupement pour la commercialisation des produits de l'érable inc.*, 2006 SCC 50, [2006] 2 S.C.R. 591; *Gilles E. Néron Communication Marketing Inc. v. Chambre des notaires du Québec*, 2004 SCC 53, [2004] 3 S.C.R. 95; *Finney v. Barreau du Québec*, 2004 SCC 36, [2004] 2 S.C.R. 17; *Prud'homme v. Prud'homme*, 2002 SCC 85, [2002] 4 S.C.R. 663; *Doré v. Verdun (City)*, [1997] 2 S.C.R. 862; *Montréal (City) v. Octane Stratégie inc.*, 2019 SCC 57, [2019] 4 S.C.R. 138; *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68, [2004] 3 S.C.R. 461; *Lefebvre (Trustee of)*, 2004 SCC 63, [2004] 3 S.C.R. 326; *Quebec (Commission des normes du travail) v. Asphalte Desjardins inc.*, 2014 SCC 51, [2014] 2 S.C.R. 514; *Béliveau St-Jacques v. Fédération des employées et employés de services publics inc.*, [1996] 2 S.C.R. 345; *Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211; *Compagnie d'immeubles Yale ltée v. Kirkland (Ville de)*, [1996] R.J.Q. 502; *Dionne v. Commission scolaire des Patriotes*, 2014 SCC 33, [2014] 1 S.C.R. 765; *Lalonde v. Sun Life Assurance Co. of Canada*, [1992] 3 S.C.R. 261; *City of Ottawa v. Town of Eastview*, [1941] S.C.R. 448; *Gignac v. Gauvin*, 2009 QCCS 524, 73 C.C.P.B. 47; *Dell Computer Corp. v. Union des consommateurs*, 2007 SCC 34, [2007] 2 S.C.R. 801; *Barer v. Knight Brothers LLC*, 2019 SCC 13, [2019] 1 S.C.R. 573; *Ormucio inc. v. Ernst & Young*, 2022 QCCA 405; *Mines d'or Visible inc. v. Zara Resources Inc.*, 2013 QCBDR 95; *Financière Manuvie v. Proteau*, 2013 QCBDR 137; *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4, [2020] 1 S.C.R. 15; *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64, [2008] 3 S.C.R. 392; *Kosoian v. Société de transport de Montréal*, 2019

SCC 59, [2019] 4 S.C.R. 335; *Autorité des marchés financiers v. Dominion Investments (Nassau) Ltd. (Dominion Investments Ltd.)*, 2008 QCBDRVM 4; *GreCon Dimter inc. v. J.R. Normand inc.*, 2005 SCC 46, [2005] 2 S.C.R. 401; *Lamborghini (Canada) inc. v. Automobili Lamborghini S.P.A.*, [1997] R.J.Q. 58; *Anvil Mining Ltd. v. Association canadienne contre l'impunité*, 2012 QCCA 117; *Otsuka Pharmaceutical Company Limited v. Pohoresky*, 2022 QCCA 1230; *Droit de la famille — 1830*, 2018 QCCA 24; *Droit de la famille — 143017*, 2014 QCCA 2188; *Ontario College of Pharmacists v. 1724665 Ontario Inc.*, 2013 ONCA 381, 363 D.L.R. (4th) 724; *Berger v. Saskatchewan (Financial and Consumer Affairs Authority)*, 2019 SKCA 89; *Torudag v. British Columbia (Securities Commission)*, 2011 BCCA 458, 343 D.L.R. (4th) 743; *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, 2004 SCC 45, [2004] 2 S.C.R. 427; *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [2005] 2 S.C.R. 473; *R. v. Hape*, 2007 SCC 26, [2007] 2 S.C.R. 292; *British Columbia v. Imperial Tobacco Canada Ltd.*, 2004 BCCA 269, 239 D.L.R. (4th) 412, aff'd 2005 SCC 49, [2005] 2 S.C.R. 473; *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077; *Beals v. Saldanha*, 2003 SCC 72, [2003] 3 S.C.R. 416; *Libman v. The Queen*, [1985] 2 S.C.R. 178; *Hunt v. T&N plc*, [1993] 4 S.C.R. 289; *Global Securities Corp. v. British Columbia (Securities Commission)*, 2000 SCC 21, [2000] 1 S.C.R. 494.

By Côté J. (dissenting)

*Unifund Assurance Co. v. Insurance Corp. of British Columbia*, 2003 SCC

40, [2003] 2 S.C.R. 63; *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4, [2020] 1 S.C.R. 15; *Transax Technologies inc. v. Red Baron Corp. Ltd.*, 2016 QCCA 1432; *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78, [2002] 4 S.C.R. 205; *Air Canada v. McDonnell Douglas Corp.*, [1989] 1 S.C.R. 1554; *Rosdev Investments Inc. v. Allstate Insurance Co. of Canada*, [1994] R.J.Q. 2966; *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572; *Lamborghini (Canada) inc. v. Automobili Lamborghini S.P.A.*, [1997] R.J.Q. 58; *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077; *Hunt v. T&N plc*, [1993] 4 S.C.R. 289; *Tolofson v. Jensen*, [1994] 3 S.C.R. 1022; *United States of America v. Harden*, [1963] S.C.R. 366; *Canada Post Corp. v. Lépine*, 2009 SCC 16, [2009] 1 S.C.R. 549; *Barer v. Knight Brothers LLC*, 2019 SCC 13, [2019] 1 S.C.R. 573; *Compagnie d'immeubles Yale ltée v. Kirkland (Ville de)*, [1996] R.J.Q. 502; *Perron-Malenfant v. Malenfant (Trustee of)*, [1999] 3 S.C.R. 375; *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, 2016 SCC 30, [2016] 1 S.C.R. 851; *Autorité des marchés financiers v. Fournier*, 2012 QCCA 1179; *Donaldson v. Autorité des marchés financiers*, 2020 QCCA 401; *Fédération des producteurs acéricoles du Québec v. Regroupement pour la commercialisation des produits de l'érable inc.*, 2006 SCC 50, [2006] 2 S.C.R. 591; *Yared v. Karam*, 2019 SCC 62, [2019] 4 S.C.R. 498; *Otsuka Pharmaceutical Company Limited v. Pohoresky*, 2022 QCCA 1230; *GreCon Dimter inc. v. J.R. Normand inc.*, 2005 SCC 46, [2005] 2 S.C.R. 401.

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*Act respecting administrative justice*, CQLR, c. J-3, s. 9.

*Act respecting French, the official and common language of Québec*, S.Q. 2022, c. 14.

*Act respecting the Autorité des marchés financiers*, CQLR, c. A-33.2, ss. 93 [am. 2018, c. 23, s. 628], 94 [repl. 2018, c. 23, s. 629].

*Act respecting the regulation of the financial sector*, CQLR, c. E-6.1, ss. 93, 94.

*Charter of human rights and freedoms*, CQLR, c. C-12.

*Charter of the French language*, CQLR, c. C-11.

*Civil Code of Québec*, preliminary provision, arts. 300, Book Five, 1376, Book Ten, 3076, Title Three, 3134 to 3154, 3155(6), 3162, 3164.

*Code of Civil Procedure*, CQLR, c. C-25.01.

*Code of Penal Procedure*, CQLR, c. C-25.1, art. 142.

*Constitution Act, 1867*, ss. 91, 92.

*Interpretation Act*, CQLR, c. I-16, ss. 12, 13.

*Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets*, CQLR, c. V-1.1, r. 24.1, s. 3.

*Rules of the Supreme Court of Canada*, SOR/2002-156, r. 33(2).

*Securities Act*, CQLR, c. V-1.1, ss. 68, Title VII, 195.2, 199.1, 202, 210, Title VIII, 213.1 et seq., 233.2, 235, 236.1, Title IX, 265, 273.1, 273.3, Title X, Chapter II, 307, 307.1.

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APPEALS from a judgment of the Quebec Court of Appeal (Marcotte, Mainville and Moore J.J.A.), 2021 QCCA 1364, 90 Admin. L.R. (6th) 25, [2021] AZ-51794411, [2021] Q.J. No. 10996 (QL), 2021 CarswellQue 14741 (WL), affirming a decision of Collier J., 2019 QCCS 94, [2019] AZ-51562732, [2019] Q.J. No. 175 (QL), 2019 CarswellQue 257 (WL), dismissing applications for judicial review of a decision of the Financial Markets Administrative Tribunal, 2017 QCTMF 114, 2017

LNQCTMF 114 (QL), 2017 CarswellQue 21707 (WL). Appeals dismissed, Côté J. dissenting.

*Sean Griffin* and *Daniel Baum*, for the appellant/intervener Frederick Langford Sharp.

*Patrick Ferland* and *Sébastien C. Caron*, for the appellants/interveners Shawn Van Damme, Vincenzo Antonio Carnovale and Pasquale Antonio Rocca.

*Stéphanie Jolin* and *Jean-Nicolas Boutin Wilkins*, for the respondent.

*Stéphanie Quirion-Cantin* and *Stéphane Rochette*, for the intervener the Attorney General of Quebec.

*Katrina Gustafson* and *Alexandra Matushenko*, for the intervener the Ontario Securities Commission.

The judgment of Wagner C.J. and Karakatsanis, Rowe, Martin, Kasirer, Jamal and O’Bonsawin JJ. was delivered by

THE CHIEF JUSTICE AND JAMAL J. —

I. Overview



[1] At issue in these appeals is whether a provincial administrative tribunal has jurisdiction over out-of-province defendants in a securities enforcement proceeding in Quebec. The appeals also raise the relationship between the *Civil Code of Québec* (“C.C.Q.”) and special statutes under Quebec law.

[2] The Financial Markets Administrative Tribunal (“FMAT”), a Quebec administrative tribunal, claims jurisdiction over the appellants, four British Columbia residents who are alleged to have contravened the Quebec *Securities Act*, CQLR, c. V-1.1, by engaging in a transnational “pump-and-dump” securities manipulation scheme with links to Quebec. 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 inflated prices. The scheme is alleged to have injured investors, including investors in Quebec.

[3] The appellants challenged the FMAT’s jurisdiction over them as out-of-province defendants. However, the FMAT ruled that it has jurisdiction over the out-of-province appellants under s. 93 of the *Act respecting the Autorité des marchés financiers*, CQLR, c. A-33.2,<sup>1</sup> which grants the FMAT jurisdiction to make determinations under the *Securities Act*. The FMAT interpreted and applied this jurisdictional provision in light of this Court’s decision in *Unifund Assurance Co. v. Insurance Corp. of British Columbia*, 2003 SCC 40, [2003] 2 S.C.R. 63, which held

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<sup>1</sup> Amended and renamed the *Act respecting the regulation of the financial sector*, CQLR, c. E-6.1 (*An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions*, S.Q. 2018, c. 23, Part IV) in 2018.

that a provincial regulatory scheme constitutionally applies to an out-of-province defendant when there is a “real and substantial connection”, also described as a “sufficient connection”, between the province and the defendant (*Unifund*, at paras. 55-56). The FMAT highlighted several factors that, in its view, created such a connection between Quebec and the appellants’ alleged contraventions.

[4] The Superior Court of Quebec dismissed applications for judicial review from the FMAT’s decision. On appeal, the Court of Appeal of Quebec affirmed the FMAT’s jurisdiction, but the court divided on the appropriate legal basis for doing so. Speaking for the majority, Marcotte J.A. ruled that the FMAT correctly found a real and substantial connection between Quebec and the appellants under the test in *Unifund*. In separate reasons concurring in the result, Mainville J.A. would have grounded the FMAT’s jurisdiction under Title Three of Book Ten of the *C.C.Q.*, which establishes rules for the “International Jurisdiction of Québec Authorities”, in particular under art. 3148 para. 1(3) *C.C.Q.* — which gives Quebec jurisdiction over personal actions of a patrimonial nature in which a fault was committed in Quebec, an injurious act or omission occurred in Quebec, or injury was suffered in Quebec — or art. 3136 *C.C.Q.* — which allows a Quebec authority to hear a dispute even though it has no other basis for jurisdiction if the dispute has a sufficient connection with Quebec and taking proceedings abroad is impossible or cannot reasonably be required.

[5] For the reasons that follow, we conclude that the FMAT has jurisdiction over the appellants under the *Securities Act* and the *Act respecting the Autorité des marchés financiers*.

[6] The *C.C.Q.* is the starting point in any interpretive exercise involving the *C.C.Q.* and special laws. The preliminary provision of the *C.C.Q.* provides that the *C.C.Q.* is the *jus commune* and the foundation of all other laws in Quebec, and that other laws may complement or make exceptions to the *C.C.Q.*

[7] In this case, the character of the proceedings and the conclusions sought before the FMAT could suggest, at first blush, a regulatory matter that does not concern the *C.C.Q.* The dispute involves a public regulator seeking prohibitions and administrative penalties under a legislative scheme designed to protect the public interest in the securities markets. One might indeed expect jurisdiction over this regulatory scheme to stand outside the scope of Quebec's law of general application established by the *C.C.Q.*, which mainly governs "persons, relations between persons, and property" (preliminary provision). But securities law, as enacted by the Quebec *Securities Act*, is of a hybrid character. On the one hand, the *Securities Act* has enforcement and administrative law rules in place to protect the public interest that give the legislation a fundamentally regulatory orientation. On the other hand, the *Securities Act* also has a title bearing on civil actions (Title VIII). While the FMAT's jurisdiction bears principally on the regulatory orientation of the *Securities Act*, its authority established by the *Act respecting the Autorité des marchés financiers* extends to the

title on civil actions in the *Securities Act*, except where excluded by law. Given this hybrid character of securities regulation, the better view is that Book Ten of the *C.C.Q.*, as part of Quebec’s *jus commune*, is the appropriate starting point for analyzing the “International Jurisdiction of Québec Authorities” in this field, including the FMAT.

[8] This calls for a review of the general and special rules in the *C.C.Q.* to determine whether the FMAT has jurisdiction over the out-of-province defendants in this case. We conclude that the *C.C.Q.*’s rules on private international law are applicable. However, here they provide no basis for jurisdiction over the out-of-province defendants, whether under art. 3134 *C.C.Q.*, which sets out the residual rule based on domicile in Quebec, art. 3148 *C.C.Q.*, which specifies the cases in which Quebec authorities have jurisdiction over personal actions of a patrimonial nature, or art. 3136 *C.C.Q.*, which allows a Quebec authority to hear a dispute despite having no jurisdiction provided the dispute has a sufficient connection with Quebec and taking proceedings abroad is impossible or cannot reasonably be required.

[9] Even so, we conclude that the FMAT has jurisdiction over the appellants under Quebec securities legislation. The *Act respecting the Autorité des marchés financiers* provides the FMAT with jurisdiction to make determinations under the *Securities Act*, including when there is a “real and substantial connection” between Quebec and out-of-province defendants. In our view, the allegations that the appellants used Quebec as the “face” of their securities manipulation and injured Quebec investors establish such a connection to give the FMAT jurisdiction over the appellants.

[10] Put another way, the Quebec securities legislation constitutionally applies to the appellants. The Quebec legislature has exercised its *prescriptive legislative jurisdiction* — its power to enact binding rules applicable to out-of-province parties with a real and substantial connection to Quebec. Those rules are engaged in the circumstances of this case. As a result, the FMAT also has *adjudicatory jurisdiction*, or the authority to hear this matter involving the appellants.

[11] We would thus affirm the FMAT’s jurisdiction and dismiss the appeals.

## II. Background

[12] The respondent Autorité des marchés financiers (“AMF”) is an administrative agency that regulates Quebec’s financial sector. It brought an originating pleading before the FMAT alleging that the appellants, who are four British Columbia residents, contravened the Quebec *Securities Act* by participating in a transnational pump-and-dump scheme with links to Quebec that injured investors.

[13] The AMF alleged that the appellants committed contraventions of Quebec’s *Securities Act* by improperly or fraudulently influencing the market price or the value of securities (s. 195.2), and by knowingly participating in securities transactions that created an artificial security price (s. 199.1). The AMF asked the FMAT to order the appellants to cease engaging in securities transactions (s. 265) and to prohibit them from acting as directors or officers of an issuer, dealer, adviser, or

investment fund manager for five years (s. 273.3). The AMF also asked the FMAT to impose administrative penalties on the appellants (s. 273.1).

[14] The FMAT's function includes making determinations regarding matters relating to the *Act respecting the Autorité des marchés financiers* as well as under a range of Quebec legislation, including the *Securities Act*. The FMAT [TRANSLATION] "is an independent administrative tribunal specializing in securities that performs decision-making functions" (S. Rousseau, "L'application de la législation sur les valeurs mobilières au Québec: une étude du rôle du Tribunal administratif des marchés financiers" (2017), 76 *R. du B.* 1, at p. 14). The FMAT exercises its discretion "in the public interest" (*Act respecting the Autorité des marchés financiers*, s. 93).

[15] The appellants filed motions for a declinatory exception challenging the FMAT's jurisdiction over them as out-of-province defendants. On such a motion, the decision maker does not consider the merits of the case, but assumes the facts alleged to be true and asks whether these facts would bring the matter within its jurisdictional competence. The decision maker also refrains from evaluating the parties' evidence, unless the facts alleged are specifically contested (*Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78, [2002] 4 S.C.R. 205, at paras. 31-32; *Air Canada v. McDonnell Douglas Corp.*, [1989] 1 S.C.R. 1554, at p. 1558). In this case, the facts alleged are uncontested, and thus are assumed to be true for the purposes of the jurisdictional challenges.

[16] None of the appellants specifically alleges that they were improperly served. The FMAT held a special hearing, which the appellants did not attend, at which it authorized the AMF to serve the appellants Frederick Langford Sharp, Vincenzo Antonio Carnovale, and Pasquale Antonio Rocca with the AMF's originating pleading and notice of hearing by publication of a press release on the AMF's website.

[17] The AMF alleged that the appellants' securities manipulation scheme had several links to Quebec. The appellants' alleged activities revolved around the promotion of a shell company named Solo International, Inc., which was incorporated in Nevada in the United States in April 2010 to offer interior design services, and whose shares traded in the over-the-counter ("OTC") market in New York. In October 2011, Michel Plante, a Quebec resident, acquired three million shares in Solo and became its majority shareholder, taking control of both Solo and its Quebec subsidiary. Because Solo was traded on the OTC market and was directed or administered in or from Quebec after July 31, 2012, Solo was a reporting issuer and subject to continuous disclosure and other obligations under the Quebec *Securities Act* (s. 68; *Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets*, CQLR, c. V-1.1, r. 24.1, s. 3). It is also alleged to have had a place of business in Montréal.

[18] Although Plante had no experience in the mining industry, in late 2011 Solo bought mining claims in Quebec through its subsidiary, with financing from offshore entities linked to the appellants. Most of Solo's original shares were transferred to offshore entities linked to the appellants.

[19] The AMF alleged that Solo engaged in two pump-and-dump operations. In the first “pump” operation, which occurred in January and February 2012, Solo published six press releases, some of which were issued in Montréal, advertising Solo’s mining exploration activities in Quebec. The appellant Shawn Van Damme helped write these press releases and partly financed the publicity campaign through one of his offshore entities. These promotional efforts led Solo’s stock price to increase, even though Solo had not advanced its mining activities. The appellants, acting through their offshore entities, then sold, or “dumped”, over 2.7 million Solo shares for a profit of about \$400,000.

[20] In the second “pump” operation, which occurred on November 14, 2012, eight promoters marketed Solo’s shares, even though Solo remained essentially inoperative. The appellants Van Damme, Carnovale, and Rocca financed this promotional effort through their offshore entities. The appellants, again acting through their offshore entities, then sold, or “dumped”, over 43 million Solo shares for a profit of more than \$2.2 million.

[21] According to the AMF, the appellants’ pump-and-dump scheme proceeded in five steps. The appellants acted in concert to (1) acquire the shares of Solo, (2) give Solo a legitimate “face”, (3) promote Solo’s business, (4) sell their shares for a profit, and (5) distribute this profit among themselves. The AMF alleged that each appellant was involved in one or more of these steps and that the scheme had several ties to Quebec sufficient to apply Quebec’s securities regulatory scheme to them: Solo was a



reporting issuer in Quebec with a Montréal business address; Plante, who directed Solo, was a Quebec resident when the scheme was implemented; Solo's promotional activities were accessible to Quebec residents; and, ultimately, 15 Quebec investors lost a total of \$5,000.

### III. Decisions Below

#### A. *Financial Markets Administrative Tribunal, 2017 QCTMF 114 (Jean-Pierre Cristel)*

[22] The FMAT ruled that it had jurisdiction over the appellants under s. 93 of the *Act respecting the Autorité des marchés financiers*, which grants the FMAT jurisdiction to make determinations under the Quebec *Securities Act*. The FMAT cited and applied the British Columbia Court of Appeal's decision in *McCabe v. British Columbia (Securities Commission)*, 2016 BCCA 7, 394 D.L.R. (4th) 197, at paras. 34-37 and 47, on the "sufficient connection" required to apply provincial securities legislation in an enforcement proceeding with transnational elements, which in turn had cited and applied this Court's decision in *Unifund*. There was a real and substantial connection between the appellants' alleged securities contraventions and Quebec because the appellants participated and profited from a pump-and-dump scheme with several links to Quebec: (1) Solo was a reporting issuer in Quebec with a business office in Montréal, (2) Solo's president, Plante, was a Quebec resident, and (3) Solo's misleading press releases and online promotions were provided to Quebec investors, some of whom were defrauded. The FMAT said that even though the

appellants were out-of-province residents and allegedly participated in the scheme through offshore entities, it could not ignore the contemporary reality of global and interconnected markets. This reality enhances the opportunities for market manipulation linked to more than one jurisdiction, and challenges regulators in detecting and investigating securities offences.

[23] The FMAT also dismissed the appellants' argument that Quebec is *forum non conveniens* under art. 3135 C.C.Q. It found insufficient evidence to conclude that another forum would be better placed to decide the matter and determined that it would not be in the public interest to decline jurisdiction. The FMAT thus dismissed the appellants' motions for a declinatory exception.

B. *Superior Court of Quebec, 2019 QCCS 94 (Collier J.)*

[24] The Superior Court of Quebec dismissed the appellants' applications for judicial review and held that the FMAT properly assumed jurisdiction. The court ruled that since the FMAT's decision was both reasonable and correct, it did not need to determine the applicable standard of review (para. 30 (CanLII)).

[25] The court stated (at para. 36) that the FMAT correctly recognized the limits of its extraterritorial reach by applying the "real and substantial connection" test, which the court noted was addressed in *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572. The court also ruled that the FMAT correctly applied the *Unifund* test for the constitutional applicability of provincial legislation (paras. 39-43). The FMAT

recognized the limits of its territorial reach and was correct in finding a real and substantial connection between Quebec and the facts alleged against the appellants.

[26] The court also stated that the private international law rules in the *C.C.Q.* reinforced its conclusion (para. 44). The publication of misleading press releases could constitute a fault in Quebec that injured Quebec investors. Under art. 3148 para. 1(3) *C.C.Q.*, the fault or injury would provide Quebec authorities with jurisdiction in matters of a personal and patrimonial nature. While the court was of the view that the matter lay within the “public regulatory sphere” (para. 44), the alleged fault and injury in Quebec, including harm to the Quebec securities market by undermining investor confidence, supported the real and substantial connection between Quebec and the appellants.

C. *Court of Appeal of Quebec, 2021 QCCA 1364, 90 Admin. L.R. (6th) 25 (Marcotte and Moore J.J.A., Mainville J.A. Concurring)*

(1) Majority

[27] Writing for the majority of the Court of Appeal of Quebec, Marcotte J.A. dismissed the appeal and affirmed the FMAT’s jurisdiction over the appellants. The majority identified the standard of review as correctness (paras. 45-47). The question of whether the FMAT has jurisdiction over the appellants raises a constitutional issue. The test in *Unifund* addresses the constitutional applicability of the Quebec securities scheme to non-residents who allegedly engaged in a securities manipulation scheme

with connections to Quebec. The majority added that insofar as the appellants assert for the first time on appeal that the FMAT failed to consider the private international law rules of the *C.C.Q.*, the applicability of those rules raises an issue of central importance to the legal system, and is therefore also reviewable for correctness (para. 48).

[28] The majority noted that although none of the applicable provisions of the Quebec securities scheme expressly places limits upon territorial reach, all are presumed to apply within the province (para. 56). In the majority's view, there is no extraterritorial jurisdiction of the FMAT at issue (para. 57). The only issue is whether the FMAT has territorial jurisdiction over the out-of-province appellants for alleged conduct sufficiently connected to Quebec (paras. 87-88).

[29] The majority rejected the appellants' argument that the private international law rules in Book Ten of the *C.C.Q.* exhaustively determine whether a Quebec authority such as the FMAT has jurisdiction over out-of-province parties (paras. 65-92). The majority ruled that although the *C.C.Q.* acts as suppletive law for many matters, including certain aspects of public law, the private international law rules in Book Ten of the *C.C.Q.* do not apply when no private rights are at issue (para. 70). Book Ten of the *C.C.Q.* does not determine jurisdiction in matters of public or criminal law where the primary basis of jurisdiction is neither personal nor real but territorial, such as in this case (para. 71). The majority saw no conflict of jurisdiction or any conflict of laws that would require the application of private international law

rules to this case (paras. 63 and 78). Instead, the FMAT simply seeks to exercise its jurisdiction to make determinations under the *Securities Act*, pursuant to the *Act respecting the Autorité des marchés financiers* (para. 78).

[30] The majority ruled (at paras. 94-117) that the FMAT correctly concluded there is a real and substantial connection between Quebec and the appellants under the sufficient connection test in *Unifund*. The appellants used Quebec as the “face” of their pump-and-dump scheme, a large part of which occurred in Quebec through misleading press releases allowing them to manipulate the stock price of a Quebec-based corporation holding mining claims in the province (paras. 113-14). Given these allegations and in view of the modern reality of global and interconnected securities markets, the greater opportunities for market manipulation in such a context, and the public interest, the FMAT properly assumed jurisdiction (paras. 115-16).

(2) Concurrence

[31] Mainville J.A. concurred with the majority in the result, but he disagreed with the majority’s conclusion that the private international law rules in Title Three of Book Ten of the *C.C.Q.* for the international jurisdiction of Quebec authorities are neither relevant nor applicable (para. 120). Those rules apply to “Québec Authorities”, which include administrative tribunals such as the FMAT, and apply whether or not there is a conflict of jurisdiction (paras. 135-37).

[32] Mainville J.A. stated that *Unifund* highlighted that the “sufficient connection” test for the constitutional applicability of a provincial law is not necessarily subsumed in the common law “real and substantial connection” test for the court of a province to take jurisdiction over a dispute, which is a rule of private international law (para. 125). He noted that this case raises both (1) the question of the constitutional applicability of the *Securities Act*, and (2) whether the FMAT has jurisdiction over the out-of-province appellants under the rules of private international law, which is addressed mainly, if not exclusively, by Title Three of Book Ten of the *C.C.Q.* (para. 126).

[33] In Mainville J.A.’s view, the FMAT has jurisdiction over the appellants under art. 3148 para. 1(3) *C.C.Q.*, which provides that Quebec authorities have jurisdiction in personal actions of a patrimonial nature when a fault was committed in Quebec, an injurious act or omission occurred in Quebec, or injury was suffered in Quebec (para. 144). He determined that this provision applies by analogy because this action resembles a personal action of a patrimonial nature. The fault requirement would be met by the allegation that misleading press releases were published in Quebec and the injury requirement would be met by the allegations that investors incurred harm in Quebec.

[34] Alternatively, Mainville J.A. would have affirmed the FMAT’s jurisdiction over the appellants under art. 3136 *C.C.Q.*, which provides that even though a Quebec authority has no jurisdiction to hear a dispute, it may nevertheless hear it provided the

dispute has a sufficient connection with Quebec and if proceedings abroad prove impossible or cannot be reasonably required (paras. 152-56). In Mainville J.A.'s view, this case meets the sufficient connection requirement of both art. 3136 *C.C.Q.* and the Constitution because of the connections between the pump-and-dump scheme and Quebec (para. 156). The second condition of art. 3136 *C.C.Q.* is also met, because there was no evidence that authorities of another state could make a decision in this case (paras. 157-59).

#### IV. Issues

[35] The main issues in these appeals are (1) the standard of review of the FMAT's decision that it has jurisdiction over the appellants and (2) whether the FMAT properly assumed jurisdiction.

#### V. Analysis

##### A. *The Standard of Review*

[36] The parties agree that under the framework established by this Court in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, the standard of review of the FMAT's decision is correctness.

[37] Although presumptively the standard of review when a court reviews the merits of an administrative decision is reasonableness, this presumption is rebutted

when the legislature explicitly prescribes the applicable standard of review or when the rule of law requires that the standard of correctness be applied (*Vavilov*, at paras. 16-17; *Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 S.C.R. 900, at para. 27). The rule of law is implicated in cases involving constitutional questions, general questions of law of central importance to the legal system as a whole, and questions related to the jurisdictional boundaries between two or more administrative bodies (*Vavilov*, at para. 17). The standard of correctness also applies “when courts and administrative bodies have concurrent first instance jurisdiction over a legal issue in a statute” (*Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30, at para. 28).

[38] Here, the FMAT’s jurisdiction over the out-of-province appellants raises a constitutional issue regarding the territorial reach of provincial legislation. The FMAT addressed its jurisdiction by examining whether the securities scheme constitutionally applies to the appellants under the test in *Unifund*, which asks whether there is a “sufficient connection” between Quebec and the appellants to support the application of Quebec’s securities regulatory scheme (paras. 55-56). This constitutional question is reviewable for correctness under the *Vavilov* framework.<sup>2</sup>

[39] Even assuming, as the appellants contend, that the question of the FMAT’s jurisdiction over out-of-province parties is to be resolved by applying Title Three of

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<sup>2</sup> The appellants did not file a notice of constitutional question in this Court under the *Rules of the Supreme Court of Canada*, SOR/2002-156, r. 33(2), presumably because their position is that the *C.C.Q.* governs whether the FMAT has jurisdiction over them, and thus they did not ask for the Quebec securities scheme to be found constitutionally inapplicable.



Book Ten of the *C.C.Q.* — an argument raised for the first time before the Quebec Court of Appeal — that question is still reviewable for correctness because it raises a general question of law of central importance to the legal system as a whole. Whether the *C.C.Q.* grants the FMAT jurisdiction over out-of-province parties in the circumstances involves the methodology for determining the relationship between the *C.C.Q.* as the *jus commune*, or general law, and special statutes in Quebec. This is a general question of law that requires a uniform and consistent answer because it has implications for many other statutes (*Vavilov*, at paras. 59-62). We address that issue next.

#### B. *The Relationship Between the C.C.Q. and Special Statutes*

[40] The majority and concurring reasons in the Quebec Court of Appeal reflect different methodologies for determining when the *C.C.Q.* establishes the international jurisdiction of an administrative tribunal over out-of-province defendants. More generally, they articulate different conceptions of the relationship between the *C.C.Q.*, as the *jus commune*, and special statutes targeting particular subjects relating to private international law. The majority reasoned that the question before the court concerns the constitutional applicability of the Quebec securities scheme to out-of-province parties, rather than private international law, and thus the FMAT's jurisdiction should be determined by applying the real and substantial connection test in *Unifund* (paras. 63 and 90-91). The majority also concluded that the private international law rules of Title Three of Book Ten of the *C.C.Q.* do not apply to determine the FMAT's jurisdiction

because (1) no private rights are at issue before the FMAT (paras. 70-71), and (2) there is no conflict of jurisdiction or any conflict of law that calls for applying private international law rules (para. 78). By contrast, the concurrence concluded that (1) the rules in Title Three of Book Ten of the *C.C.Q.* apply to all “Québec Authorities”, including administrative tribunals such as the FMAT in respect of actions pertaining to Quebec’s constitutional jurisdiction over property and civil rights (paras. 135-36), (2) whether or not there is a conflict of jurisdiction (para. 137), and (3) whether or not an action pertains to matters in the *C.C.Q.* (para. 142).

[41] This section addresses this methodological debate by considering the relationship between the *C.C.Q.* and special statutes. As will be elaborated, the *C.C.Q.*, as stated in the preliminary provision, “lays down the *jus commune*”, or law of general application, “in all matters within the letter, spirit or object of its provisions” which mainly govern “persons, relations between persons, and property”. For these matters, the *C.C.Q.* is the “foundation of all other laws”. Accordingly, for such matters, interpretive exercises must begin with the *C.C.Q.*, although special legislation can derogate from the *C.C.Q.* when the legislature expresses its intention to do so and, of course, some of the law of general application may be found outside the *C.C.Q.* in general principles of law. Contrary to the conclusion of the majority of the Court of Appeal, provisions of Title Three of Book Ten of the *C.C.Q.* can, in principle, apply to an administrative tribunal like the FMAT, even if no private right is in issue and even if no conflict of jurisdiction arises, as long as these parameters of the *jus commune* alluded to in the preliminary provision are met. However, as we elaborate in later

sections, while the *C.C.Q.* does not grant the FMAT jurisdiction over the out-of-province appellants in this case, the jurisdictional provisions of the special securities scheme, properly interpreted in light of *Unifund*, do grant jurisdiction because the appellants, and their alleged contraventions, have a sufficient connection to Quebec.

(1) The Preliminary Provision of the *C.C.Q.*

[42] The starting point for understanding the relationship between the *C.C.Q.* and special statutes is the preliminary provision of the *C.C.Q.*:

The Civil Code of Québec, in harmony with . . . the Charter of human rights and freedoms . . . and the general principles of law, governs persons, relations between persons, and property.

The Civil Code comprises a body of rules which, in all matters within the letter, spirit or object of its provisions, lays down the *jus commune*, expressly or by implication. In these matters, the Code is the foundation of all other laws, although other laws may complement the Code or make exceptions to it.<sup>3</sup>

[43] Several aspects of the preliminary provision elucidate the relationship between the *C.C.Q.* and special statutes.

(a) *The C.C.Q. Lays Down the Jus Commune*

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<sup>3</sup> The preliminary provision of the *C.C.Q.* was amended on June 1, 2022 by the *Act respecting French, the official and common language of Québec*, S.Q. 2022, c. 14, to add a reference to the *Charter of the French language*, CQLR, c. C-11. The preliminary provision is cited here as it read at the time the FMAT decision was rendered.

[44] First, the preliminary provision announces that the *C.C.Q.* “lays down the *jus commune*”, or the law of general application, of Quebec “in all matters within the letter, spirit or object of its provisions”, which mainly govern “persons, relations between persons, and property” (see also *Fédération des producteurs acéricoles du Québec v. Regroupement pour la commercialisation des produits de l’érable inc.*, 2006 SCC 50, [2006] 2 S.C.R. 591, at para. 10; *Gilles E. Néron Communication Marketing Inc. v. Chambre des notaires du Québec*, 2004 SCC 53, [2004] 3 S.C.R. 95, at para. 56; *Finney v. Barreau du Québec*, 2004 SCC 36, [2004] 2 S.C.R. 17, at para. 26; see also J.-M. Brisson, “Le Code civil, droit commun?”, in *Le nouveau Code civil: interprétation et application — Les journées Maximilien-Caron 1992* (1993), 292, at pp. 308-15). Thus, the *C.C.Q.* does not simply lay down rules of private law on a narrow compass (*Prud’homme v. Prud’homme*, 2002 SCC 85, [2002] 4 S.C.R. 663, at para. 28).

(b) *The C.C.Q. Has a Suppletive Role*

[45] Second, as the *jus commune*, the *C.C.Q.* “is the foundation of all other laws, although other laws may complement the [C.C.Q.] or make exceptions to it”. The *C.C.Q.* has a suppletive role and can fill gaps in special statutes to the extent that legislation is silent on a given matter, thus preventing a legal vacuum (*Fédération des producteurs*, at paras. 10 and 29; see also *Doré v. Verdun (City)*, [1997] 2 S.C.R. 862, at para. 18; *Montréal (City) v. Octane Stratégie inc.*, 2019 SCC 57, [2019] 4 S.C.R. 138, at para. 36; A.-F. Bisson, “La Disposition préliminaire du *Code civil du Québec*”

(1999), 44 *McGill L.J.* 539, at p. 558; H. P. Glenn, “La Disposition préliminaire du *Code civil du Québec*, le droit commun et les principes généraux du droit” (2005), 46 *C. de D.* 339, at p. 349). The suppletive nature of the *C.C.Q.* flows from its foundational character, as confirmed by the preliminary provision. As elucidated by the Ministère de la Justice, *Commentaires du ministre de la Justice*, vol. I, *Le Code civil du Québec — Un mouvement de société* (1993), at p. 1, one objective of the second paragraph of the preliminary provision [TRANSLATION] “is to promote a dynamic interpretation of the Civil Code and encourage the use of its provisions to interpret and apply other legislation and fill any gaps in that legislation, where it relates to matters or makes use of concepts or institutions that come under the Civil Code.”

[46] For example, the *C.C.Q.* plays a suppletive role in the domains of corporate law (*Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68, [2004] 3 S.C.R. 461, at paras. 29 and 54), insolvency law (*Lefebvre (Trustee of)*, 2004 SCC 63, [2004] 3 S.C.R. 326, at para. 16), and employment law (*Quebec (Commission des normes du travail) v. Asphalte Desjardins inc.*, 2014 SCC 51, [2014] 2 S.C.R. 514, at paras. 28-32), among other areas. Such suppletive rules apply absent a legislative intention to exclude them (J. E. C. Brierley, “Quebec’s ‘Common Laws’ (*Droits Communs*): How Many Are There?”, in E. Caparros et al., eds., *Mélanges Louis-Philippe Pigeon* (1989), 109, at p. 126; R. A. Macdonald, “Encoding Canadian Civil Law”, in *Mélanges Paul-André Crépeau* (1997), 579, at pp. 595-96 and 599).

(c) *All Interpretive Exercises of Laws Governing Persons, Relations Between Persons, and Property Must Begin With the C.C.Q.*

[47] Third, as the *jus commune* and the foundation of all other Quebec laws, the *C.C.Q.* is the primary source of Quebec civil law and serves as the starting point in any interpretive exercise involving a special statute in matters within the letter, spirit, or object of the *C.C.Q.*'s provisions. The preliminary provision of the *C.C.Q.* established "the new position assigned to the *Civil Code* in the hierarchy of the sources of law in matters within the legislative jurisdiction of the Quebec National Assembly" (*Finney*, at para. 26; see also D. Lemieux, "The Role of the *Civil Code of Québec* in Administrative Law" (2005), 18 *C.J.A.L.P.* 143, at p. 147; *Commentaires du ministre de la Justice*, vol. I, at p. 1 ([TRANSLATION] "its privileged position in our legislative system as a whole"))).

[48] Writing on the *Civil Code of Lower Canada*, Professors John E. C. Brierley and Roderick A. Macdonald have observed that, "[f]rom the dual perspective of the actual operation of the Code as a living structure of written legal rules and of its own underlying logic, the Code is intellectually pre-eminent" (*Quebec Civil Law: An Introduction to Quebec Private Law* (1993), at pp. 134-35). They add that "[b]y virtue of its vocation to state the general law, [the Code] claims the centre ground of the Civil law. By virtue of its being written, it provides a textual referent by which or through which all other sources of law are understood to pass" (p. 135). Given this primacy, "other sources (including other legislative sources such as statutes) are viewed as vehicles of interpretation, and all interpretive exercises must necessarily begin with the Code" (p. 135).

[49] This Court has regularly applied this methodology. For example, in *Finney*, this Court explained that “examination of the liability of governments begins with the application of the rules of liability established by the *Civil Code of Québec*” (para. 27). In *Gilles E. Néron Communication Marketing*, this Court indicated that under the Quebec law of civil liability for defamation, “[t]he starting point is not the common law but the *Civil Code of Québec*, which is the basic general law in Quebec, as provided for in the preliminary provision of the *Civil Code*” (para. 56). Similarly, Professor Macdonald has explained that “a civil code ordains the modes of legal analysis and interpretation” (p. 599). For his part, Professor Brierley has observed that “[t]he Civil Code is . . . *droit commun* in relation to other enactment[s] because it is the fundamental reference point from which such other legislation proceeds” (p. 123).

(d) *The Preliminary Provision of the C.C.Q. Has Normative Force*

[50] Fourth, given that the preliminary provision establishes the hierarchy of sources in Quebec civil law and the *C.C.Q.* has a suppletive role, the preliminary provision has normative force of law (*Prud’homme*, at para. 30, citing *Doré*). It is not a mere preamble; rather, it has the force of law of an enactment and establishes the *C.C.Q.*’s foundational role in Quebec civil law (Bisson, at p. 552; Lemieux (2005), at p. 147).

(2) Special Laws May Complement or Derogate From the C.C.Q.

[51] The preliminary provision of the *C.C.Q.* states that other laws “may complement the [*C.C.Q.*] or make exceptions to it”. It is sometimes difficult to distinguish between special laws that *complement* the *C.C.Q.* and those that *derogate* from or make exceptions to it (C. Lemieux, “Éléments d’interprétation en droit civil” (1994), 24 *R.D.U.S.* 221, at p. 234).

[52] As Professors Pierre-André Côté and Mathieu Devinat have noted, this Court has recognized many examples in which the *C.C.Q.* *complements* the legal regimes established by special statutes, such as by providing rules on prescription (*Doré*, at paras. 18 and 20); civil liability based on a breach of the Quebec *Charter of human rights and freedoms*, CQLR, c. C-12 (*Béliveau St-Jacques v. Fédération des employées et employés de services publics inc.*, [1996] 2 S.C.R. 345, at pp. 403-6); and evidence (*Quebec (Public Curator) v. Syndicat national des employés de l’hôpital St-Ferdinand*, [1996] 3 S.C.R. 211, at pp. 228-29) (see P.-A. Côté and M. Devinat, *Interprétation des lois* (5th ed. 2021), at p. 388, fn. 256). In such cases, the *C.C.Q.* [TRANSLATION] “is not only a conceptual reservoir for special statutes, but also their normative complement” (Côté and Devinat, at p. 388).

[53] In addition, a special statute may *derogate* from the *C.C.Q.*, either expressly or by implication (see *Octane*, at para. 39; Brierley, at p. 125). The *C.C.Q.* will apply as suppletive law unless special legislation clearly derogates from it (Lemieux (2005), at p. 148). This reflects [TRANSLATION] “a general principle of predominance of special legislation” (Côté and Devinat, at p. 410); that is, *specialia*



*generalibus derogant*, which means that special legislation derogates from contrary general legislation (A. Mayrand, *Dictionnaire de maximes et locutions latines utilisées en droit* (4th ed. 2007), at p. 572; see also *Doré*, at para. 41). As Professor H. Patrick Glenn noted, [TRANSLATION] “[l]ike all suppletive general law, [the *C.C.Q.*] therefore yields to sources that are more specific, more imperative, which is also contemplated by the [Preliminary] Provision” (p. 349).

[54] For example, a special statute may derogate from the *C.C.Q.* if the legislature provides sufficiently detailed and specific statutory language suggesting that it did not intend the general provisions of the *C.C.Q.* to override the special statute (*Compagnie d’immeubles Yale ltée v. Kirkland (Ville de)*, [1996] R.J.Q. 502 (C.Q.), at p. 507; *Dionne v. Commission scolaire des Patriotes*, 2014 SCC 33, [2014] 1 S.C.R. 765, at para. 37). Similarly, if the special statute provides a complete rule on a matter, and is neither silent nor insufficient on an essential element, the special statute applies instead of the general law in the *C.C.Q.*, unless the legislature provides otherwise (*Lalonde v. Sun Life Assurance Co. of Canada*, [1992] 3 S.C.R. 261, at pp. 278-79, citing *City of Ottawa v. Town of Eastview*, [1941] S.C.R. 448, at p. 462; see also *Gignac v. Gauvin*, 2009 QCCS 524, 73 C.C.P.B. 47, at para. 54).

(3) The Court of Appeal Erred in Its Methodology for Determining When the *C.C.Q.* Applies

[55] The proper interpretive methodology in determining the relationship between the *C.C.Q.* and a special statute is to start with the *jus commune* in the *C.C.Q.*,

and then to ask whether the special statute complements or derogates from the *jus commune* (see generally Doré, at paras. 15-21; see also paras. 40-41; Brierley, at p. 125-26). Often, the answer to this question will be obvious and will not require an extensive interpretation exercise. In this case, the majority erred with respect to each of the two reasons it gave for concluding that the *C.C.Q.* does not apply in the circumstances, even though, as will be explained, the court was correct that the FMAT has jurisdiction over the out-of-province appellants under the special statutes.

(a) *Book Ten of the C.C.Q. Can Apply to Administrative Tribunals Even if Private Rights Are Not at Issue*

[56] First, the majority concluded that although the private international law rules of Title Three of Book Ten of the *C.C.Q.* apply to all Quebec authorities, including judicial and administrative tribunals, they do not determine the FMAT's jurisdiction because no "private rights" (para. 70) are at issue in a proceeding before the FMAT. While the majority rightly recognized that the *C.C.Q.* acts as suppletive law in a wide range of circumstances, "including certain aspects of public law" (para. 70), they narrowed the compass of the *jus commune* by implying that private rights must be in issue. The majority's methodology erroneously suggested that whether Book Ten of the *C.C.Q.* applies depends on characterizing the issue before the court, seemingly limiting its scope to matters of private law. However, the *jus commune*, including Book Ten, is not limited to matters of private rights, but rather extends to "all matters within the letter, spirit or object" of the *C.C.Q.*'s provisions.

[57] In reaching its conclusion, the majority noted that the respondent had cited the Quebec Court of Appeal's decision in *Donaldson v. Autorité des marchés financiers*, 2020 QCCA 401, in support of its position that the *C.C.Q.* does not apply to proceedings before the FMAT. In *Donaldson*, the Court of Appeal held that the three-year prescription period under art. 2925 *C.C.Q.* did not apply to administrative proceedings brought by the AMF before the FMAT to impose an administrative monetary penalty under s. 273.1 of the *Securities Act* for contravention of the Act or a regulation made under its authority. One reason the court in *Donaldson* ruled that the *C.C.Q.* did not apply is because the *C.C.Q.* establishes the *jus commune* over only those matters falling under private law (paras. 43-44 (CanLII)). The court in *Donaldson* distinguished between private law matters, which fall under the purview of the *C.C.Q.*, and public law matters, which do not. With respect, insofar as this approach creates a divide between public and private law not reflected in the letter, spirit, or object of the *C.C.Q.*, it is incorrect in law.

[58] Although the first paragraph of the preliminary provision states that the *C.C.Q.*, in harmony with the *Charter of human rights and freedoms*, and the general principles of law, “governs persons, relations between persons, and property”, this paragraph does not limit the *C.C.Q.*'s application to stating rules of private law, even though the *C.C.Q.* contains many such rules. The second paragraph of the preliminary provision also provides that the *C.C.Q.* “lays down the *jus commune*”, or law of general application, “in all matters within the letter, spirit or object of its provisions”. Moreover, the *C.C.Q.* contains rules of public law and is an important source of

administrative law in Quebec (P. Garant, with P. Garant and J. Garant, *Droit administratif* (7th ed. 2017), at p. 10).

[59] For example, art. 1376 *C.C.Q.* provides that the rules in Book Five, Obligations, “apply to the State and its bodies, and to all other legal persons established in the public interest, subject to any other rules of law which may be applicable to them”. Article 1376 *C.C.Q.* “is a public law rule” (*Prud’homme*, at para. 27; see also *Octane*, at para. 36; *Finney*, at paras. 26-27; Glenn, at pp. 350-51). In addition, art. 300 *C.C.Q.* provides that legal persons established in the public interest, although primarily governed by special Acts by which they are constituted and by those which are applicable to them, are also governed by the *C.C.Q.* “where the provisions of such Acts require to be complemented, particularly with regard to their status as legal persons, their property or their relations with other persons”. Article 300 *C.C.Q.* is also a public law rule (see *Doré*, at paras. 15-17 and 20-21; see also *Finney*, at para. 26; *Octane*, at para. 36; Glenn, at pp. 350-51). And because the *C.C.Q.* is the *jus commune* and the foundation of all other laws, [TRANSLATION] “the Civil Code is also applicable to the state or its components where a rule of public law has so determined” (Brisson, at p. 313). Thus, “the *Civil Code* itself partakes of public law” (Lemieux (2005), at p. 144; see also pp. 149-55), and “serves to ground much public and administrative law” (Macdonald, at p. 592).

[60] As a result, the proper way to determine whether the *C.C.Q.* applies does not involve characterizing the right at issue as either a private law or public law matter.

The *C.C.Q.* is not limited to stating rules or rights of private law. As this Court has explained, “[i]t is important to recall . . . that the new Code does not simply lay down a body of private law rules . . . . As stated in its preliminary provision, it is the *jus commune* of Quebec” (*Prud’homme*, at para. 28 (emphasis in original); see also *Finney*, at para. 26; *Fédération des producteurs*, at para. 10). As this Court has also noted, a draft version of the preliminary provision had provided that the *C.C.Q.* laid down the “private law”, but in response to debate in the legal literature, “the expression ‘private law’ was replaced by the more inclusive expression ‘*jus commune*’” (*Prud’homme*, at para. 29). The backdrop for this change, the Court found, “leaves no doubt as to the very conscious decision made by the legislature to give the Civil Code the broadest possible operational scope” (para. 29; Bisson, at pp. 551-53). In sum, to quote Professor Alain-François Bisson: [TRANSLATION] “. . . the Civil Code is not a code of private law; it is a code of *jus commune*, which does not have private law as its exclusive subject matter” (p. 563).

[61] Book Ten of the *C.C.Q.*, which codifies the rules of private international law in Quebec, likewise applies as the *jus commune* beyond matters of private law, strictly defined. The rules of private international law are concerned with “the jurisdiction of courts of the Canadian provinces, with whether that jurisdiction should be exercised, with what law should apply to a dispute, and with whether a court should recognize and enforce a judgment rendered by a court of another province or country” (*Van Breda*, at para. 21; see also C. Emanuelli, *Étude comparative sur le droit international privé au Canada* (2019), at p. 2; G. Goldstein and E. Groffier, *Droit*

*international privé*, vol. I, *Théorie générale* (1998), at pp. 4-5). These matters extend beyond the narrow scope of private law and also apply, as part of the *jus commune* of Quebec, in public and administrative law contexts.

[62] The jurisdictional rules invoked by the appellants here are contained in Title Three of Book Ten of the *C.C.Q.*, “International Jurisdiction of Québec Authorities”, and unless otherwise provided by law apply to administrative tribunals. To be sure, the FMAT is an administrative tribunal with adjudicative functions “charged with settling disputes between a citizen and an administrative authority” under s. 9 of the *Act respecting administrative justice*, CQLR, c. J-3. Quebec authorities within the meaning of Title Three of Book Ten of the *C.C.Q.* were intended to include [TRANSLATION] “judicial, administrative and even ecclesiastical bodies, for example . . .[,] if [they are] considered as such by Quebec law” (*Commentaires du ministre de la Justice*, vol. II, at p. 1998). Quebec authorities have since been found to include, for example, arbitrators, where there is a relevant foreign element justifying resort to the *C.C.Q.*’s rules of private international law (see *Dell Computer Corp. v. Union des consommateurs*, 2007 SCC 34, [2007] 2 S.C.R. 801, at para. 53); Quebec courts (*Barer v. Knight Brothers LLC*, 2019 SCC 13, [2019] 1 S.C.R. 573, at paras. 111-12; *Ormucos inc. v. Ernst & Young*, 2022 QCCA 405, at paras. 8-9 (CanLII)); and administrative tribunals (*Ormucos inc.*, at paras. 8-9; J. P. McEvoy, “Forum of necessity in Quebec Private International Law: C.c.Q. art. 3136” (2005), 35 *R.G.D.* 61, at p. 66, fn. 8; S. Guillemard and V. A. Ly, *Éléments de droit international privé québécois* (2019), at p. 75).

[63] In short, the *C.C.Q.* is an important source of administrative law in Quebec and, unless otherwise provided by law, Title Three of Book Ten applies to administrative tribunals like the FMAT regardless of whether private rights are at issue, as long as the matters dealt with by the administrative tribunals are “within the letter, spirit or object of [the *C.C.Q.*’s] provisions”. Otherwise, the scheme establishing the tribunal’s jurisdiction does not fall within the purview of the law of general application established by the *C.C.Q.* This is because the object of the regulatory scheme is not captured by the *jus commune*.

[64] Had the majority of the Quebec Court of Appeal considered these principles, it would not have concluded that Title Three of Book Ten of the *C.C.Q.* does not apply. Indeed, the scheme establishing the FMAT’s jurisdiction makes it fall within the purview of the law of general application established by the *C.C.Q.*

[65] The FMAT adjudicates securities law matters, a hybrid field involving standards established to regulate markets in the public interest, as well as rules designed to resolve disputes between parties. On the one hand, Title VII of the *Securities Act* sets out various prohibitions and penalties and Title IX vests the FMAT with powers to make other regulatory orders. On the other hand, Title VIII deals with civil actions, including certain actions brought by market participants for rescission, revision of prices, and damages, and also extends to actions in damages relating to the acquisition and dispositions of securities (ss. 213.1 et seq.). Under s. 93 of the *Act respecting the Autorité des marchés financiers*, the FMAT has jurisdiction to exercise all the functions

and powers assigned to it under the *Securities Act*, including under the Title VIII on civil actions (e.g., see s. 233.2 of the *Securities Act*, which sets out the power to provide a remedy to an interested person in respect of distribution of certain documents, applied in *Mines d'or Visible inc. v. Zara Resources Inc.*, 2013 QCBDR 95). As a result, the FMAT can make orders that have important consequences on the private rights of actors concerned. The securities scheme establishing the FMAT thus vests it with the powers to adjudicate matters within “the letter, spirit or object of [the *C.C.Q.*’s] provisions”.

[66] Moreover, s. 93 of the *Act respecting the Autorité des marchés financiers* provides that “any interested person” can seize the FMAT of a matter involving the *Securities Act* and other aspects of its jurisdiction. This prompted Professor Stéphane Rousseau to observe that [TRANSLATION] “the powers [of the FMAT] also apply to disputes that do not concern the AMF and involve only market participants” (p. 18). Although persons without an interest cannot substitute themselves for the AMF, the statute gives those whose private rights are affected in the securities market the power to seize the FMAT of a matter (see *Financière Manuvie v. Proteau*, 2013 QCBDR 137, at paras. 26, 34, and 38-39 (CanLII)).

[67] Given this hybridity, the international jurisdiction of the Quebec authority established to decide matters relating to securities law can be seen to involve, in some measure, the governing of matters relating to “persons, relations between persons, and property”, as set out in the preliminary provision.



[68] Indeed, provisions of the *Securities Act* itself refer to the *C.C.Q.* (e.g., ss. 235 and 273.3), demonstrating the *C.C.Q.*'s suppletive role to the provisions of the *Securities Act*. The *C.C.Q.*'s suppletive role can also be gleaned from s. 236.1 of the *Securities Act*. This provision derogates from the rules for the international jurisdiction of Quebec authorities set out in Book Ten of the *C.C.Q.*, by establishing a special jurisdictional rule for civil actions relating to the distribution of a security, a take-over bid, an issuer bid, or actions under Title VIII of the *Securities Act*. It states that such actions may be brought before the court of the plaintiff's residence and that any contrary stipulation as to the jurisdiction of the courts is without effect.

[69] Section 236.1 of the *Securities Act* illustrates two aspects of the relationship between the *C.C.Q.* and the Quebec securities legislation. First, it suggests that the rules in Book Ten of the *C.C.Q.* otherwise serve a suppletive role to the *Securities Act*. Second, this provision also confirms that not all of the rules bearing on the international jurisdiction of Quebec authorities are to be found in the *C.C.Q.*

[70] In light of the foregoing, the international jurisdiction of the FMAT should be considered, first, in light of the rules set forth in Title Three of Book Ten of the *C.C.Q.*

- (b) *Title Three of Book Ten of the C.C.Q. Applies Broadly Even in Absence of a Conflict of Jurisdiction or a Conflict of Laws*

[71] Second, the majority of the Quebec Court of Appeal can be read as having suggested that the private international law rules of Title Three of Book Ten of the *C.C.Q.* do not apply to the FMAT because there is no conflict of jurisdiction or any conflict of laws that calls for the application of private international law rules (para. 78). We respectfully disagree with that premise. Title Three of Book Ten applies not just in cases of conflict of jurisdiction; it applies more broadly to determine the “International Jurisdiction of Québec Authorities”, meaning whether Quebec authorities can assume jurisdiction over disputes containing a foreign element (see *Dell*, at paras. 22-23; Guillemard and Ly, at pp. 19 and 77; C. Emanuelli, *Droit international privé québécois* (3rd ed. 2011), at No. 148). As explained in the *Commentaires du ministre de la Justice*, vol. II, at p. 1998:

[TRANSLATION] . . . the traditional expression *conflict of jurisdiction* was not used, because the purpose here is solely to determine the cases in which Quebec authorities will have jurisdiction to hear a dispute with a foreign element, not the cases in which foreign authorities will have jurisdiction. [Emphasis in original.]

[72] In fairness to the majority, when they said that there was no conflict of jurisdiction that would call for the application of private international law rules, it was in support of the view that the FMAT simply sought to apply a Quebec statute to make determinations under s. 93 of the *Act respecting the Autorité des marchés financiers*, rather than to resolve an issue of competing jurisdictions. It is, however, imprecise to say that Book Ten of the *C.C.Q.* does not apply on the basis that the matter before the court raises no question of conflict of jurisdiction or conflict of laws.

C. *The C.C.Q.'s General Rules for the International Jurisdiction of Quebec Authorities*

(1) Introduction

[73] We now proceed to apply the interpretive methodology outlined above regarding the relationship between the *C.C.Q.* and special statutes. In this section, we begin with the *C.C.Q.* as the *jus commune*. We outline the *C.C.Q.*'s general rules for the international jurisdiction of Quebec authorities and interpret arts. 3148 para. 1(3) and 3136 *C.C.Q.*, which Mainville J.A. relied on in determining that the FMAT has jurisdiction over the appellants. We conclude that neither provision, nor any other special provision, nor the residual jurisdiction rule of the *C.C.Q.* provides the FMAT with jurisdiction over the appellants. In the following sections, we then review the special rules for the FMAT's jurisdiction under the Quebec securities scheme, and explain how the territorial reach of those provisions is determined in accordance with this Court's decision in *Unifund*. We interpret the relevant special jurisdictional rules of the Quebec securities scheme in light of *Unifund*, and explain why that scheme provides the FMAT with jurisdiction over the out-of-province appellants in this case.

(2) The *C.C.Q.* Does Not Give the FMAT Jurisdiction Over the Appellants

[74] As previously discussed, Book Ten of the *C.C.Q.* sets out the rules of private international law in Quebec and "contains a well-developed set of rules and principles in this area" (*Van Breda*, at para. 21). The rules of private international law

in Quebec include the rules for the international jurisdiction of Quebec authorities codified in Title Three of Book Ten of the *C.C.Q.* Book Ten limits “the jurisdiction of Quebec authorities to matters closely linked to the province” (*Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4, [2020] 1 S.C.R. 15, at para. 16). These rules “must be read as a coherent whole and in light of the principles of comity, order and fairness” (*Spar Aerospace*, at para. 55; see also *Van Breda*, at para. 21; *Uashaunnuat*, at para. 17).

[75] Title Three of Book Ten of the *C.C.Q.* begins with general rules. The first provision, art. 3134 *C.C.Q.*, states that “[i]n the absence of any special provision, Québec authorities have jurisdiction when the defendant is domiciled in Québec”. This is a suppletive or residual jurisdictional rule for international jurisdiction based on domicile, which applies in the absence of an applicable special provision in Chapter II of Title Three of Book Ten (*Uashaunnuat*, at para. 18). Since the appellants are not domiciled in Quebec, unless a special provision in Chapter II of Title Three of Book Ten gives the FMAT jurisdiction over the appellants, there will be no basis for the FMAT to assert jurisdiction under the general rules of private international law set out in Book Ten of the *C.C.Q.*

[76] An examination of the jurisdictional rules set out in Book Ten and more specifically arts. 3148 para. 1(3) and 3136 *C.C.Q.*, relied on by Mainville J.A., leads to the conclusion that no provision gives the FMAT jurisdiction over the appellants. We address each rule discussed by Mainville J.A. in turn.

(a) *Article 3148 Para. 1(3) C.C.Q.*

[77] Article 3148 para. 1(3) *C.C.Q.* states:

**3148.** In personal actions of a patrimonial nature, Québec authorities have jurisdiction in the following cases:

...

(3) a fault was committed in Québec, injury was suffered in Québec, an injurious act or omission occurred in Québec or one of the obligations arising from a contract was to be performed in Québec;

[78] Mainville J.A. accepted that the present matter before the FMAT is not a personal action of a patrimonial nature in the usual sense, but found that it is very close to being so, and therefore applied art. 3148 para. 1(3) *C.C.Q.* by analogy (para. 144). We respectfully disagree with this conclusion.

[79] To begin with, art. 3148 para. 1(3) *C.C.Q.* does not apply directly because the proceeding before the FMAT does not involve a personal action of a patrimonial nature. A personal action of a patrimonial nature implies the assertion of rights that “in their very essence have a monetary value” and are transmissible as property (Brierley and Macdonald, at p. 156; see also J.-L. Baudouin and P.-G. Jobin, *Les obligations* (7th ed. 2013), by P.-G. Jobin and N. Vézina, at No. 3). It often involves a contractual or extra-contractual claim by a creditor against a debtor seeking the enforcement of the performance of an obligation (see G. Saumier, “The Recognition of Foreign Judgments in Quebec — The Mirror Crack’d?” (2002), 81 *Can. Bar Rev.* 677, at p. 690; C. Walsh,

“The International Jurisdiction of Québec Authorities in Personal Actions: An Overview” (2012), 71 *R. du B.* 249, at p. 254). While the proceeding may have a patrimonial impact on the defendants in that, should the AMF prove successful in securing the prohibition orders and the fines sought, it will have an impact on their patrimonies, the proceeding will not result in a transfer, from one patrimony to another, to redress for example a private law wrong by compensating a loss sustained or a profit deprived. Moreover, the proceeding is not a personal action but one initiated by the securities market regulator acting in the public interest rather than in a strictly personal capacity. It does not involve a person taking legal action against another based on personal rights that are transmissible as property, as art. 3148 *C.C.Q.* requires.

[80] However, Mainville J.A. did not propose to apply art. 3148 *C.C.Q.* directly, but rather by analogy. In the civil law, reasoning by analogy is not only commonplace, but scholars have suggested it is particularly suited to the interpretation of the *C.C.Q.*, which is cast in broad language and not typically designed to apply as a [TRANSLATION] “law of exception”, unlike a common law statute (see Côté and Devinat, at pp. 370-71; see also Bisson, at p. 557). This Court has noted that analogy is “one of the tools that can be used to ensure that the *Civil Code of Québec* functions properly” (*Fédération des producteurs*, at para. 29). Importantly, reasoning by analogy, as Mainville J.A. noted, was used by this Court in respect of some of the very provisions in Book Ten that are engaged by these appeals (*Uashaunnuat*, at paras. 53 and 60).

[81] Moreover, as both Collier J. in the Superior Court and Mainville J.A. underscored, the AMF’s allegations as to the misleading character of the press releases issued in Quebec are similar, in respect of the conduct in question, to an allegation of fault in the private law of civil liability. The AMF’s originating pleading filed before the FMTAT alleges injury sustained by Quebec investors that is said to be caused by the Quebec-based conduct of the defendants. In this sense, one might say the defendants are alleged to have engaged in conduct that is analogous to conduct that could sustain an action in civil liability in the law of obligations. While the contravention of a statute does not in itself constitute a civil fault, the violation of a statutory standard can amount to civil wrong when it amounts to “a violation of the standard of conduct of a reasonable person under the general rules of civil liability” (*St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64, [2008] 3 S.C.R. 392, at para. 34; see also *Kosoian v. Société de transport de Montréal*, 2019 SCC 59, [2019] 4 S.C.R. 335, at para. 48).

[82] In our view, however, reasoning by analogy cannot ground jurisdiction here. Civil law scholars have explained that this mode of interpretation for a civil code reflects [TRANSLATION] “the analogical extension of a rule through the use of an ‘*a pari*’ argument” (G. Cornu, *Droit civil: Introduction au droit* (13th ed. 2007), at p. 213). It is premised on the notion that the *C.C.Q.* can be extended from a circumstance in which it plainly applies to the same type of situation, but about which the *C.C.Q.* is silent (see pp. 213-14; Côté and Devinat, at pp. 370-71).

[83] This is not a circumstance allowing for *a pari* reasoning. Article 3148 para. 1(3) *C.C.Q.* cannot be applied by analogy in this case because to extend the administrative provisions involved here to the law of civil liability would be to change the nature and object of the proceedings to something that is fundamentally different from, rather than analogous to, personal actions of a patrimonial nature contemplated by art. 3148 *C.C.Q.*

[84] The fundamental character of a personal action of patrimonial nature is the private enforcement of a debt (see Brierley and Macdonald, at p. 166; Jobin and Vézina, at Nos. 3 and 6). In contrast, the AMF has brought an action before the FMAT for orders, including administrative prohibitions and penalties, under Titles VII and IX of the *Securities Act*, in the public interest, acting in its [TRANSLATION] “role of supervising the financial markets, protecting investors and the public, and regulating securities trading” (Rousseau, at p. 13). This focus on the public interest [TRANSLATION] “transcends the individual interests of certain investors” (p. 30, citing *Autorité des marchés financiers v. Dominion Investments (Nassau) Ltd. (Dominion Investments Ltd.)*, 2008 QCBDRVM 4, at p. 25 (CanLII)). It aims to prevent future harm to the Quebec securities market and is neither restorative nor punitive (pp. 31-32 and 38-39). Here, there is no tenable analogy between a personal action of a patrimonial nature, which seeks the enforcement of a debt under private law, and a regulatory prosecution by the state, which seeks public interest remedies rather than simply private reparation. Such proceedings are of a fundamentally different legal character. To apply



art. 3148 para. 1(3) *C.C.Q.* to a regulatory prosecution by the state would stretch the provision well beyond its letter, spirit, and object.

[85] As a result, art. 3148 para. 1(3) *C.C.Q.* does not give the FMAT jurisdiction over the appellants by reason of the misleading press releases or the resulting injury being connected to Quebec. Moreover, the fact that the defendant Solo, an out-of-province corporation, had an establishment in Quebec at the relevant time does not ground jurisdiction on the basis of art. 3148 *C.C.Q.* either. Although art. 3148 para. 1(2) *C.C.Q.* provides that Quebec authorities have jurisdiction when the defendant is a legal person that is not domiciled in Quebec but has an establishment in Quebec and the dispute relates to activities in Quebec, this rule still requires the nature of the action to be personal and of a patrimonial nature, which is not the case here.

(b) *Article 3136 C.C.Q.*

[86] Article 3136 *C.C.Q.* states:

**3136.** Even though a Québec authority has no jurisdiction to hear a dispute, it may nevertheless hear it provided the dispute has a sufficient connection with Québec, if proceedings abroad prove impossible or the institution of proceedings abroad cannot reasonably be required.

[87] Neither the FMAT nor the Superior Court of Quebec applied art. 3136 *C.C.Q.* Indeed, the AMF did not invoke this provision before the FMAT. Despite this,

Mainville J.A. relied on this provision in his concurring opinion and concluded that it gives the FMAT jurisdiction over the appellants.

[88] Article 3136 *C.C.Q.* is part of a body of suppletive rules that gives a Quebec authority flexibility in determining whether it has jurisdiction (*GreCon Dimter inc. v. J.R. Normand inc.*, 2005 SCC 46, [2005] 2 S.C.R. 401, at para. 33). Article 3136 *C.C.Q.* was described by LeBel J.A., as he then was, as a forum of necessity provision that [TRANSLATION] “is intended to resolve certain access to justice problems for a litigant who is in Quebec when the foreign forum that would normally have jurisdiction is inaccessible to the litigant for exceptional reasons, such as legal impossibility or practical impossibility that is nearly absolute” (*Lamborghini (Canada) inc. v. Automobili Lamborghini S.P.A.*, [1997] R.J.Q. 58 (C.A.), at p. 68; see also *Anvil Mining Ltd. v. Association canadienne contre l’impunité*, 2012 QCCA 117, at paras. 97-98 (CanLII); *Otsuka Pharmaceutical Company Limited v. Pohoresky*, 2022 QCCA 1230, at para. 7 (CanLII); G. Goldstein, *Droit international privé*, vol. 2, *Compétence internationale des autorités québécoises et effets des décisions étrangères (Art. 3134 à 3168 C.c.Q.)* (2012), at p. 55; and *Commentaires du ministre de la Justice*, vol. II, at p. 2000).

[89] Article 3136 *C.C.Q.* states three preconditions for the provision to apply: the Quebec authority must have no jurisdiction; proceedings abroad cannot possibly be instituted or cannot reasonably be required; and the dispute must have a sufficient connection to Quebec (see *Droit de la famille — 1830*, 2018 QCCA 24, at para. 24

(CanLII)). Because art. 3136 *C.C.Q.* applies only when a Quebec authority otherwise lacks jurisdiction, the provision [TRANSLATION] “rather represents a narrow exception to the normal rules of jurisdiction” (*Lamborghini*, at p. 68; see also *Anvil Mining*, at paras. 97-98; Emanuelli (2011), at No. 168). To apply art. 3136 *C.C.Q.*, a Quebec authority must first find that it does not have jurisdiction by other means (Goldstein, at p. 56; McEvoy, at p. 100). If the Quebec authority has jurisdiction by other means, art. 3136 *C.C.Q.* cannot apply.

[90] In our view, art. 3136 *C.C.Q.* does not provide a basis for the FMAT’s jurisdiction in this case, for two reasons. First, the AMF did not seek to rely on art. 3136 *C.C.Q.* as a basis for the FMAT’s jurisdiction. This Court has confirmed that both art. 3135 *C.C.Q.*, which deals with *forum non conveniens*, and art. 3136 *C.C.Q.*, “may be applied only if one of the parties raises them, as the court cannot apply them of its own motion” (*GreCon*, at para. 33). Otherwise stated, [TRANSLATION] “only an express request” can allow a “judge to confer on the Quebec authorities a jurisdiction that they do not possess on the basis of article 3136 *C.C.Q.*” (*Droit de la famille — 143017*, 2014 QCCA 2188, at para. 55 (CanLII)). It was therefore an error to rely on art. 3136 *C.C.Q.* as a basis for the FMAT’s jurisdiction when the AMF did not invoke this provision.

[91] Second, even if a party had properly raised art. 3136 *C.C.Q.*, the provision does not apply on its face. For art. 3136 *C.C.Q.* to apply, a Quebec authority must have no jurisdiction to hear a dispute, as shown by its wording: “Even though a Québec authority has no jurisdiction to hear a dispute . . . .” Here, as we address below, the

FMAT *does* have jurisdiction to hear the dispute — including jurisdiction over the appellants — under the special jurisdictional rules of the Quebec securities scheme contained in the *Securities Act* and the *Act respecting the Autorité des marchés financiers*. As a result, art. 3136 *C.C.Q.* does not provide a basis for the FMAT’s jurisdiction in this case.

D. *The Quebec Securities Scheme’s Special Rules for the FMAT’s Jurisdiction*

[92] Although the *C.C.Q.* does not grant the FMAT jurisdiction in these circumstances, it remains to consider whether the FMAT has jurisdiction under the special jurisdictional rules under Quebec’s securities scheme. This Court has stated that “[t]he various rules governing the private international law order of Quebec are found primarily in Book Ten of the *C.C.Q.*” (*Spar Aerospace*, at para. 22). However, this does not preclude the application of other jurisdictional rules set out in special statutes (see P. Ferland and G. Laganière, “Le droit international privé”, in *Collection de droit de l’École du Barreau du Québec 2023-2024*, vol. 7, *Contrats, sûretés, publicité des droits et droit international privé* (2023), 271, at p. 303, fn. 247).

[93] The FMAT has jurisdiction under two special statutes: the Quebec *Securities Act* and the *Act respecting the Autorité des marchés financiers*, now known as the *Act respecting the regulation of the financial sector*, CQLR, c. E-6.1.

[94] Section 93 of the *Act respecting the Autorité des marchés financiers* provides that the FMAT’s function is to make determinations regarding matters brought

under the *Act respecting the Autorité des marchés financiers* and other Acts listed in the provision, including the *Securities Act*. Section 93 thus grants the FMAT jurisdiction over the adjudication of matters brought under the *Securities Act*:

**93.** On the request of the Authority or of any interested person, the Tribunal shall exercise the functions and powers assigned to it under this Act, the Act respecting the distribution of financial products and services (chapter D-9.2), the Money-Services Businesses Act (chapter E-12.000001), the Derivatives Act (chapter I-14.01) and the Securities Act (chapter V-1.1).

The Tribunal shall exercise its discretion in the public interest.

The Tribunal may not, when assessing the facts or the law for the purposes of those Acts, substitute its assessment of the public interest for that made by the Authority in making a decision.<sup>4</sup>

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<sup>4</sup> Section 93 was amended in 2018 and now reads:

**93.** The function of the Tribunal is to make determinations with respect to matters brought under this Act and the Acts listed in Schedule I. Except where otherwise provided by law, the Tribunal shall exercise its jurisdiction to the exclusion of any other tribunal or adjudicative body.

The Tribunal shall exercise its discretion in the public interest.

In reviewing a decision rendered by the Authority under the Securities Act (chapter V-1.1) or the Derivatives Act (chapter I-14.01), the Tribunal may not, when assessing the facts or the law for the purposes of those Acts, substitute its assessment of the public interest for that made by the Authority in making a decision.

In this Title, unless the context indicates otherwise, “matters” also includes any application, complaint, contestation or motion, as well as any action falling within the jurisdiction of the Tribunal.

The former version of s. 93, in force at the time when the AMF instituted proceedings before the FMAT, continues to apply to these proceedings under the applicable transitional rules because the provision is substantive (it relates to the FMAT’s jurisdiction) and not procedural (see *Interpretation Act*, CQLR, c. I-16, ss. 12 and 13; *Dell Computer*, at para. 160, per Bastarache and LeBel JJ., dissenting; Côté and Devinat, at p. 219; R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at pp. 788-89).

[95] Section 94 grants the FMAT jurisdiction to take any measure to ensure compliance with any of the Acts referred to in s. 93, which include the *Act respecting the Autorité des marchés financiers* and the *Securities Act*:

**94.** At the request of the Authority, the Tribunal may take any measure conducive to ensuring compliance with an undertaking given under this Act, the Act respecting the distribution of financial products and services (chapter D-9.2), the Money-Services Businesses Act (chapter E-12.000001), the Derivatives Act (chapter I-14.01) or the Securities Act (chapter V-1.1) or compliance with those Acts.<sup>5</sup>

[96] The AMF has alleged before the FMAT that the appellants violated the *Securities Act* by improperly or fraudulently influencing the market price or the value of securities (s. 195.2) and by knowingly participating in securities transactions that created an artificial security price (s. 199.1). In addition to setting forth the FMAT's jurisdiction through the *Act respecting the Autorité des marchés financiers*, the legislature addressed the FMAT's jurisdiction through various provisions in the *Securities Act* itself. The three relevant jurisdictional provisions are ss. 265, 273.1, and 273.3.

[97] Section 265 of the *Securities Act* empowers the FMAT to order a person to cease any activity in respect of securities transactions:

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<sup>5</sup> The wording of s. 94 was modified in 2018 and now reads:

**94.** At the request of the Authority, the Tribunal may take any measure conducive to ensuring compliance with an undertaking given to the Authority under any of the Acts listed in the first paragraph of section 93 or compliance with those Acts.

**265.** The Financial Markets Administrative Tribunal may order a person to cease any activity in respect of a transaction in securities.

The Financial Markets Administrative Tribunal may, furthermore, order any person or category of persons to cease any activity in respect of a transaction in a particular security.

[98] Section 273.1 of the *Securities Act* allows the FMAT to impose an administrative penalty on an offender:

**273.1.** Where the Financial Markets Administrative Tribunal becomes aware of facts establishing that a person has, by an act or omission, contravened, or aided in the contravention of, a provision under this Act or a regulation made under its authority, the Tribunal may impose an administrative penalty on the offender and have it collected by the Authority.

The amount of the penalty may in no case exceed \$2,000,000 for each contravention.

[99] Finally, s. 273.3 of the *Securities Act* provides that the FMAT can prohibit a person from acting as a director or officer of an issuer, dealer, adviser, or investment fund manager:

**273.3.** The Financial Markets Administrative Tribunal may prohibit a person from acting as a director or officer of an issuer, dealer, adviser or investment fund manager on the grounds set out in article 329 of the Civil Code, or where a penalty has been imposed on the person under this Act, the Act respecting the distribution of financial products and services (chapter D-9.2) or the Derivatives Act (chapter I-14.01).

The prohibition imposed by the Financial Markets Administrative Tribunal may not exceed five years.

The Financial Markets Administrative Tribunal may, at the request of the person concerned, lift the prohibition on such conditions as it considers appropriate.

[100] These three *Securities Act* provisions empower the FMAT to act in a broad range of circumstances. In particular, s. 265, which allows the FMAT to order a person to “cease any activity in respect of a transaction in securities”, grants the FMAT a large measure of discretion when exercising its jurisdiction. It is important, however, to read these provisions in conjunction with the *Act respecting the Autorité des marchés financiers*, which explicitly provides for the FMAT’s jurisdiction to make determinations over matters brought under the two Acts. Reading the Acts together underscores that the FMAT must exercise its discretion under ss. 265, 273.1, and 273.3 of the *Securities Act* “in the public interest” (*Act respecting the Autorité des marchés financiers*, s. 93).

[101] We recognize that s. 93 of the *Act respecting the Autorité des marchés financiers* provides subject-matter jurisdiction to the FMAT over matters arising under the statutes listed in s. 93 (Rousseau, at pp. 16-17; see also C. Duclos, in collaboration with R. Crête and A. Létourneau, “Les autorités d’encadrement”, in R. Crête et al., eds., *Courtiers et conseillers financiers: Encadrement des services de placement* (2011), 117, at pp. 150-51; C. Duclos, *La protection des épargnants dans l’industrie des services d’investissement: une analyse de l’influence des défaillances organisationnelles sous l’angle du Swiss Cheese Model* (2021), at p. 427). But with



respect for other views, as we will explain, the relevance of this provision is not confined to subject-matter jurisdiction.

[102] Although both Acts read together, and particularly s. 93 of the *Act respecting the Autorité des marchés financiers*, grant the FMAT jurisdiction to make determinations under the *Securities Act*, neither statute expressly provides for the FMAT to assert jurisdiction over out-of-province parties, or otherwise limits the territorial reach of the Quebec securities scheme over interprovincial or international transactions. To evaluate whether these statutes may be applied in such circumstances, the Quebec securities scheme must be interpreted to determine its territorial reach. That issue involves consideration of this Court's decision in *Unifund*, which holds that the permissible territorial application of provincial legislation is determined by assessing the sufficiency of the connection among the enacting jurisdiction, the subject matter of the legislation, and the individual or entity sought to be regulated. We address that issue next.

E. *The Territorial Reach of Provincial Legislation Is Interpreted in Accordance With This Court's Decision in Unifund*

(1) This Court's Decision in *Unifund*

[103] In *Unifund*, this Court addressed when a provincial regulatory scheme applies to an out-of-province defendant. The specific issue in *Unifund* was whether a reimbursement provision of Ontario's *Insurance Act*, R.S.O. 1990, c. I.8, applied to an

out-of-province insurer. An Ontario insurer had paid statutory no-fault benefits to its clients when they were injured in a car accident in British Columbia. The Ontario insurer then claimed reimbursement of these amounts from the B.C.-based insurer of the driver who had caused the accident. The Ontario insurer invoked s. 275 of the Ontario *Insurance Act*, which imposed an indemnification obligation on the responsible insurer in certain cases. However, Binnie J. ruled that s. 275 of the *Insurance Act* did not apply in the circumstances.

[104] Binnie J. considered whether the connection between Ontario and matters occurring outside the province was sufficient to support the constitutional application of Ontario's regulatory regime to the out-of-province insurer (para. 22). He observed that "a province has no legislative competence to legislate extraterritorially" (para. 50). This territorial restriction is "fundamental to our system of federalism" (para. 51), and flows both from the opening words of s. 92 of the *Constitution Act, 1867*, which limits the territorial reach of each provincial legislature to enacting legislation "[i]n each Province", and from s. 92(13), which gives a provincial legislature legislative authority to make laws in relation to property and civil rights only "in the Province" (para. 51 (emphasis in original)). However, Binnie J. accepted that a provincial legislative scheme can constitutionally apply to an out-of-province defendant without offending the restriction on extraterritorial legislation, provided that there is a "real and substantial connection" or "sufficient connection" — terms he used interchangeably — between the legislative scheme and the out-of-province defendant. He formulated the

following test for when provincial legislation applies to an out-of-province individual or entity:

Consideration of constitutional *applicability* can conveniently be organized around the following propositions:

1. The territorial limits on the scope of provincial legislative authority prevent the application of the law of a province to matters not sufficiently connected to it;
2. What constitutes a “sufficient” connection depends on the relationship among the enacting jurisdiction, the subject matter of the legislation and the individual or entity sought to be regulated by it;
3. The applicability of an otherwise competent provincial legislation to out-of-province defendants is conditioned by the requirements of order and fairness that underlie our federal arrangements;
4. The principles of order and fairness, being purposive, are applied flexibly according to the subject matter of the legislation. [Emphasis in original; para. 56.]

[105] Over the last two decades, courts have regularly applied the *Unifund* test when determining whether a provincial regulatory scheme constitutionally applies to out-of-province defendants.

[106] In *Ontario College of Pharmacists v. 1724665 Ontario Inc.*, 2013 ONCA 381, 363 D.L.R. (4th) 724, the Ontario Court of Appeal applied the *Unifund* test and held that the College of Pharmacists had jurisdiction over out-of-province parties who allegedly breached statutory provisions regulating the sale of prescription drugs in Ontario (paras. 74-75).

[107] In the securities context, the Saskatchewan Court of Appeal in *Berger v. Saskatchewan (Financial and Consumer Affairs Authority)*, 2019 SKCA 89, ruled that the Financial and Consumer Affairs Authority of Saskatchewan should have applied the *Unifund* test to determine whether *The Securities Act, 1988*, S.S. 1988-89, c. S-42.2, applied to a resident of Costa Rica (paras. 64-66 (CanLII)). The court held that “a province cannot use its legislative authority to empower an administrative tribunal to apply laws extraprovincially”, and it noted that “the question will always be whether the connection between the matter before a tribunal and the province in question is sufficient to give the tribunal jurisdiction” (para. 60).

[108] Similarly, the British Columbia Court of Appeal has applied the *Unifund* test to determine whether that province’s Securities Commission had jurisdiction over out-of-province defendants who allegedly breached the *Securities Act*, R.S.B.C. 1996, c. 418 (*McCabe*, at para. 34; see also *Torudag v. British Columbia (Securities Commission)*, 2011 BCCA 458, 343 D.L.R. (4th) 743, at paras. 16-29).

[109] This Court has also applied the “sufficient connection” test when determining whether federal regulatory legislation applies to matters involving international elements. In *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, 2004 SCC 45, [2004] 2 S.C.R. 427, the Court cited *Unifund* and ruled that the applicability of the *Copyright Act*, R.S.C. 1985, c. C-42, to communications with international participants depends on whether

there is a “sufficient connection between this country and the communication in question for Canada to apply its law” (para. 57).

[110] As a result, the “real and substantial connection” test in *Unifund* is now the “accepted test for discerning the presumptively intended reach of federal legislation as well as the constitutionally permissible application of provincial legislation” (R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at p. 806).

[111] Four aspects of the *Unifund* test warrant particular emphasis.

(a) *The Unifund Test Concerns Constitutional Applicability, Not Constitutional Validity*

[112] First, the *Unifund* “sufficient connection” test is not concerned with the constitutional *validity* of legislation but with its constitutional *applicability*. *Unifund* does not address the situation in which the constitutional validity of provincial legislation is challenged because the legislation violates the territorial limitations on provincial legislative competence — that is, when the law is said to be *ultra vires* or to fall outside the jurisdiction of the enacting provincial legislature (*British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [2005] 2 S.C.R. 473; J. Blom, “Constitutionalizing Canadian private international law — 25 years since *Morguard*” (2017), 13 *J. Priv. Int’l L.* 259, at p. 288; J. Walker, *Canadian Conflict of Laws* (7th ed. (loose-leaf)), at § 1.02). There was no constitutional challenge to the validity of the Ontario *Insurance Act* in *Unifund*, nor is there any such challenge to the Quebec

securities scheme in this case. Rather, the issue is whether the relevant provincial legislation is constitutionally *applicable* to the out-of-province defendants (*Unifund*, at paras. 55-56). As Professors Elizabeth Edinger and Vaughan Black have explained, the question of constitutional applicability “usually concerns interjurisdictional immunity, but may entail questions about the territorial reach of provincial legislation in particular applications” (“A New Approach to Extraterritoriality: *Unifund Assurance Co. v. I.C.B.C.*” (2004), 40 *Can. Bus. L.J.* 161, at p. 173; see also p. 177).

(b) *The Unifund Test Functions as a Principle of Statutory Interpretation*

[113] Second, like the doctrine of interjurisdictional immunity in constitutional law, the *Unifund* test functions as a principle of statutory interpretation. As noted by Professors Peter W. Hogg and Wade K. Wright, under the doctrine of interjurisdictional immunity, a broadly framed provincial or federal law that is valid in most of its applications “should be interpreted so as not to apply to the matter that is outside the jurisdiction of the enacting body” (*Constitutional Law of Canada* (5th ed. Supp.), at § 15:16 (emphasis added)). The enacting legislative body “is presumed to have meant to enact provisions which do not transgress the limits of its constitutional powers; general language which appears to transgress the limits must therefore be ‘read down’ so that it is confined within the limits” (§ 15:15; see also H. Brun, G. Tremblay and E. Brouillet, *Droit constitutionnel* (6th ed. 2014), at para. VI-2.56). “Reading down is simply a canon of construction (or interpretation)” (Hogg and Wright, at § 15:15).

[114] Similarly, the *Unifund* “sufficient connection” test limits, or reads down, the territorial reach of otherwise broadly framed provincial legislation, consistent with the territorial restrictions on provincial legislative power in ss. 91 and 92 of the *Constitution Act, 1867*. It does so by insisting on a “sufficient connection” between the legislation and the out-of-province defendant (Sullivan, at pp. 821-23). As Professor Joost Blom has explained, the *Unifund* test “functions as a kind of unilateral, negative choice of law principle, because it defines the permissible territorial ambit of the provincial rule” ((2017), at p. 288; see also J. Blom, “Regulation of Contracts in Canadian Private International Law” (2014), 31 *Ariz. J. Int’l & Comp. L.* 21, at p. 31; Edinger and Black, at pp. 181-82; N. Hume, “Four Flaws: Reflections on the Canadian Approach to Private International Law” (2006), 44 *Can. Y.B. Int’l L.* 161, at p. 234). In short, the *Unifund* test allows a statute to be interpreted to apply to an out-of-province defendant in certain circumstances without having an extraterritorial effect.

(c) *The Unifund Test Relates to Prescriptive Legislative Jurisdiction*

[115] Third, the *Unifund* “sufficient connection” test relates to *prescriptive legislative jurisdiction*, rather than *adjudicatory jurisdiction*, although the latter may flow from the former. Prescriptive legislative jurisdiction is “the power to make rules, issue commands or grant authorizations that are binding upon persons and entities” (*R. v. Hape*, 2007 SCC 26, [2007] 2 S.C.R. 292, at para. 58; see also Edinger and Black, at pp. 165-66; *British Columbia v. Imperial Tobacco Canada Ltd.*, 2004 BCCA 269, 239 D.L.R. (4th) 412, at para. 23, *aff’d* 2005 SCC 49, [2005] 2 S.C.R. 473; and B. Kain and

B. Shaw, “Mapping the Serbonian Bog: The Territorial Limits of Secondary Market Securities Act Claims Under the Canadian Constitution — Part 1” (2012), 53 *Can. Bus. L.J.* 63, at pp. 74-75). Adjudicatory jurisdiction, also known as judicial jurisdiction, is the power of a court or tribunal to “resolve disputes or interpret the law through decisions that carry binding force” (*Hape*, at para. 58), and includes the power to take jurisdiction over a matter that may have extraterritorial connections (*Hape*, at para. 59; *Imperial Tobacco* (BCCA), at para. 23; Edinger and Black, at p. 165).

[116] In *Unifund*, Binnie J. distinguished between prescriptive legislative jurisdiction and adjudicatory jurisdiction, both of which are governed by different versions of the “real and substantial connection” test. As Binnie J. noted, “a ‘real and substantial connection’ sufficient to permit the court of a province to take jurisdiction over a dispute may not be sufficient for the law of a province to regulate the outcome” (para. 58). He later added that “[a] relationship that is inadequate to support the application of regulatory legislation may nevertheless provide a sufficient ‘real and substantial connection’ to permit the courts of the forum to take jurisdiction over a dispute. This happens regularly. The courts, having taken jurisdiction, then apply the law of the other province applying rules of conflict resolution governing choice of law issues” (para. 80). In *Unifund*, Binnie J. concluded that the reimbursement obligation in s. 275 of the Ontario *Insurance Act* did not apply to the B.C.-based insurer (prescriptive legislative jurisdiction), and thus the Ontario courts also had no jurisdiction to appoint an arbitrator under the Ontario *Insurance Act* (adjudicatory or judicial jurisdiction) (para. 44).



(d) *The Unifund Test Is Part of a Family of “Real and Substantial Connection” Tests*

[117] Fourth, the test in *Unifund* is distinct from the “real and substantial connection” tests that this Court has developed elsewhere in the domain of conflicts of laws. The courts below and the parties before this Court disagree about which version of the real and substantial connection test applies in this case. The Quebec Superior Court determined that the FMAT had correctly applied the real and substantial connection test in *Van Breda*, but the court also looked to *Unifund* for what might constitute a “sufficient connection” (para. 39). The appellants argue that the *C.C.Q.* supplies the rules for the international jurisdiction of Quebec authorities, but note that if the “real and substantial connection” test applies, then this Court’s formulation of that test in *Van Breda* should apply. The respondent argues that the “real and substantial connection” test in *Unifund* applies.

[118] The “real and substantial connection” test has been described both as a single test that applies in a variety of different contexts (*Van Breda*, at paras. 23-31), and as a collection of different tests with a common family resemblance (J. Blom and E. Edinger, “The Chimera of the Real and Substantial Connection Test” (2005), 38 *U.B.C. L. Rev.* 373, at pp. 373-74). Although both views have merit, we refer to the “real and substantial connection” test as a family of tests to emphasize that the same formula of words — that is, “real and substantial connection” — involves different considerations in each of the varying contexts in which the formula is employed.

[119] For example, in *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, this Court ruled that a court in one province should recognize and enforce a judgment of the court of another province if there is a “real and substantial connection” between that other court and the subject matter of the litigation (pp. 1107-8). In *Beals v. Saldanha*, 2003 SCC 72, [2003] 3 S.C.R. 416, the Court extended the principles in *Morguard* to foreign judgments and ruled that Canadian courts should recognize and enforce a judgment of a court outside Canada when there is a “real and substantial connection” between the cause of action and the foreign court (paras. 32 and 37).

[120] In *Van Breda*, this Court developed a “real and substantial connection” test in the context of deciding whether a court can assume jurisdiction over a tort claim brought by Canadian residents who were injured abroad. The Court identified presumptive connecting factors that *prima facie* entitle a court to assume jurisdiction over a tort dispute and explained how such a presumption of jurisdiction is subject to rebuttal. The Court also clarified that this version of the “real and substantial connection” test is a common law test. In Quebec, “the *Civil Code of Québec* contains a list of factors that must be considered in order to determine whether a Quebec authority has jurisdiction over a delictual or quasi-delictual action (art. 3148)” (para. 77; see also *Spar Aerospace*, at paras. 55-56).

[121] This Court also developed a version of the real and substantial connection test in *Libman v. The Queen*, [1985] 2 S.C.R. 178, to determine whether a transnational crime, which took place partly in Canada, could be prosecuted in Canada. The Court

held that such a crime can be prosecuted in Canada when there is a “real and substantial link” between the offence and this country (pp. 212-13).

[122] As a final example, this Court has developed a “real and substantial connection” test in the context of determining whether provincial legislation is constitutionally applicable to out-of-province defendants or circumstances (see *Blom* (2017), at pp. 288-89). In *Hunt v. T&N plc*, [1993] 4 S.C.R. 289, the Court decided that a Quebec “blocking” statute prohibiting the transfer of documents to other jurisdictions was constitutionally inapplicable to other provinces. The Court confirmed that “courts are required, by constitutional restraints, to assume jurisdiction only where there are real and substantial connections to that place”, and held that “the presence of such blocking statutes is an anachronism . . . inimical to [interprovincial] litigation if applied on the interprovincial level” (p. 328). In *Unifund*, this Court built on *Hunt* and ruled that provincial regulatory legislation is constitutionally applicable to out-of-province defendants when there is a “sufficient connection” between the province and the out-of-province defendants, subject to the principles of order and fairness (para. 56).

[123] The appellants’ argument and the Superior Court’s conclusion that the *Van Breda* “real and substantial connection” test should apply here are misplaced. *Van Breda* set out the real and substantial connection test in the context of tort claims at common law and does not apply in Quebec. The counterpart to the *Van Breda* test for personal actions of a patrimonial nature in Quebec is contained in art. 3148 *C.C.Q.* (*Van Breda*, at para. 77). In any event, in the present case, the Court is asked to

determine whether Quebec's securities regulatory scheme constitutionally applies to the out-of-province appellants as a matter of prescriptive legislative jurisdiction. Consequently, the *Unifund* test applies.

(2) Interpreting the Special Jurisdictional Rules of the Quebec Securities Scheme in Light of *Unifund*

[124] The Quebec securities scheme, interpreted in light of the *Unifund* test, provides for jurisdiction over out-of-province parties with a “sufficient connection” or “real and substantial connection” with Quebec. On their face, the special jurisdictional provisions in the *Act respecting the Autorité des marchés financiers* and the *Securities Act* are not limited in their territorial reach. Constitutionally, they apply only to matters within Quebec's territorial jurisdiction. *Unifund* provides the appropriate test for evaluating the territorial applicability of these statutes to a particular set of circumstances. It functions, as a canon of construction, to limit the application of Quebec's securities scheme to those persons and matters with a “sufficient connection” or “real and substantial connection” to the province. These provisions thus give the FMAT plenary international jurisdiction to make determinations and issue orders against persons under the *Securities Act* when there is a sufficient connection with Quebec.

[125] The Quebec securities scheme may be said to both *complement* and *derogate* from the rules for the international jurisdiction of Quebec authorities in Title Three of Book Ten of the *C.C.Q.* The Quebec securities scheme may be said to

*complement* the *C.C.Q.* because the special statutes' jurisdictional rules for the FMAT work alongside the general jurisdictional rules in the *jus commune*. But the Quebec securities scheme may also be said to *derogate* from the *C.C.Q.* because, in this case, as demonstrated below, the application of the special jurisdictional rules provides the FMAT with jurisdiction over the out-of-province appellants, even though the *C.C.Q.*'s general rules do not.

F. *The Quebec Securities Scheme Applies to the Out-of-Province Appellants*

[126] Finally, it must be determined whether the FMAT's exercise of jurisdiction over the out-of-province appellants would be contrary to the constitutional limitations set out in *Unifund*, which asks whether there is a sufficient connection between Quebec and the facts alleged against the appellants based on the following four principles:

1. The territorial limits on the scope of provincial legislative authority prevent the application of the law of a province to matters not sufficiently connected to it;
2. What constitutes a "sufficient" connection depends on the relationship among the enacting jurisdiction, the subject matter of the legislation and the individual or entity sought to be regulated by it;
3. The applicability of an otherwise competent provincial legislation to out-of-province defendants is conditioned by the requirements of order and fairness that underlie our federal arrangements;
4. The principles of order and fairness, being purposive, are applied flexibly according to the subject matter of the legislation. [para. 56]

(1) There Is a Sufficient Connection Between Quebec and the Appellants

[127] The first two principles in *Unifund* are related. The first principle requires a sufficient connection, while the second principle identifies factors that might furnish that connection (Sullivan, at p. 822). This involves a contextual inquiry. As Binnie J. noted in *Unifund*, “different degrees of connection to the enacting province may be required according to the subject matter of the dispute” (para. 65). In each case, a court or tribunal must examine the relationship among the enacting jurisdiction, the subject matter of the law, and the person sought to be regulated by it, to decide whether that relationship is sufficient to support the applicability of the legislation to the out-of-province person (para. 65).

[128] The “sufficient connection” analysis must recognize the transnational nature of modern securities regulation and the public interest in addressing international market manipulation. Securities regulation raises unique considerations that highlight the need for transnational enforcement. As this Court noted in *Global Securities Corp. v. British Columbia (Securities Commission)*, 2000 SCC 21, [2000] 1 S.C.R. 494, the “securities market has been an international one for years” and the “Internet has greatly increased the ability of securities traders to extend across borders” (para. 28). To effectively regulate the securities market, “regulators must equally be able to respond, and surmount borders where legally possible” (para. 28).

[129] Applying the first two *Unifund* principles, there is a sufficient connection between Quebec and the out-of-province appellants, all of whom allegedly participated in a fraudulent securities manipulation scheme with important ties to Quebec. The

appellants allegedly used Quebec as the “face” of their alleged pump-and-dump scheme by promoting Solo’s mining activities in Quebec. They participated in marketing or financing efforts and partly targeted Quebec residents. Solo, the company through which the appellants operated their scheme, was a reporting issuer in Quebec, and Solo’s director was a Quebec resident. There was thus a clear connection between Solo and the appellants, on the one hand, and the province of Quebec on the other. In the circumstances, it would defeat the purpose of the cross-border nature of modern securities regulation to allow the appellants to escape the reach of Quebec’s regulatory oversight.

[130] The appellant Sharp argues that the FMAT and courts below failed to analyze the AMF’s specific allegations against him, which relate only to the purchase and sale of securities outside of Quebec. We do not accept this submission. The AMF alleges that he participated in one or more stages of the appellants’ securities manipulation scheme, that he was closely implicated by buying or selling securities, and that the scheme had important links to Quebec. Under *Unifund*, that connection suffices to apply Quebec’s securities regulatory scheme to him.

(2) The Requirements of Order and Fairness Are Satisfied

[131] The third and fourth *Unifund* principles are also related and “incorporate the notions of interprovincial comity and fairness to the defendant” (Sullivan, at p. 822). The third principle requires a court or tribunal to consider the principles of order and fairness, which function “as a mechanism to regulate extraterritoriality

concerns” (*Unifund*, at para. 73) by ensuring the “security of transactions with justice” (para. 68, citing *Morguard*, at p. 1097). “Order” refers to the idea that courts and tribunals must respect the principle of interprovincial comity and only assume jurisdiction where constitutionally appropriate (*Unifund*, at para. 71; *Morguard*, at p. 1102). “Fairness” refers to fairness to the out-of-province defendant (*Unifund*, at para. 72; *Morguard*, at p. 1103). Finally, the fourth *Unifund* principle requires a court or tribunal to apply the principles of order and fairness purposively and flexibly given the subject matter of the legislation and the type of jurisdiction being asserted (*Unifund*, at para. 80).

[132] In our view, it is consistent with the principles of order and fairness and would not raise any extraterritoriality concerns to apply Quebec’s securities regulatory scheme to the appellants.

[133] Applying the Quebec regulatory regime is fair to the appellants. The appellants chose to enter Quebec’s securities marketplace (see *Unifund*, at para. 77), and they promoted the Quebec mining prospects of Solo, a reporting issuer in Quebec. Because the appellants made Quebec the face of their securities manipulation operation, their entrance into Quebec’s market was not accidental or irrelevant, but rather was an integral part of the scheme.

[134] In addition, applying Quebec’s securities regulatory scheme to the appellants does not offend the principle of order or the related concept of interprovincial comity. Given the cross-border nature of securities manipulation and



securities fraud, regulators from multiple jurisdictions may exercise jurisdiction over the same scheme. As noted by the intervener the Ontario Securities Commission, this is “a feature, not a flaw” of modern securities regulation (I.F., at para. 15). “It promotes the seamless coverage of regulatory protection and the imposition of public interest remedies across the territories affected by a single, unlawful scheme” (para. 15). We also agree with the AMF: [TRANSLATION] “. . . nothing precludes such a multiplicity of proceedings because each of the proceedings constitutes a legitimate exercise of the jurisdiction of the state concerned. . . . [T]he application of the sufficient connection test is not a zero-sum game” (R.F., at paras. 81 and 87).

[135] Because contemporary securities manipulation and fraud are often transnational and extend across provincial and national borders, courts and tribunals must take a flexible and purposive approach when applying the principles of order and fairness in the securities context. In our view, it is consistent with the principles of order and fairness for the FMAT to have jurisdiction over the appellants.

(3) The FMAT’s Adjudicatory Jurisdiction Flows From the Province’s Prescriptive Legislative Jurisdiction

[136] In closing, it bears noting that while prescriptive legislative jurisdiction and adjudicatory jurisdiction are distinct concepts (*Unifund*, at para. 58), in this case the FMAT’s adjudicatory jurisdiction flows from the province’s prescriptive legislative jurisdiction. Section 93 of the *Act respecting the Autorité des marchés financiers* stipulates that the FMAT shall exercise jurisdiction under the *Securities Act*. Since the

Quebec legislature has decided that the FMAT shall adjudicate alleged breaches of the *Securities Act* and the appellants' alleged conduct has a real and substantial connection with Quebec, the FMAT necessarily has jurisdiction over the appellants in respect of their alleged contraventions. The special legislation, properly interpreted, thus provides for the FMAT's adjudicatory jurisdiction.

## VI. Conclusion

[137] The jurisdictional rules of the Quebec securities scheme are constitutionally applicable to the out-of-province appellants. These provisions grant the FMAT jurisdiction over the appellants' alleged contraventions of the *Securities Act*. Based on the facts alleged by the AMF, there is a sufficient connection between Quebec and the appellants to justify applying Quebec's security regulatory scheme to them. As a result, the FMAT correctly concluded that it has jurisdiction over the appellants.

[138] We would dismiss the appeals with costs.

English version of the reasons delivered by

CÔTÉ J. —

## I. Overview

[139] These appeals raise the question of whether the Financial Markets Administrative Tribunal ("FMAT") has jurisdiction over the appellants, who are

domiciled outside Quebec, specifically in the province of British Columbia, either under the rules in Title Three of Book Ten of the *Civil Code of Québec* (“C.C.Q.”) which relate to the international jurisdiction of Quebec authorities, or on the basis of the “real and substantial connection” test set out in *Unifund Assurance Co. v. Insurance Corp. of British Columbia*, 2003 SCC 40, [2003] 2 S.C.R. 63, at paras. 55-56.

[140] According to my colleagues, this case raises an issue regarding the constitutional applicability of the *Securities Act*, CQLR, c. V-1.1 (“SA”), which means that the FMAT’s jurisdiction must be assessed on the basis of the sufficient connection test from *Unifund*. I disagree with that position. In my view, at this stage of the proceedings, the case raises no issue regarding the constitutional applicability of the SA but rather concerns the FMAT’s adjudicative jurisdiction. Consequently, the limits of the FMAT’s jurisdiction must instead be analyzed in light of the rules of private international law set out in Title Three of Book Ten of the *C.C.Q.*

[141] Applying those provisions to this case, I conclude that the appeals should be allowed on the basis that the FMAT does not have adjudicative jurisdiction over the appellants and therefore cannot hear the matter brought before this Court.

[142] I agree with my colleagues that correctness is the applicable standard of review; the only issue is thus whether the FMAT has adjudicative jurisdiction over the appellants, who are domiciled outside Quebec.

[143] My analysis proceeds as follows. First, I summarize the facts and the procedural context of this dispute. Next, I explain the distinction between the constitutional applicability of legislation and the adjudicative jurisdiction of a court or administrative tribunal. Based on this analysis, I show that this dispute relates to the FMAT’s adjudicative jurisdiction, more particularly its territorial component (jurisdiction *ratione personae*), and consequently that the *C.C.Q.*’s rules on the international jurisdiction of Quebec authorities are applicable. Because there is no provision in the *SA*, the *Act respecting the Autorité des marchés financiers*, CQLR, c. A-33.2 (“*AAMF*”), or the *C.C.Q.*<sup>6</sup> that gives the FMAT adjudicative jurisdiction over the appellants in the specific proceedings brought against them by the Autorité des marchés financiers (“AMF” or “Authority”), I conclude that the appellants’ declinatory exceptions should have been allowed.

## II. Facts and Procedural Context

[144] On the whole, I agree with my colleagues’ overview of the facts and summary of the decisions below. However, I wish to clarify certain points regarding the procedural context of this dispute.

[145] In 2017, the AMF filed an application with the FMAT against a number of defendants, some of whom — the appellants — are residents of British Columbia. In the application, the AMF alleged that the defendants had taken part in what is

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<sup>6</sup> The relevant provisions are reproduced in an appendix to these reasons.

commonly called a “pump and dump scheme” or, in other words, that they had influenced or manipulated the market price or value of a security by unfair, improper or fraudulent means and participated in transactions in securities that created an artificial price for a security, in contravention of the SA. The AMF therefore asked the FMAT to order the defendants to cease any activity in respect of a transaction in securities, to prohibit them from acting as directors or officers of an issuer, dealer, adviser or investment fund manager for five years, and to impose administrative penalties on them, in accordance with ss. 195.2, 199.1 para. 1(1), 265, 273.1 and 273.3 SA.

[146] In response to the AMF’s application, the appellants filed preliminary exceptions in the form of declinatory exceptions, in which they argued that the FMAT lacked adjudicative jurisdiction over them. The FMAT dismissed the preliminary exceptions and found that it had jurisdiction to hear the matter. The Quebec Superior Court dismissed the applications for judicial review of that decision filed by the appellants, whose subsequent appeals to the Quebec Court of Appeal were unsuccessful.

[147] The appellants’ declinatory exceptions are based on the FMAT’s lack of adjudicative jurisdiction over them. As this Court explained in *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4, [2020] 1 S.C.R. 15, “[s]uch a declinatory exception must be disposed of on a preliminary basis” (para. 85, citing A. Rochon, with the collaboration of

F. Le Colleter, *Guide des requêtes devant le juge unique de la Cour d'appel: Procédure et pratique* (2013), at p. 77, and *Transax Technologies inc. v. Red Baron Corp. Ltd*, 2016 QCCA 1432, at para. 6 (CanLII). Thus, at this preliminary stage of the proceedings, a court or tribunal “is not to consider the merits of the case, but rather, is to take as averred the facts that are alleged by the plaintiff to bring it within the jurisdictional competence of the Quebec courts” (*Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78, [2002] 4 S.C.R. 205, at para. 31, citing *Air Canada v. McDonnell Douglas Corp.*, [1989] 1 S.C.R. 1554, at p. 1558, and *Rosdev Investments Inc. v. Allstate Insurance Co. of Canada*, [1994] R.J.Q. 2966 (Sup. Ct.), at p. 2968). It is also important to note that when the international jurisdiction of a Quebec court or tribunal is challenged, the party arguing that the court or tribunal has jurisdiction bears the burden of demonstrating this. And where an action involves more than one defendant, as here, jurisdiction over each of them must be established.

[148] In light of the procedural context of this dispute, the issue is therefore not whether the SA applies in this case to the merits of the matter but rather whether the FMAT has jurisdiction in the proceedings brought against the appellants. For the reasons I explain more fully below, these appeals must be decided by applying the rules on the international jurisdiction of Quebec authorities found in Title Three of Book Ten of the *C.C.Q.*

### III. Analysis

[149] To begin my analysis, I think it is appropriate to specify the points on which I agree with my colleagues.

[150] I have already stated above that I agree with the application of the correctness standard of review. Moreover, it is self-evident that because the *C.C.Q.* sets out the *jus commune* of Quebec, it does not simply lay down a body of private law rules. As its preliminary provision states, the *C.C.Q.* “is the foundation of all other laws, although other laws may complement the Code or make exceptions to it”. I therefore agree with my colleagues, and with Mainville J.A., that the rules in Title Three of Book Ten of the *C.C.Q.* apply to determine the international jurisdiction of Quebec authorities, even the jurisdiction of an administrative tribunal, and that a conflict of jurisdiction or a conflict of laws is not necessary.

[151] Like my colleagues, and for the reasons I explain below, I am of the view that arts. 3134, 3136 and 3148 *C.C.Q.* do not give the FMAT any jurisdiction over the appellants.

[152] I also agree with my colleagues that special laws may make exceptions to or derogate from the rules in the *C.C.Q.* My colleagues are of the view, as am I, that neither the *SA* nor the *AAMF*, individually or read together, *expressly* derogates from the rules in Title Three of Book Ten of the *C.C.Q.* so as to give the FMAT jurisdiction over the appellants, who are domiciled outside Quebec (“neither statute expressly provides for the FMAT to assert jurisdiction over out-of-province parties, or otherwise

limits the territorial reach of the Quebec securities scheme over interprovincial or international transactions” (para. 102)).

[153] Where I disagree completely with my colleagues is on their conclusion that there is a kind of implicit derogation, which they reach by interpreting the Quebec securities scheme in light of *Unifund*. My colleagues state that “while the *C.C.Q.* does not grant the FMAT jurisdiction over the out-of-province appellants in this case, the jurisdictional provisions of the special securities scheme, properly interpreted in light of *Unifund*, do grant jurisdiction because the appellants, and their alleged contraventions, have a sufficient connection to Quebec” (para. 41).

[154] I cannot accept that reasoning, because the *C.C.Q.* “contains a well-developed set of rules and principles [of private international law]” (*Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572, at para. 21). In fact, the *C.C.Q.* codifies the “sufficient connection” test (“sufficient connection” and “real and substantial connection” are synonymous). The rules on the international jurisdiction of Quebec authorities (arts. 3134 to 3154 *C.C.Q.*) [TRANSLATION] “are substantive rules for determining whether Quebec courts or tribunals have jurisdiction to hear a dispute . . . . [These] rules . . . are intended to ensure that there are connections between Quebec and the dispute submitted that are considered sufficient” (P. Ferland and G. Laganière, “Le droit international privé”, in *Collection de droit de l’École du Barreau du Québec 2023-2024*, vol. 7, *Contrats, sûretés, publicité des droits et droit international privé* (2023), 271, at p. 303). If no special law makes exceptions to or derogates from the set



of rules in Book Ten of the *C.C.Q.*, the FMAT has no jurisdiction over the appellants, who are domiciled outside Quebec.

[155] After finding that neither Book Ten of the *C.C.Q.* nor the Quebec securities scheme expressly confers territorial jurisdiction on the FMAT, my colleagues continue their analysis by interpreting the securities scheme in light of *Unifund*. I disagree with that approach. *Unifund* cannot serve as a safety net where the *C.C.Q.* does not establish the territorial jurisdiction of a court or tribunal and the legislature has not otherwise conferred territorial jurisdiction on it through special legislation. In short, when there is no jurisdiction, that must be the end of the analysis. This means that recourse should not be had to *Unifund*, which concerns an entirely different situation. *Unifund* applies once it is established that a court or tribunal has jurisdiction to deal with a matter. For example, if the AMF had invoked art. 3136 *C.C.Q.* and thereby established the jurisdiction of the FMAT as a [TRANSLATION] “forum of necessity” (*Lamborghini (Canada) Inc. v. Automobili Lamborghini S.P.A.*, [1997] R.J.Q. 58 (C.A.), at p. 68, quoting H. P. Glenn, “Droit international privé”, in *La réforme du Code civil*, vol. 3, *Priorités et hypothèques, preuve et prescription, publicité des droits, droit international privé, dispositions transitoires* (1993), 669, at p. 745), *Unifund* could be relied on to determine the applicability of the *SA* and the *AAMF* to the appellants, who are domiciled outside Quebec.

[156] *Unifund* cannot give the provisions of the *SA* and the *AAMF* an effect they do not have on their own; in other words, it cannot give the FMAT territorial

jurisdiction over the appellants, who are domiciled outside Quebec, in a manner that derogates from the well-developed set of rules in the *C.C.Q.* I therefore do not agree with my colleagues that *Unifund* supports the conclusion that the FMAT has jurisdiction to decide this matter. I explain my thinking in detail in the reasons that follow.

A. *Distinction Between the Constitutional Applicability of Legislation and the Adjudicative Jurisdiction of a Court or Tribunal*

[157] With respect, my colleagues' approach conflates the concepts of adjudicative jurisdiction of a court or tribunal and constitutional applicability of legislation, as they deal interchangeably with the constitutional applicability of the *SA* under the *Unifund* framework and the FMAT's jurisdiction under the rules of private international law. Just like the majority of the Court of Appeal, my colleagues shift from a private international law analysis into an analysis of the *SA*'s constitutional applicability to foreign residents, thereby modifying the true question put before and answered by the FMAT.

[158] It will therefore be helpful to briefly explain the difference between the constitutional applicability of legislation and the adjudicative jurisdiction of a court or tribunal. Both concepts involve the existence of a real and substantial connection. In the constitutional context, the real and substantial connection test affirms "the constitutionally imposed territorial limits that underlie the requirement of legitimacy in the exercise of the state's power of adjudication" (*Van Breda*, at para. 32). In *Unifund*,

where it had to determine whether an Ontario company had a viable cause of action against a British Columbia insurance company under the *Insurance Act*, R.S.O. 1990, c. I.8, this Court summarized this test from its constitutional standpoint as follows:

Consideration of constitutional applicability can conveniently be organized around the following propositions:

1. The territorial limits on the scope of provincial legislative authority prevent the application of the law of a province to matters not sufficiently connected to it;
2. What constitutes a “sufficient” connection depends on the relationship among the enacting jurisdiction, the subject matter of the legislation and the individual or entity sought to be regulated by it;
3. The applicability of an otherwise competent provincial legislation to out-of-province defendants is conditioned by the requirements of order and fairness that underlie our federal arrangements;
4. The principles of order and fairness, being purposive, are applied flexibly according to the subject matter of the legislation. [Emphasis deleted; para. 56.]

[159] Thus, the applicability of provincial legislation to a defendant domiciled outside the province in question depends on there being a sufficient connection “between the enacting jurisdiction and the out-of-province individual or entity” (*Unifund*, at para. 65). Although this test relates more specifically to the connection between a province and an action, the purpose of the *Unifund* analysis is essentially to determine whether there is a viable cause of action on the merits (see para. 14).

[160] Conversely, from a private international law perspective, the real and substantial connection test relates to “the exercise of the state’s power of adjudication”

(*Van Breda*, at para. 32). The rules of private international law in force in a province are what confer adjudicative jurisdiction on a decision maker. In the common law provinces, the real and substantial connection test is an organizing principle for the rules of private international law. In Quebec, these rules are set out in Book Ten of the *C.C.Q.* I could not articulate these principles any better than LeBel J. did on behalf of a unanimous Court:

Conflicts rules must fit within Canada's constitutional structure. Given the nature of private international law, its application inevitably raises constitutional issues. This branch of the law is concerned with the jurisdiction of courts of the Canadian provinces, with whether that jurisdiction should be exercised, with what law should apply to a dispute, and with whether a court should recognize and enforce a judgment rendered by a court of another province or country. The rules of private international law can be found, in the common law provinces, in the common law and in statute law and, in Quebec, in the *Civil Code of Québec*, S.Q. 1991, c. 64, which contains a well-developed set of rules and principles in this area (see *Civil Code of Québec*, Book Ten, arts. 3076 to 3168). The interplay between provincial jurisdiction and external legal situations takes place within a constitutional framework which limits the external reach of provincial laws and of a province's courts. The Constitution assigns powers to the provinces. But these powers are subject to the restriction that they be exercised within the province in question (see P. W. Hogg, *Constitutional Law of Canada* (5th ed. 2007), vol. 1, at pp. 364-65 and 376-77; H. Brun, G. Tremblay and E. Brouillet, *Droit constitutionnel* (5th ed. 2008), at p. 569; *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [2005] 2 S.C.R. 473, at paras. 26-28, *per* Major J.), and they must be exercised in a manner consistent with the territorial restrictions created by the Constitution (see *Castillo v. Castillo*, 2005 SCC 83, [2005] 3 S.C.R. 870, at para. 5, *per* Major J.; *Unifund Assurance Co. v. Insurance Corp. of British Columbia*, 2003 SCC 40, [2003] 2 S.C.R. 63, at para. 51, *per* Binnie J.). [Emphasis added.]

(*Van Breda*, at para. 21)

[161] Accordingly, to be able to assume jurisdiction over a dispute, a provincial court or tribunal must have adjudicative jurisdiction under provincial legislation, which must itself have been validly enacted by the province in the exercise of its legislative jurisdiction. As can be seen from the excerpt quoted in the previous paragraph, the *jurisdiction of courts and tribunals* of the Canadian provinces, *the appropriateness of exercising that jurisdiction* and the *law that should apply* to a dispute are all different concepts.

[162] The adjudicative jurisdiction of a court or tribunal has two components: jurisdiction *ratione materiae* (subject-matter jurisdiction) and jurisdiction *ratione personae* (territorial jurisdiction). The subject-matter jurisdiction of a court or tribunal [TRANSLATION] “is that given to [it] to hear a case by reason of its subject matter” (G. Goldstein and E. Groffier, *Droit international privé*, vol. I, *Théorie générale* (1998), at p. 299). As Brown and Rowe JJ. (dissenting, but not on this point) clearly stated in *Uashaunnuat* (at para. 105):

The Quebec Superior Court’s *inherent jurisdiction* is therefore an aspect of its subject-matter jurisdiction (or jurisdiction *ratione materiae*), not an aspect of its territorial jurisdiction (or jurisdiction *ratione personae vel loci*):

. . . subject matter competence refers to the ability of the court to hear the type of dispute in question, considering issues such as whether its jurisdiction was limited by statute. It deals with criteria that are not connected to the territorial reach of the court’s authority and rarely raise issues of private international law. [Emphasis added; footnote omitted.]

(Pitel and Rafferty, at pp. 58-59) [Emphasis in original.]

As for territorial jurisdiction, it is assessed on the basis of a geographical connection, which may arise [TRANSLATION] “either from the situation of the litigant (usually the defendant) or from the location of the item in dispute or the place where the dispute arose” (Goldstein and Groffier, at p. 299). To have jurisdiction to hear a dispute, a court or tribunal must therefore have the necessary subject-matter jurisdiction and territorial jurisdiction (Glenn, at p. 743).

[163] The rules on the territorial jurisdiction of Quebec courts and tribunals are divided between the *Code of Civil Procedure*, CQLR, c. C-25.01 (“*C.C.P.*”), and the *C.C.Q.*, depending on whether a dispute falls under domestic law or private international law (S. Guillemard, “Règles générales de compétence des tribunaux québécois”, in *JurisClasseur Québec — Collection Droit civil — Droit international privé* (loose-leaf), fasc. 8, at No. 1). It is important to note here that

[TRANSLATION] the rules on the international jurisdiction of Quebec authorities should not be confused with the rules laid down by the Code of Civil Procedure regarding the territorial jurisdiction of courts under domestic law (arts. 41 to 48 C.C.P.). Although these two types of rules often echo one another, the rules on international jurisdiction are substantive rules for determining whether Quebec courts or tribunals have jurisdiction to hear a dispute, whereas the rules on domestic jurisdiction are procedural rules for determining the district in which proceedings may be instituted. Extreme caution should therefore be exercised before attempting to apply the rules in the Code of Civil Procedure to fill a gap in Book Ten of the Civil Code of Québec, an approach that hearkens back to the time when no effort to codify Quebec private international law had yet been made. [Footnote omitted.]

(Ferland and Laganière, at p. 303)

[164] As I explain below, the appellants' objection in this case clearly does not relate to the FMAT's lack of subject-matter jurisdiction. Rather, it is an objection to the FMAT's territorial jurisdiction. And it is also important to note that private international law is concerned mainly with territorial jurisdiction:

Private international law, on the other hand, is concerned with territorial jurisdiction: J.-G. Castel, *Droit international privé québécois* (1980), at p. 660. The rules of subject-matter jurisdiction play a limited role in private international law. By definition, however, the rules of territorial jurisdiction impose territorial limits on the authority of provincial superior courts to exercise their subject-matter jurisdiction, including their inherent powers. In Quebec, for example, although "procedural law recognizes the courts' inherent powers to deal with situations not provided for in the law or the rules of practice", the fact remains that "civil procedure is subject to the general principles found in the *Civil Code of Québec*", including the rules of private international law set out in Book Ten: *Lac d'Amiante*, at paras. 37 and 40; arts. 25 and 49 *C.C.P.*

(*Uashaunnuat*, at para. 106, per Brown and Rowe JJ., dissenting, but not on this point)

B. *This Dispute Concerns the FMAT's Territorial Jurisdiction*

[165] These appeals, as they were argued, relate to the FMAT's territorial jurisdiction, not to the scope of Quebec's legislative jurisdiction over securities. At this stage of the proceedings, that is, the stage of the preliminary exceptions raised by the appellants in the form of declinatory exceptions, the only question before the FMAT was as follows: Could the FMAT hear the dispute involving the appellants?

[166] Although there appears to have been some confusion in the courts and tribunal below, it is clear from a review of the record that the appellants' motions for

declinatory exception were based on the FMAT's lack of territorial jurisdiction over them. And the appeals before this Court are from judicial reviews of a decision dismissing those motions for declinatory exception brought by the appellants. What can be said of those motions?

[167] I begin by examining the declinatory exception of the appellants Shawn Van Damme, Vincenzo Antonio Carnovale and Pasquale Antonio Rocca. In their motion, they argue that the FMAT "does not have jurisdiction to hear and rule upon the charges brought against Petitioners" (A.R., at pp. 109-10). They contend, more particularly, that there is no real and substantial connection between the proceedings brought by the AMF and the province of Quebec (p. 110), on the basis of the following allegations: (i) the defendants are not domiciled in Quebec (p. 110); (ii) the AMF's originating application does not allege that the acts complained of were committed in Quebec or even that any fault was committed in Quebec (p. 110).

[168] At first glance, it might be thought that these arguments relate to the constitutional applicability of the *SA*. However, the last paragraph of the motion shows beyond the shadow of a doubt that the declinatory exception is based on the FMAT's lack of adjudicative jurisdiction over the appellants:

The present motion is made under strict reserve of Petitioners' rights, including their right to claim that Quebec law (including the provisions of the Quebec *Securities Act*) does not apply to their alleged actions, that the acts allegedly committed by Petitioners do not constitute violations of section 195.2, section 199.1 or of any other provision of the *Securities Act*, and that Plaintiff Autorité des marchés financiers does not have jurisdiction to bring the present proceedings against Petitioners.



(A.R., at p. 111)

[169] It can be seen from the above that the appellants Van Damme, Carnovale and Rocca reserved the right to contest the constitutional applicability of the SA on the basis of the test set out in *Unifund*. This statement confirms that their motion for declinatory exception dealt first and foremost with the FMAT's territorial jurisdiction.

[170] The arguments made by the appellant Frederick Langford Sharp in the Superior Court also concerned the FMAT's territorial jurisdiction, notwithstanding his statement that "the Impugned Decision constitutes an unconstitutional assertion of extra-provincial jurisdiction that should be set aside" (A.R., at p. 160). In my view, the reference to the alleged extraterritorial reach of the FMAT's decision must be understood in light of the imperatives — which are now constitutional — recognized in *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, at pp. 1100-1101, *Hunt v. T&N plc*, [1993] 4 S.C.R. 289, at pp. 315-17, and *Tolofson v. Jensen*, [1994] 3 S.C.R. 1022, at p. 1066. According to this jurisprudence, there are "constitutionally imposed territorial limits that underlie the requirement of legitimacy in the exercise of the state's power of adjudication". Considered from this perspective, the adjudicative jurisdiction of courts and tribunals raises a constitutional law issue, in the same way as the extraterritorial applicability of provincial legislation. However, this does not have the effect of "turn[ing] every private international law issue into a constitutional one" (*Van Breda*, at para. 67).

[171] The appellants' argument in this case is that no provision of the *SA*, the *AAMF* or the *C.C.Q.* gives the FMAT jurisdiction over them. From this standpoint, the appeals relate not to the extraterritorial applicability of the *SA* but rather to the FMAT's territorial jurisdiction under private international law.

[172] I would add that the way the case was argued in the Quebec Superior Court confirms this approach. Before that court, the appellants Van Damme, Carnovale and Rocca again made the argument they had originally made, namely that the FMAT had no jurisdiction to hear the proceedings brought by the AMF. More particularly, they submitted that the FMAT had erred in basing its jurisdiction on ss. 93 and 94 *AAMF* rather than on the *C.C.Q.*'s rules concerning the international jurisdiction of Quebec authorities. It is clear that the rules in the *C.C.Q.* that apply in matters of private international law relate to the adjudicative jurisdiction of Quebec courts and tribunals, not to the legitimate exercise of the state's legislative power. In contrast, ss. 93 and 94 *AAMF* relate to subject-matter jurisdiction to decide the AMF's complaint on the merits, and here, as I said above, the FMAT's subject-matter jurisdiction is not in issue.

[173] I acknowledge that the real and substantial connection test has several components, which may be confusing. It would probably have been preferable for the appellants to explain further that no provision of the *C.C.Q.* could confer jurisdiction on the FMAT in this case. In my view, however, this in no way changes the essence of the declinatory exceptions raised, which clearly relate to the FMAT's lack of territorial jurisdiction over the appellants. The proof of this is that neither Michel Plante, who,

according to the application, is domiciled in Quebec, nor Solo, which, according to the application, was a reporting issuer in Quebec and operated in Montréal, brought a motion for declinatory exception.

[174] In short, the appellants' motions — declinatory exceptions based on the FMAT's lack of adjudicative jurisdiction — must be decided by applying the rules on the international jurisdiction of Quebec authorities set out in the *C.C.Q. Unifund* is not applicable here. As mentioned above, this Court had to determine in that case whether Ontario's *Insurance Act* gave Unifund a viable cause of action against the appellant, which was domiciled outside the province (see paras. 9, 14, 22, 27, 48 and 58-81). Here, however, the issue is not whether the AMF has a viable statutory remedy against the appellants under the *SA*. Rather, the debate concerns the FMAT's territorial jurisdiction over them.

[175] I pause here to point out that if the *C.C.Q.*'s rules of private international law did not apply, this dispute would have to be decided under the analytical framework set out in *Van Breda* and not the one laid down in *Unifund*, since the FMAT's territorial jurisdiction is the only issue here. This is so because what must be determined at the declinatory exception stage is not whether the *SA* applies to the facts alleged but rather whether the FMAT has territorial jurisdiction in the proceedings brought by the AMF.

C. *The C.C.Q.'s Rules on the International Jurisdiction of Quebec Authorities Apply to Administrative Proceedings Before the FMAT*

[176] The rules of private international law set out in the *C.C.Q.* apply to all proceedings that may be heard by Quebec authorities pursuant to the jurisdiction conferred on the province by the Constitution. Accordingly, the rules in Title Three of Book Ten of the *C.C.Q.* must be considered here unless a special law complements, makes exceptions to or derogates from them.

[177] The AMF submits that Book Ten of the *C.C.Q.* is not applicable because the FMAT's jurisdiction is a matter of public law. More specifically, it argues that [TRANSLATION] "the absence of any specific reference in the [*C.C.Q.*] to the administrative proceedings that may be brought before the FMAT . . . clearly indicates that the legislature deliberately planned not to include them. An analysis of the provisions of Book Ten of the [*C.C.Q.*] . . . demonstrates that the legislature intends the rules of private international law to apply only to matters of a strictly private nature" (R.F., at para. 52). The majority of the Court of Appeal was persuaded by this argument. With respect, and like my colleagues, I cannot accept it, since this position creates a dichotomy between public law and private law for which there is no support in Book Ten of the *C.C.Q.*

[178] It is common ground that the *C.C.Q.* lays down the *jus commune* in Quebec. Its preliminary provision used to read as follows:<sup>7</sup>

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<sup>7</sup> The preliminary provision was amended in 2022, but I refer to the version that was in force at the time the proceedings before the FMAT were instituted.

The Civil Code of Québec, in harmony with the Charter of human rights and freedoms (chapter C-12) and the general principles of law, governs persons, relations between persons, and property.

The Civil Code comprises a body of rules which, in all matters within the letter, spirit or object of its provisions, lays down the *jus commune*, expressly or by implication. In these matters, the Code is the foundation of all other laws, although other laws may complement the Code or make exceptions to it.

[179] The point of disagreement with the majority of the Court of Appeal relates to the scope of Book Ten in matters of public law. Nothing in the language of Title Three of Book Ten of the *C.C.Q.* supports the distinction between private law and public law proposed by the AMF and accepted by the majority of the Court of Appeal. My colleagues are of the opinion that Book Ten of the *C.C.Q.* is the appropriate starting point for analyzing the international jurisdiction of Quebec authorities, but they emphasize a distinction that, with respect, is in my view completely irrelevant. They refer to the SA as having a “hybrid character” because it has a fundamentally regulatory orientation but also has a title dealing with civil actions (paras. 7 and 67). However, both the regulatory law aspect and the civil law aspect are included in the *jus commune*, which means that focusing on this “hybrid character” sheds no light on the question before us.

[180] The AMF’s argument and my colleagues’ emphasis on “the hybridity” of the SA also conflict with the commentary of Quebec’s Minister of Justice stating that the purpose of the rules in Book Ten of the *C.C.Q.* is to establish the international jurisdiction of Quebec authorities:

[TRANSLATION] Since there were no rules for determining whether Quebec authorities had jurisdiction over disputes with a foreign element, the courts had extended the domestic law rules of jurisdiction provided for in the Code of Civil Procedure to such situations.

The general objective of Title Three is to remedy this deficiency by establishing specific rules for determining the international jurisdiction of Quebec authorities — courts, administrative tribunals and various administrative authorities. It is divided into two chapters, one containing general provisions and the other containing specific provisions for personal matters of an extrapatrimonial or patrimonial nature and for real and mixed matters. The rules are generally meant to give Quebec authorities jurisdiction only where disputes are closely connected with them, out of concern for international comity.

The term *authority* was chosen rather than *court* in order to encompass judicial, administrative and even ecclesiastical bodies, for example. However, an authority is an authority only if it is considered as such by Quebec law. In addition, the traditional expression *conflict of jurisdiction* was not used, because the purpose here is solely to determine the cases in which Quebec authorities will have jurisdiction to hear a dispute with a foreign element, not the cases in which foreign authorities will have jurisdiction. [Underlining added.]

(Ministère de la Justice, *Commentaires du ministre de la Justice*, vol. II, *Le Code civil du Québec — Un mouvement de société* (1993), at p. 1998)

[181] The statements made by the Minister of Justice make it clear that Title Three of Book Ten of the *C.C.Q.* is the sole starting point for determining the international jurisdiction of Quebec authorities, regardless of whether they apply a purely regulatory scheme or a scheme with regulatory and civil aspects. I repeat that [TRANSLATION] “the rules on international jurisdiction are substantive rules for determining whether Quebec courts or tribunals have jurisdiction to hear a dispute” (Ferland and Laganière, at p. 303). Whether or not the Quebec court or tribunal has “hybrid” jurisdiction changes absolutely nothing.

[182] Moreover, I would note that the very wording of Book Ten indicates that it applies to certain public law matters. One such matter is the enforcement of obligations arising from the taxation laws of a foreign state (arts. 3155(6) and 3162 *C.C.Q.*). The traditional position is that obligations of this kind are not enforceable in Canada, including in Quebec. For example, in *United States of America v. Harden*, [1963] S.C.R. 366, this Court refused to enforce a tax debt arising from a decision rendered by an American court. This same principle is codified in art. 3155(6) *C.C.Q.* However, under art. 3162 *C.C.Q.*, the rules of private international law allow the recognition of obligations resulting from foreign taxation laws if there is a reciprocity mechanism between Quebec and the foreign state. Of course, this presupposes the existence of a foreign court with jurisdiction to decide the dispute, in accordance with Title Three of Book Ten of the *C.C.Q.*, as provided for in art. 3164 *C.C.Q.* Therefore, and contrary to what the AMF argues, the foregoing clearly shows that the legislature intended Title Three of Book Ten of the *C.C.Q.* to apply to jurisdictional issues of public law.

[183] It would be incongruous to find that the provisions of Title Three can ground the jurisdiction of a foreign authority dealing with a public law issue, but not the jurisdiction of a Quebec authority dealing with such an issue. Moreover, Quebec private international law generally recognizes the mirror principle, according to which “[t]he foreign authority is deemed to have jurisdiction if the Quebec court would, by applying its own rules, have accepted jurisdiction in the same situation” (*Canada Post Corp. v. Lépine*, 2009 SCC 16, [2009] 1 S.C.R. 549, at para. 25, citing Goldstein and

Groffier, at p. 416). In the above example, this principle makes the jurisdiction of Quebec authorities subject to the provisions of Title Three, notwithstanding the public nature of tax law.

[184] Unlike the common law provinces, Quebec has codified the rules of private international law, which are set out in Book Ten of the *C.C.Q.* In that book, the Quebec legislature has established a comprehensive system of rules and principles “to codify the entire field of private international law” (*Van Breda*, at para. 42 (emphasis added); see also *Uashaunnuat*, at para. 102, citing *Van Breda*, at para. 21, *Barer v. Knight Brothers LLC*, 2019 SCC 13, [2019] 1 S.C.R. 573, at paras. 131-32, per Brown J., and G. Saumier, “The Recognition of Foreign Judgments in Quebec — The Mirror Crack’d?” (2002), 81 *Can. Bar Rev.* 677, at p. 693). Because of this codification, “courts must interpret those rules by first examining the specific wording of the provisions of the *C.C.Q.* and then inquiring whether or not their interpretation is consistent with the principles which underlie the rules” (*Spar Aerospace Ltd.*, at para. 23).

[185] As its name indicates, Title Three of Book Ten of the *C.C.Q.* deals with the international jurisdiction of Quebec authorities. The rules in Title Three “rely on specific facts linking the subject matter of the litigation to the jurisdiction [in order to justify the application] of the conflicts rules” designed to ensure that there is a “lin[k] [between] the subject matter of the litigation [and] the jurisdiction” (*Van Breda*, at para. 76). Upon examining Title Three, it becomes apparent that the requirement of a



real and substantial connection “is reflected in the overall scheme established by Book Ten” (*Spar Aerospace Ltd.*, at para. 63). Indeed, Book Ten helps to “safeguard against the improper assumption of jurisdiction” (*Spar Aerospace Ltd.*, at para. 57). Given the codification of these rules, there is no reason to resort to the real and substantial connection test from *Van Breda*.

[186] Articles 3134 to 3154 *C.C.Q.* are meant [TRANSLATION] “to be exhaustive in setting out the international jurisdiction of Quebec authorities” (*Lamborghini*, at p. 68, quoting *Commentaires du ministre de la Justice*, at p. 2000). Exceptionally, art. 3076 *C.C.Q.* provides that Book Ten applies “subject to those rules of law in force in Québec which are applicable by reason of their particular object”. In this case, those rules might include the *SA* and the *AAMF*. But as I explain below, and contrary to what my colleagues argue, the *SA* and the *AAMF* do not themselves make exceptions to, derogate from or complement the *C.C.Q.*’s rules of private international law when it comes to the administrative proceedings brought by the AMF.

[187] It is clear from reading the provisions of the *SA* and the *AAMF* that the legislature intended them to be supplemented by the *C.C.Q.*’s provisions on the international jurisdiction of Quebec authorities. Let me explain. First, in civil matters, the Quebec legislature enacted the rule in s. 236.1 *SA*. This provision gives precedence to the *SA* in matters pertaining to the distribution of securities to Quebec residents and states that, in contrast to the usual rule, “any action under the ordinary rules of law in

respect of facts related to the distribution of a security” may be brought “before the court of the plaintiff’s residence”.

[188] Similarly, in penal matters, art. 142 of the *Code of Penal Procedure*, CQLR, c. C-25.1, provides, for the purposes of ss. 202 and 210 SA, that all penal proceedings must be instituted either in the judicial district where the defendant resides (or is in detention, where such is the case) or in the district where the defendant “committed the offence”.

[189] In administrative matters, on the other hand, the Quebec legislature did not enact specific provisions concerning the FMAT’s international jurisdiction in addition to the rules in the *C.C.Q.* The provisions of the SA in question here are ss. 265, 273.1 and 273.3. They allow the FMAT to order a person to cease any activity in respect of a transaction in securities (s. 265), to impose an administrative penalty on the person and have it collected by the AMF (s. 273.1), and to prohibit a person from acting as a director or officer of an issuer, dealer, adviser or investment fund manager (s. 273.3):

**265.** The Financial Markets Administrative Tribunal may order a person to cease any activity in respect of a transaction in securities.

...

**273.1.** Where the Financial Markets Administrative Tribunal becomes aware of facts establishing that a person has, by an act or omission, contravened, or aided in the contravention of, a provision under this Act or a regulation made under its authority, the Tribunal may impose an administrative penalty on the offender and have it collected by the Authority.

...

**273.3.** The Financial Markets Administrative Tribunal may prohibit a person from acting as a director or officer of an issuer, dealer, adviser or investment fund manager on the grounds set out in article 329 of the Civil Code, or where a penalty has been imposed on the person under this Act, the Act respecting the distribution of financial products and services (chapter D-9.2) or the Derivatives Act (chapter I-14.01).

[190] According to my colleagues, none of these provisions “limits the territorial reach of the Quebec securities scheme over interprovincial or international transactions. To evaluate whether these statutes may be applied in such circumstances, the Quebec securities scheme must be interpreted to determine its territorial reach” (para. 102). However, these statements need to be qualified; while ss. 265, 273.1 and 273.3 *SA* do not specify their territorial reach, this does not mean that it can be unlimited. Such an interpretation would be contrary to the principle of territoriality, whereby a provincial legislature is presumed to intend its laws to apply to [TRANSLATION] “persons, property, juridical acts and events within the territorial boundaries of its jurisdiction” (P.-A. Côté and M. Devinat, *Interprétation des lois* (5th ed. 2021), at para. 779), not to all persons regardless of their place of domicile or residence.

[191] My colleagues therefore fall back on s. 93 *AAMF* to make up for the legislature’s silence regarding the territorial reach of the Quebec securities scheme. But as they recognize at para. 101, s. 93 *AAMF* establishes the FMAT’s subject-matter jurisdiction in administrative proceedings instituted by the AMF under the *SA*. At the time the AMF brought its proceedings before the FMAT, the *AAMF* was in force. In 2018, it was amended and renamed the *Act respecting the regulation of the financial*

*sector*, CQLR, c. E-6.1. I agree with my colleagues that the former version of s. 93 continues to apply in this case under the applicable transitional rules (fn. 4).

[192] The applicable version of s. 93 *AAMF* is as follows:

**93.** On the request of the Authority or of any interested person, the Tribunal shall exercise the functions and powers assigned to it under this Act, the Act respecting the distribution of financial products and services (chapter D-9.2), the Money-Services Businesses Act (chapter E-12.000001), the Derivatives Act (chapter I-14.01) and the Securities Act (chapter V-1.1).

The Tribunal shall exercise its discretion in the public interest.

The Tribunal may not, when assessing the facts or the law for the purposes of those Acts, substitute its assessment of the public interest for that made by the Authority in making a decision.

[193] And s. 93 as it reads in the *Act respecting the regulation of the financial sector*, which came into force following the 2018 amendments, is as follows:

**93.** The function of the Tribunal is to make determinations with respect to matters brought under this Act and the Acts listed in Schedule I. Except where otherwise provided by law, the Tribunal shall exercise its jurisdiction to the exclusion of any other tribunal or adjudicative body.

The Tribunal shall exercise its discretion in the public interest.

In reviewing a decision rendered by the Authority under the Securities Act (chapter V-1.1) or the Derivatives Act (chapter I-14.01), the Tribunal may not, when assessing the facts or the law for the purposes of those Acts, substitute its assessment of the public interest for that made by the Authority in making a decision.

In this Title, unless the context indicates otherwise, “matters” also includes any application, complaint, contestation or motion, as well as any action falling within the jurisdiction of the Tribunal.

[194] In my colleagues' view, s. 93 *AAMF* — which provides for the FMAT's subject-matter jurisdiction — is sufficient to ground the FMAT's international jurisdiction in the proceedings brought by the AMF, subject only to *Unifund*. According to them, this section thus derogates from the well-developed set of rules in the *C.C.Q.* With respect, I disagree with such an interpretation of s. 93 *AAMF*.

[195] My colleagues' argument rests on a premise that essentially relates to a question of subject-matter jurisdiction (jurisdiction *ratione materiae*), which has nothing to do with the FMAT's territorial jurisdiction (jurisdiction *ratione personae*). As noted above, the subject-matter jurisdiction of a court or tribunal and its territorial jurisdiction are distinct. While subject-matter jurisdiction concerns the subject or nature of the dispute, territorial jurisdiction is assessed on the basis of the connection that serves to link a dispute to a jurisdiction. Although the proceedings brought by the AMF are within the FMAT's subject-matter jurisdiction, it does not follow that the FMAT has extraterritorial jurisdiction over the appellants. The subject-matter jurisdiction conferred on the FMAT by s. 93 *AAMF* simply means that, within Quebec's adjudicative and administrative system, it is this tribunal that has jurisdiction and not some other tribunal or body. As a result, I cannot accept my colleagues' argument that s. 93 *AAMF* — which confers subject-matter jurisdiction — gives the FMAT territorial jurisdiction.

[196] My colleagues also rely on s. 94 *AAMF*, which allows the FMAT to exercise the subject-matter jurisdiction conferred on it by s. 93 by taking any measure

conducive to ensuring compliance with any of the statutes listed in s. 93. The version of s. 94 that was in force at the time the proceedings were instituted, and that is applicable in this case, is as follows:

**94.** At the request of the Authority, the Tribunal may take any measure conducive to ensuring compliance with an undertaking given under this Act, the Act respecting the distribution of financial products and services (chapter D-9.2), the Money-Services Businesses Act (chapter E-12.000001), the Derivatives Act (chapter I-14.01) or the Securities Act (chapter V-1.1) or compliance with those Acts.

This section is not concerned in any way with territorial jurisdiction but relates rather to the measures that the FMAT may take once it is established that it has jurisdiction *ratione personae* to deal with a matter. This is also the case of ss. 265, 273.1 and 273.3 SA, which authorize the FMAT to impose prohibitions and administrative penalties. As my colleagues note, these provisions empower the FMAT to act in a broad range of circumstances, but this is true only where the FMAT has jurisdiction over the persons involved in the dispute before it. The mere existence of these sections cannot establish the FMAT's jurisdiction over persons domiciled outside Quebec. Consequently, the FMAT can take the measures contemplated in s. 94 AAMF, or in ss. 265, 273.1 and 273.3 SA, only where it has jurisdiction under the rules of private international law set out in the *C.C.Q.*

[197] As my colleagues in fact seem to recognize, when the legislature intends to make exceptions to or derogate from the rules in the *C.C.Q.*, it does so clearly, using “detailed and specific” language (para. 54, citing *Compagnie d'immeubles Yale ltée v.*

*Kirkland (Ville de)*, [1996] R.J.Q. 502 (C.Q.), at p. 507; see also *Perron-Malenfant v. Malenfant (Trustee of)*, [1999] 3 S.C.R. 375, at para. 42). This principle is reflected, for example, in s. 236.1 *SA*, which derogates expressly from the rules of private international law in the *C.C.Q.* by stating that “[i]n matters pertaining to the distribution of a security, the laws of Québec are applicable where the subscriber or purchaser resides in Québec, regardless of the place of the contract”. My colleagues say that s. 236.1 “confirms that not all of the rules bearing on the international jurisdiction of Quebec authorities are to be found in the *C.C.Q.*” (para. 69). This is true, but only insofar as the legislation expressly derogates from the *C.C.Q.*, like in s. 236.1. The derogating effect of s. 236.1 cannot be extended to another part of the *SA* or to the *SA* as a whole. If the legislature had wanted to make exceptions to or derogate from the *C.C.Q.* in other respects, it would have expressed a clear intention to do so. But unlike in the case of s. 236.1 *SA*, I do not see in ss. 93 and 94 *AAMF*, or in ss. 265, 273.1 and 273.3 *SA*, any expression of the legislature’s intention to make exceptions to or derogate from the rules in the *C.C.Q.* Absent a clear intention to the contrary, I am of the opinion that the *C.C.Q.*’s rules of private international law, that is, arts. 3134 to 3154, are what govern the FMAT’s international jurisdiction.

[198] Finally, my colleagues’ interpretation of ss. 93 and 94 *AAMF* and ss. 265, 273.1 and 273.3 *SA* is refuted by the specific context of the legislative scheme in issue in this case. Their approach completely ignores the provisions of Chapter II of Title X of the *SA* concerning interjurisdictional cooperation. That chapter sets out various rules — including with respect to cooperation between regulators at the national and

international levels — that allow the AMF and the FMAT to perform their respective functions and exercise their respective authority despite the globalization of markets. These rules provide, for example, that the AMF may “delegate a Québec authority to an extra-provincial securities commission and accept to exercise an extra-provincial authority” (ss. 307 and 307.1). What would be the point of this interprovincial cooperation scheme if the legislature truly intended to confer potentially unlimited international jurisdiction on the FMAT? To ask the question is to answer it. The legislature does not legislate in vain and, with respect, I cannot agree with my colleagues’ conclusion, which in my view disregards the fact that legislation must be interpreted coherently and contributes to creating uncertainty and unpredictability with respect to international jurisdiction.

[199] In sum, neither the *SA* nor the *AAMF* makes exceptions to or derogates, either expressly or by implication, from the *C.C.Q.*’s rules when it comes to the FMAT’s jurisdiction in administrative matters. Because the *SA* and the *AAMF* are silent in this regard, it is necessary in this case to refer to the *C.C.Q.*’s provisions on the extraterritorial jurisdiction of Quebec authorities, that is, arts. 3134 to 3154 *C.C.Q.*, which are exhaustive in defining the situations in which Quebec authorities have jurisdiction.

D. *No Provision of the C.C.Q. Gives the FMAT Jurisdiction Over the Appellants*

[200] Title Three of Book Ten of the *C.C.Q.* sets out general rules and specific rules to ground the international jurisdiction of Quebec authorities. These rules lay



down conditions that must necessarily be met in order for a Quebec authority to deal with a dispute. As this Court has repeatedly stated, “[a]s a whole, these rules ensure compliance with the basic requirement that there be a real and substantial connection between the Quebec court and the dispute” (*Lépine*, at para. 19, citing *Spar Aerospace Ltd.*, at paras. 55-56).

[201] Title Three of Book Ten has two chapters: Chapter I (“General Provisions”) and Chapter II (“Special Provisions”). The first provision in Chapter I, art. 3134 *C.C.Q.*, sets out the general rule of jurisdiction: “In the absence of any special provision, Québec authorities have jurisdiction when the defendant is domiciled in Québec.” The special provisions to which art. 3134 *C.C.Q.* refers are found in Chapter II of Title Three.

[202] In this case, the provisions that might ground the FMAT’s jurisdiction are arts. 3134, 3136 and 3148 *C.C.Q.* I analyze each of these provisions below based on their application to the facts of this dispute. In this analysis, I conclude, as my colleagues do, that none of them is capable of giving the FMAT jurisdiction over the appellants.

(1) Article 3134 C.C.Q.

[203] As mentioned above, art. 3134 *C.C.Q.* sets out the general rule that, in the absence of any special provision, Quebec authorities have jurisdiction when the defendant is domiciled in Quebec. Because the appellants are not domiciled in Quebec,

this provision cannot give the FMAT jurisdiction in the proceedings brought by the AMF.

(2) Article 3148 Paragraph 1(3) C.C.Q.

[204] Under art. 3148 para. 1(3) *C.C.Q.*, “Quebec authorities have jurisdiction over an action in extra-contractual liability where a fault was committed in Quebec or the injury was suffered there” (*Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, 2016 SCC 30, [2016] 1 S.C.R. 851, at para. 33). Like my colleagues, and contrary to what was suggested in the concurring reasons given in the Court of Appeal, I am of the view that no analogy can be drawn between a personal action of a patrimonial nature and the proceedings brought by the AMF.

[205] It is important to remember that [TRANSLATION] “[t]he AMF is the specialized body to which the Quebec legislator has entrusted the application of the SA and the AAMF, in the public interest” (*Autorité des marchés financiers v. Fournier*, 2012 QCCA 1179, at para. 28 (CanLII)). When it applies to the FMAT for an administrative penalty under s. 273.1 SA, the AMF is thus acting [TRANSLATION] “in the context of its mission to protect the financial market and to maintain investors’ confidence in the system” (*Donaldson v. Autorité des marchés financiers*, 2020 QCCA 401, at para. 25 (CanLII)). Therefore, when it applies to the FMAT for an administrative penalty, the AMF is not bringing a “personal actio[n] of a patrimonial nature” (art. 3148 *C.C.Q.*). Rather, it is taking administrative action as part of its role of supervising the financial market (*Donaldson*, at para. 42, quoting S. Rousseau,

“L’application de la législation sur les valeurs mobilières au Québec: une étude du rôle du Tribunal administratif des marchés financiers” (2017), 76 *R. du B.* 1, at p. 13).

[206] As my colleagues recognize at para. 80, reasoning by analogy is a perfectly acceptable tool “to ensure that the *Civil Code of Québec* functions properly” (*Fédération des producteurs acéricoles du Québec v. Regroupement pour la commercialisation des produits de l’érable inc.*, 2006 SCC 50, [2006] 2 S.C.R. 591, at para. 29), but this tool must always be used wisely (see *Fédération des producteurs acéricoles du Québec*, at para. 29; see also *Yared v. Karam*, 2019 SCC 62, [2019] 4 S.C.R. 498, at para. 28). Moreover, while this goes without saying, an analogy must relate to things or concepts that are actually analogous. In this case, a personal action of a patrimonial nature is not analogous to an application to the FMAT for an administrative penalty, which means that, and I say this with respect, the reasoning in the concurring reasons given in the Court of Appeal in fact involves modifying art. 3148 para. 1(3) *C.C.Q.*

[207] Having regard to the administrative nature of an application by the AMF for a penalty under s. 273.1 *SA*, I am of the view that art. 3148 para. 1(3) *C.C.Q.* cannot confer jurisdiction on the FMAT. In addition, even if an analogy were possible, none of the criteria in art. 3148 para. 1(3) *C.C.Q.* is met in this case. The AMF is not alleging that the appellants committed faults in Quebec, and it did not bring its proceedings against them in order to compensate investors who had suffered losses.

(3) Article 3136 C.C.Q.

[208] Article 3136 *C.C.Q.* recognizes the “forum of necessity” doctrine (*Lamborghini*, at p. 68, quoting H. P. Glenn, “Droit international privé”, in *La réforme du Code civil*, vol. 3, *Priorités et hypothèques, preuve et prescription, publicité des droits, droit international privé, dispositions transitoires* (1993), 669, at p. 745; see also *Van Breda*, at para. 59), which can serve as an exceptional basis for the jurisdiction of Quebec authorities (*Van Breda*, at para. 59). The article provides that “[e]ven though a Québec authority has no jurisdiction to hear a dispute, it may nevertheless hear it provided the dispute has a sufficient connection with Québec, if proceedings abroad prove impossible or the institution of proceedings abroad cannot reasonably be required.” This provision [TRANSLATION] “sets out an exceptional rule based on the demonstrated impossibility of having access to a foreign court in a dispute that has a sufficient connection with Quebec” (*Lamborghini*, at p. 69). In this sense, the purpose of the provision is to permit a Quebec authority to deal with a dispute, even though it would ordinarily have no jurisdiction over the dispute, in order [TRANSLATION] “to prevent a denial of justice” (*Otsuka Pharmaceutical Company Limited v. Pohoresky*, 2022 QCCA 1230, at para. 7 (CanLII), quoting Glenn, at p. 745).

[209] My colleagues and I agree that art. 3136 *C.C.Q.* can be applied only if one of the parties raises it, since a court or tribunal cannot raise it of its own motion (*GreCon Dimter inc. v. J.R. Normand inc.*, 2005 SCC 46, [2005] 2 S.C.R. 401, at para. 33, citing *Spar Aerospace Ltd.*, at para. 69). In this case, the AMF did not raise art. 3136 *C.C.Q.* as a basis for the FMAT’s jurisdiction. It did not demonstrate that proceedings abroad had proved impossible or that it could not reasonably require the institution of

proceedings abroad. Nor did it explain why it had not applied to the authorities having jurisdiction, in accordance with the provisions of Chapter II of Title X of the *SA* concerning interjurisdictional cooperation. As a result, the AMF cannot rely on art. 3136 *C.C.Q.* to establish the FMAT's jurisdiction over the appellants.

[210] In light of the foregoing, I am of the view that no provision of the *C.C.Q.* can ground the FMAT's jurisdiction in the proceedings brought by the AMF.

[211] I am also of the view, for the reasons explained more fully above, that the *Unifund* test is of no assistance to the AMF and cannot ground the FMAT's adjudicative jurisdiction over the appellants.

#### IV. Conclusion

[212] For these reasons, I would allow the appeals and set aside the FMAT's decision on the appellants' declinatory exceptions, with costs. Because the FMAT has no adjudicative jurisdiction to hear the AMF's proceedings against the appellants, the proceedings should be dismissed, and there is no need to refer the matter back to the FMAT.

## **APPENDIX**

### Relevant Statutory Provisions

*Securities Act, CQLR, c. V-1.1*

**195.2.** Influencing or attempting to influence the market price or the value of securities by means of unfair, improper or fraudulent practices is an offence.

**199.1.** A person who directly or indirectly engages or participates in any transaction or series of transactions in securities or any trading method relating to a transaction in securities, or in any act, practice or course of conduct is guilty of an offence if the person knows, or ought reasonably to know, that the transaction, series of transactions, trading method, act, practice or course of conduct

(1) creates or contributes to a misleading appearance of trading activity in, or an artificial price for, a security; or

(2) perpetrates a fraud on any person.

**265.** The Financial Markets Administrative Tribunal may order a person to cease any activity in respect of a transaction in securities.

The Financial Markets Administrative Tribunal may, furthermore, order any person or category of persons to cease any activity in respect of a transaction in a particular security.

In the case of failure by a reporting issuer to provide periodic disclosure about its business and internal affairs in accordance with the conditions determined by regulation or failure by an issuer or another person to provide any other disclosure prescribed by regulation in accordance with the conditions determined by regulation, the power to order a person to cease any activity in respect of a transaction in securities shall be exercised by the Authority.

Despite the first paragraph of section 318, the Authority may exercise the power conferred on it by the third paragraph without allowing the person to present observations or submit documents to complete the person's record.

**273.1.** Where the Financial Markets Administrative Tribunal becomes aware of facts establishing that a person has, by an act or omission, contravened, or aided in the contravention of, a provision under this Act or a regulation made under its authority, the Tribunal may impose an administrative penalty on the offender and have it collected by the Authority.

The amount of the penalty may in no case exceed \$2,000,000 for each contravention.

**273.3.** The Financial Markets Administrative Tribunal may prohibit a person from acting as a director or officer of an issuer, dealer, adviser or investment fund manager on the grounds set out in article 329 of the Civil Code, or where a penalty has been imposed on the person under this Act, the Act respecting the distribution of financial products and services (chapter D-9.2) or the Derivatives Act (chapter I-14.01).

The prohibition imposed by the Financial Markets Administrative Tribunal may not exceed five years.

The Financial Markets Administrative Tribunal may, at the request of the person concerned, lift the prohibition on such conditions as it considers appropriate.

*Act respecting the Autorité des marchés financiers, CQLR, c. A-33.2*

**93.** On the request of the Authority or of any interested person, the Tribunal shall exercise the functions and powers assigned to it under this Act, the Act respecting the distribution of financial products and services (chapter D-9.2), the Money-Services Businesses Act (chapter E-12.000001), the Derivatives Act (chapter I-14.01) and the Securities Act (chapter V-1.1).

The Tribunal shall exercise its discretion in the public interest.

The Tribunal may not, when assessing the facts or the law for the purposes of those Acts, substitute its assessment of the public interest for that made by the Authority in making a decision.

**94.** At the request of the Authority, the Tribunal may take any measure conducive to ensuring compliance with an undertaking given under this Act, the Act respecting the distribution of financial products and services (chapter D-9.2), the Money-Services Businesses Act (chapter E-12.000001), the Derivatives Act (chapter I-14.01) or the Securities Act (chapter V-1.1) or compliance with those Acts.

*Act respecting the regulation of the financial sector, CQLR, c. E-6.1*

**93.** The function of the Tribunal is to make determinations with respect to matters brought under this Act and the Acts listed in Schedule I. Except where otherwise provided by law, the Tribunal shall exercise its jurisdiction to the exclusion of any other tribunal or adjudicative body.

The Tribunal shall exercise its discretion in the public interest.

In reviewing a decision rendered by the Authority under the Securities Act (chapter V-1.1) or the Derivatives Act (chapter I-14.01), the Tribunal may not, when assessing the facts or the law for the purposes of those Acts, substitute its assessment of the public interest for that made by the Authority in making a decision.

In this Title, unless the context indicates otherwise, “matters” also includes any application, complaint, contestation or motion, as well as any action falling within the jurisdiction of the Tribunal.

**94.** At the request of the Authority, the Tribunal may take any measure conducive to ensuring compliance with an undertaking given to the Authority under any of the Acts listed in the first paragraph of section 93 or compliance with those Acts.

*Civil Code of Québec*

**3134.** In the absence of any special provision, Québec authorities have jurisdiction when the defendant is domiciled in Québec.

**3135.** Even though a Québec authority has jurisdiction to hear a dispute, it may, exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another State are in a better position to decide the dispute.

**3136.** Even though a Québec authority has no jurisdiction to hear a dispute, it may nevertheless hear it provided the dispute has a sufficient connection with Québec, if proceedings abroad prove impossible or the institution of proceedings abroad cannot reasonably be required.

**3137.** On the application of a party, a Québec authority may stay its ruling on an action brought before it if another action, between the same parties, based on the same facts and having the same subject is pending before a foreign authority, provided that the latter action can result in a decision which may be recognized in Québec, or if such a decision has already been rendered by a foreign authority.

**3138.** A Québec authority may order provisional or conservatory measures even if it has no jurisdiction over the merits of the dispute.

**3139.** Where a Québec authority has jurisdiction to rule on the principal demand, it also has jurisdiction to rule on an incidental demand or a cross demand.

**3140.** In cases of emergency or serious inconvenience, Québec authorities may also take such measures as they consider necessary for the protection of a person present in Québec or of the person’s property if it is situated there.

**3148.** In personal actions of a patrimonial nature, Québec authorities have jurisdiction in the following cases:

(1) the defendant has his domicile or his residence in Québec;

(2) the defendant is a legal person, is not domiciled in Québec but has an establishment in Québec, and the dispute relates to its activities in Québec;



(3) a fault was committed in Québec, injury was suffered in Québec, an injurious act or omission occurred in Québec or one of the obligations arising from a contract was to be performed in Québec;

*Appeals dismissed with costs, CÔTÉ J. dissenting.*

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