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| **SUPREME COURT OF CANADA** |

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| **Citation:** 1068754 Alberta Ltd. *v.* Québec (Agence du revenu), 2019 SCC 37, [2019] 2 S.C.R. 993 |  | **Appeal Heard:** January 22, 2019**Judgment Rendered:** June 27, 2019**Docket:** 37999 |

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| **Between:****1068754 Alberta Ltd. as sole trustee of the DGGMC Bitton Trust**Appellantand**Agence du revenu du Québec**Respondent |
| **Coram:** Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ. |

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| **Reasons for Judgment:**(paras. 1 to 90) | Rowe J. (Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown and Martin JJ. concurring) |

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1068754 Alberta Ltd. *v.* Québec (Agence du revenu), 2019 SCC 37, [2019] 2 S.C.R. 993

1068754 Alberta Ltd. as sole trustee of the DGGMC Bitton Trust Appellant

v.

Agence du revenu du Québec Respondent

**Indexed as:** 1068754 Alberta Ltd. ***v.*** Québec (Agence du revenu)

2019 SCC 37

File No.: 37999.

2019: January 22; 2019: June 27.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

on appeal from the court of appeal for quebec

 *Financial institutions — Banks — Request for information and documents — Quebec tax authority sending formal demand for information and documents to Calgary branch of bank as part of audit of trust — Demand sent to branch in Calgary rather than in Quebec to comply with federal banking legislation directing that certain documents pertaining to customers be sent to branch of account — Whether legislation required tax authority to send demand to Calgary branch — If so, whether complying with legislation rendered tax authority’s actions extraterritorial and thus ultra vires — Bank Act, S.C. 1991, c. 46, s. 462(1), (2).*

 As part of the enforcement of fiscal laws, the Agence du revenu du Québec (“ARQ”) may require the provision of certain information and documents. The ARQ sent a formal demand for information and documents pursuant to s. 39 of the Quebec *Tax Administration Act* (“Demand”) to a branch of the National Bank of Canada in Calgary as part of an audit of DGGMC Bitton Trust (“Trust”), which maintains a bank account at the Calgary branch. The ARQ was seeking to ascertain the residence of the Trust and determine if the Trust owed taxes in Quebec. It sent the Demand to the Calgary branch rather than to National Bank in Quebec in order to conform to the requirements of s. 462(2) of the *Bank Act*, which directs that certain documents pertaining to bank customers be sent to the branch of account. The sole trustee of the Trust, 1068754 Alberta Ltd. (“Alberta Ltd.”), objected to the Demand as beyond the ARQ’s authority. In Alberta Ltd.’s submission, ss. 462(1) and 462(2) of the *Bank Act* require treating the branch as distinct from the bank as a whole. Thus, it argues that in sending the Demand out of province, the ARQ acted outside its jurisdiction. The Superior Court dismissed the trustee’s motion to quash the Demand. It found that the Demand falls under s. 462(2) of the *Bank Act* and that any extraterritorial effect that the Demand may have had was merely incidental to Quebec’s power to tax within the province. The Court of Appeal dismissed the trustee’s appeal.

 Held: The appeal should be dismissed.

 The Demand was validly issued to the National Bank. The ARQ was required by s. 462(2) of the *Bank Act* to send the Demand to the Calgary branch. Complying with this requirement of the *Bank Act* did not render the ARQ’s actions extraterritorial and, accordingly, they were not *ultra vires*.

 Section 462(2) of the *Bank Act* applies to the Demand. It provides requirements by which documents that pertain to a particular customer — other than those enumerated in s. 462(1) and (3) — are to be communicated to a bank, in order for the bank to be considered to have notice of the documents sent. It is a residual provision. The use of the word “notification” in s. 462(2) contemplates not only documents that serve a notification function, but also documents that impose positive obligations on a bank. The proposal to add the predecessor to s. 462(2) was based on a practical concern that the affected bank branch actually receive notice of the bank’s obligations before the obligations are considered binding. From its inception, s. 462(2) was concerned with documents that could impose obligations on recipient banks. Thus, the Demand, which compels the production of documents and information, comes within the scope of s. 462(2). It is consistent with s. 462(2)’s concern with practical convenience for the ARQ to send the Demand to the Calgary branch where some of the requested documents are located.

 However, s. 462(1) of the *Bank Act* has no application to the Demand. The purpose of s. 462(1) is to set out the preconditions for binding customer property held by the bank, either in the form of valuable assets or bank account debt. This provides certainty and thereby protection to banks from the risk of double liability in dealing with claims to customer property. The Demand is neither among the enumerated documents in s. 462(1)(a) to (d) nor does it seek to “bin[d] . . . property belonging to a person and in the possession of a bank”, or “money owing to a person by reason of a deposit account in a bank”, as stipulated in s. 462(1). Thus, s. 462(1) does not apply to the Demand, and so it follows that the application of s. 462(1) could not have rendered the Demand extraterritorial.

 The bank, as a corporation, is a single entity; its branches are treated as distinct only for limited and specific purposes. Branches of a bank are only regarded as distinct where practical exigencies require it. There is no basis in the text of s. 462(2), in the underlying policy, or in the practicality of bank operations, to regard a branch as distinct in order to make a formal demand on the bank. The purpose of s. 462(2) is to provide a practical means by which the bank as a whole is fixed with notice. It is to the bank that the Demand is made. One is not required to conceptualize the bank and its branches as separate entities to achieve this purpose. Instead, s. 462(2) is premised on the idea that a branch is part of the bank. This is exemplified by the fact that nothing further is required from a branch upon receiving a document under s. 462(2) for the bank to be fixed with notice; the entities are one and the same.

 In sending the Demand to the Calgary branch as required by s. 462(2), the ARQ did not act extraterritorially. The fact that the exercise of the ARQ’s power has some impact outside Quebec does not *ipso facto* render such action impermissible or extraterritorial. In this case, the determinative point in characterizing the exercise of the coercive power is the place where enforcement of the Demand may be sought. There is no dispute that National Bank operates in Quebec. It would be absurd if the procedural requirements imposed by s. 462(2) of the *Bank Act* were understood to affect the ARQ’s authority to issue a formal demand to a bank that operates within its territorial jurisdiction. There is no interference with Alberta’s territorial sovereignty in communicating a formal demand to National Bank through one of the bank’s branches in Alberta. Nor is there any unfairness in subjecting a corporation that operates in multiple jurisdictions in Canada to a formal demand from a jurisdiction in which it operates. If the ARQ, in the absence of s. 462(2), would have authority to issue the Demand, the application of s. 462(2) does not detract from this.

**Cases Cited**

 **Distinguished:** *Royal Bank, Re* (2002), 25 O.S.C.B. 1855; **considered:** *Woodland v. Fear* (1857), 7 El. & Bl. 519, 119 E.R. 1339; *R. v. Lovitt*, [1912] A.C. 212; *McMulkin v. Traders Bank of Canada* (1912), 21 O.W.R. 640; **referred to:** *Fundy Settlement v. Canada*, 2012 SCC 14, [2012] 1 S.C.R. 520; *Québec (Sous‑ministre du Revenu) v. Banque Toronto‑Dominion*, [2001] R.D.F.Q. 90; *Equity Accounts Buyers Ltd. v. Jacob et la Banque Royale du Canada, tierce‑saisie*, [1972] R.P. 326; *Deloitte & Touche Inc. v. Bank of Nova Scotia* (1993), 22 C.B.R. (3d) 317; *Foley v. Hill* (1848), 2 H.L.C. 28, 9 E.R. 1002; *Bank of Nova Scotia v. Mitchell* (1981), 30 B.C.L.R. 213; *Fleishman v. T. A. Allan & Sons* (1932), 45 B.C.R. 553; *R. v. Soucy* (1975), 11 N.B.R. (2d) 75; *Re Selkirk*, [1961] O.R. 391; *Canadian Credit Men’s Trust Association v. Edmonton (City)* (1925), 21 Alta. L.R. 160; *Re Royal Bank of Canada and Ontario Securities Commission* (1976), 14 O.R. (2d) 783; *Univar Canada Ltd. v. PCL Packaging Corp.*, 2007 BCSC 1737, 76 B.C.L.R. (4th) 196; *R. v. Hape*, 2007 SCC 26, [2007] 2 S.C.R. 292.

**Statutes and Regulations Cited**

*Act respecting the Agence du revenu du Québec*, CQLR, c. A‑7.003, s. 175(1).

*Act respecting the Ministère du Revenu*, R.S.Q., c. M‑31, s. 39.

*Bank Act*, S.C. 1923, c. 32, s. 96(4).

*Bank Act*, S.C. 1953‑54, c. 48, s. 96(4).

*Bank Act*, S.C. 1966‑67, c. 87, s. 96(4).

*Bank Act*, S.C. 1991, c. 46, ss. 461(2), (4), 462.

*Banks and Banking Law Revision Act, 1980*, S.C. 1980, c. 40, ss. 2, 211(1), (2), (4), 212(1).

*Canada Evidence Act*, R.S.C. 1985, c. C‑5, ss. 29(9), 30(12).

*Civil Code of Québec*, art. 2327.

*Constitution Act, 1867*, s. 92.

*Securities Act*, R.S.O. 1990, c. S.5, s. 13.

*Tax Administration Act*, CQLR, c. A‑6.002, ss. 2, 39, 39.2, 61.

*Taxation Act*, CQLR, c. I‑3.

*Trust and Loan Companies Ac*t, S.C. 1991, c. 45, s. 448.

**Authors Cited**

*Black’s Law Dictionary*, 10th ed. by Bryan A. Garner. St. Paul, Minn.: Thomson Reuters, 2014, “writ”.

Canada. Department of Finance. *Summary of Banking Legislation 1978*. Ottawa, 1978.

Canada. House of Commons. *Minutes of Proceedings and Evidence of the Standing Committee on Finance, Trade and Economic Affairs*,No. 17, 4th Sess., 30th Parl., December 7, 1978.

*Canadian Law Dictionary*, 7th ed. by John A. Yogis, Catherine Cotter and Stephen G. Coughlan. Hauppauge, N.Y.: Barron’s Educational Series, 2013, “process”.

Crawford, Bradley. *Crawford and Falconbridge, Banking and Bills of Exchange: A Treatise on the Law of Banks, Banking, Bills of Exchange and the Payment System in Canada*, vol. 1, 8th ed. Toronto: Canada Law Book, 1986.

Edinger, Elizabeth R. “Garnishment of Interprovincial Corporations” (1980), 38 *Advocate* 385.

Krishna, Vern. *Income Tax Law*, 2nd ed. Toronto: Irwin Law, 2012.

L’Heureux, Nicole, et Marc Lacoursière. *Droit bancaire*, 5e éd. Montréal: Yvon Blais, 2017.

Rogerson, Pippa J. “The Situs of Debts in the Conflict of Laws ⸺ Illogical, Unnecessary and Misleading” (1990), 49(3) *C.L.J.* 441.

*Stroud’s Judicial Dictionary of Words and Phrases*, vol. 3, 9th ed. by Daniel Greenberg and Yisroel Greenberg, London: Thomson Reuters, 2016, “process”.

Sullivan, Ruth E. “Interpreting the Territorial Limitations on the Provinces” (1985), 7 *S.C.L.R.* 511.

 APPEAL from a judgment of the Quebec Court of Appeal (Vézina, Marcotte and Hogue JJ.A.), 2018 QCCA 8, [2018] AZ‑51455185, [2018] J.Q. no 15 (QL), 2018 CarswellQue 2 (WL Can.), affirming a decision of Davis J., 2015 QCCS 1135, [2015] AZ‑51161439, [2015] J.Q. no 7561 (QL), 2015 CarswellQue 2062 (WL Can.). Appeal dismissed.

 Stéphane Eljarrat and Frédéric Plamondon, for the appellant.

 Antoine Lamarre and Christian Lemay, for the respondent.

The judgment of the Court was delivered by

1. Rowe J. — This appeal is about the authority of the Agence du revenu du Québec (“ARQ”) under Quebec’s *Tax Administration Act*, CQLR, c. A-6.002 (“*TAA*”), as it interacts with the requirements of a federal statute, the *Bank Act*, S.C. 1991, c. 46, against the backdrop of principles that limit the authority of provincial government agencies to act extraterritorially.
2. The ARQ sent a formal demand for information and documents pursuant to s. 39 of the *TAA* (“Demand”) to a branch of the National Bank of Canada in Calgary (“Calgary Branch”) as part of an audit of DGGMC Bitton Trust (“Trust”), which maintains a bank account at the Calgary Branch. The ARQ was seeking to ascertain the residence of the Trust and determine if the Trust owed taxes in Quebec. The sole trustee of the Trust, 1068754 Alberta Ltd. (“Alberta Ltd.”), objected to the Demand as beyond the ARQ’s authority. The ARQ took the position that it sent the Demand to the Calgary Branch in order to conform to the requirements of s. 462(2) of the *Bank Act*, which directs that certain documents pertaining to customers be sent to the branch of account.
3. The parties agree that, in the absence of the *Bank Act*, there is no question that the ARQ would have authority pursuant to s. 39 of the *TAA* to issue a formal demand to National Bank (in Quebec) for information and documents pertaining to one of its customers, given that National Bank operates in Quebec. It is the *Bank Act* which, in Alberta Ltd.’s submission, requires treating the Calgary Branch as a separate entity, and also that directs that the Demand be sent outside of Quebec. The question in this appeal is whether the requirement under the *Bank Act* that such a demand be sent to a branch of National Bank outside of Quebec means that sending the Demand is beyond the authority of the ARQ.
4. The Quebec Court of Appeal affirmed the ARQ’s authority under s. 39 of the *TAA* to send the Demand to the Calgary Branch. Alberta Ltd. now appeals this decision. Alberta Ltd. submits that s. 462(1) of the *Bank Act*, a provision which treats the branch of a bank as an entity distinct from the bank, applies to the Demand. As the branch in this case is in Calgary, Alberta Ltd. submits that the ARQ does not have authority to issue a formal demand to it. On its view, the ARQ cannot legally send a formal demand, which is a coercive document, outside of Quebec’s territory. In Alberta Ltd.’s submission, the Demand is extraterritorial, and therefore *ultra vires*.
5. I would dismiss the appeal. The ARQ was required by s. 462(2) of the *Bank Act* to send the Demand to the Calgary Branch. Complying with this requirement of the *Bank Act* did not render the ARQ’s actions extraterritorial and, accordingly, they were not *ultra vires*. Subsection 462(2) prescribes a mode of communication with banks. It does not change the party with respect to whom authority is exercised — here, National Bank — nor does it alter the nature of the communication. Thus, s. 462(2) of the *Bank Act* does not change what is fundamental, that National Bank is the party to whom the ARQ issued the Demand, and that National Bank is within the ARQ’s territorial jurisdiction. Thus, I agree with the Quebec Court of Appeal that the Demand was validly issued to National Bank.
6. Background
	1. The Tax Administration Act and Provincial Taxation Powers
7. Pursuant to s. 92(2) of the *Constitution Act, 1867*, provinces have competence to impose “Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes”. Provincial taxation powers are thus limited to the province’s territory. Accordingly, the residences of persons and businesses determine whether a (direct) tax applies to that party. In *Fundy Settlement v. Canada*, 2012 SCC 14, [2012] 1 S.C.R. 520, this Court clarified that for taxation purposes, the residence of a trust is “where the central management and control of the trust actually takes place” (para. 15).
8. Unlike other provinces, Quebec does not have an agreement with the federal government to collect either personal income or corporate taxes (V. Krishna, *Income Tax Law* (2nd ed. 2012), at p. 13). The *TAA* “sets out those powers granted to the ARQ for the enforcement and administration of fiscal laws in the Province of Québec” (A.F., at para. 23). The Minister of Revenue is responsible for the enforcement of fiscal laws in Quebec (*TAA*, s. 2). This responsibility is carried out by the ARQ (*Act respecting the Agence du revenu du Québec*, CQLR, c. A-7.003, s. 175(1)). As part of the enforcement of fiscal laws, the ARQ may require the provision of certain information or documents. Section 39 of the *TAA* provides for the ARQ’s power to issue a “formal demand” (“*demande péremptoire*”) for documents or information for the purposes of administration and enforcement of a fiscal law.
9. Section 39 of the *TAA* reads:

For the administration and enforcement of a fiscal law, in particular for the recovery of an amount owed by a person under such a law, the Minister may, by a formal demand notified by registered mail or by personal service, require from any person, whether or not the person is liable to pay a duty, that the person file by registered mail or by personal service, within a reasonable time fixed in the demand:

(*a*) information or additional information, including a return, report or supplementary return or report, or

(*b*) documents.

The person to whom the demand is made must, within the delay fixed, comply with that demand, whether or not he has already filed such a return or report, or an answer to a similar demand made under a fiscal law or regulations made under such a law.

. . .

1. Section 61 of the *TAA* imposes a penalty for a failure to comply with a formal demand:

 Every person who contravenes sections 38, 39, 43 or section 1015 of the Taxation Act (chapter I-3) . . . is guilty of an offence and, in addition to any penalty prescribed by this Act, is liable to a fine of not less than $800 nor more than $10,000 or, notwithstanding article 231 of the Code of Penal Procedure (chapter C-25.1), to both the fine and a term of imprisonment not exceeding six months.

. . .

1. Section 39.2 of the *TAA* provides that the Minister may apply to the Court of Québec to remedy a failure to comply with a formal demand:

 Where a person has not provided access, assistance, information, documents or things even if the person is required to do so under section 38 or 39, the Minister may make an application to a judge of the Court of Québec acting in chambers and that judge may, notwithstanding section 61.1, order the person to provide the access, assistance, information, documents or things to the Minister or make such order as the judge deems proper in order to remedy the failure which is the subject of the application . . . .

* 1. Facts
1. The facts are not in dispute. The Trust was settled in 2003 under the laws of the Province of Alberta. The Trust maintains a bank account at the Calgary Branch of National Bank.
2. The ARQ initiated an audit of the Trust while auditing a related corporate group. The purpose of the audit was to determine the residence of the Trust for the purposes of taxation. On January 13, 2014, the ARQ sent a formal demand for information or documents relating to the Trust to National Bank at its Calgary Branch pursuant to s. 39 of the *TAA*. The ARQ requested the following information or documents:
* The bank records (including returned cheques, deposit books, debit memo, credit memo, etc.) of all accounts held by the [T]rust.
* The lines of credit and credit card statements (including returned cheques, deposit books, debit memo, credit memo, etc.) held by the [T]rust.
* All statements respecting investments of any type held by the [T]rust.
* Documents related to the opening of accounts (including bank accounts, lines of credit, credit cards and investment).
1. Consistent with s. 61 of the *TAA*,the Demand outlined the consequences of a failure to comply:

If you fail to comply with this formal demand within 30 days of it being delivered by certified or register[ed] mail or served by bailiff, you will be liable under penal proceedings to a fine of $800 to $10,000, to which may be added a term of imprisonment of no more than six months, as provided under section 61 of the *Tax Administration Act*.

1. National Bank did not contest the Demand and furnished the requested documents, which were then put under seal. Alberta Ltd. brought a motion requesting that the Demand be quashed on the basis that the ARQ acted outside its authority in issuing the Demand.
	1. The Bank Act
2. Alberta Ltd.’s argument that the Demand was issued extraterritorially and without proper authority is premised on the application of two particular subsections of the *Bank Act* which read as follows:

**Effect of writ, etc.**

**462 (1)** Subject to subsections (3) and (4), the following documents are binding on property belonging to a person and in the possession of a bank, or on money owing to a person by reason of a deposit account in a bank, only if the document or a notice of it is served at the branch of the bank that has possession of the property or that is the branch of account in respect of the deposit account, as the case may be:

**(a)** a writ or process originating a legal proceeding or issued in or pursuant to a legal proceeding;

**(b)** an order or injunction made by a court;

**(c)** an instrument purporting to assign, perfect or otherwise dispose of an interest in the property or the deposit account; or

**(d)** an enforcement notice in respect of a support order or support provision.

**Notices**

**(2)** Any notification sent to a bank with respect to a customer of the bank, other than a document referred to in subsection (1) or (3), constitutes notice to the bank and fixes the bank with knowledge of its contents only if sent to and received at the branch of the bank that is the branch of account of an account held in the name of that customer.

1. Alberta Ltd. submits that the effect of complying with the *Bank Act* renders issuing the Demand to the Calgary Branch extraterritorial. Alberta Ltd.’s submission largely hinges on what it calls the “Branch Entity Rule”, which, Alberta Ltd. says,“deems, for the purposes of all seizures, the bank branch an entity distinct from the chartered bank itself” (A.F., at para. 3). In its written submissions, it argues that this rule is enshrined in s. 462(1) and (2) of the *Bank Act* as “both subsections require an action directly and exclusively towards the branch of account in order to have an effect on the bank” (A.F., at para. 39). Because in its view s. 462(1), at least, applies to the Demand, the connection between the Calgary Branch and National Bank is severed. Thus, sending the Demand to the Calgary Branch caused the ARQ to act outside its jurisdiction. Alternatively, Alberta Ltd. submits, if s. 462(1) does not apply to the Demand, the ARQ was not required to issue the Demand to the Calgary Branch, and in issuing the Demand out of province, it acted extraterritorially and beyond its authority.
2. The ARQ submits that s. 462(2), rather than 462(1), applies to the Demand. Accordingly, the ARQ sent the Demand to the Calgary Branch in order to conform to the requirements of s. 462(2). To Alberta Ltd.’s submissions about the Branch Entity Rule, the ARQ states that a bank is considered one entity, except for limited circumstances, for instance, when commercial convenience requires otherwise. Sending a formal demand for information to a branch of a bank is not one of these circumstances where there is any reason to regard the branch as distinct from the bank. Quite the opposite, s. 462(2) was enacted so that a bank is considered to be notified of an obligation once the relevant branch receives notice. The ARQ submits that it conducted an audit pursuant to the Quebec *Taxation Act*, CQLR, c. I-3,and sent the Demand pursuant to its power under the *TAA* to determine whether the Trust had to file taxes in Quebec, and that any extraterritorial effect of sending the Demand is incidental to the ARQ’s power under the *TAA* and raises no jurisdictional problem.
	1. Decision of the Quebec Superior Court — 2015 QCCS 1135
3. In a judgment dated March 24, 2015, the Quebec Superior Court dismissed the appellant’s motion to quash the Demand. It found that the documents referred to in s. 462(1) require action on the part of the bank that goes beyond the mere communication of information that is required by the Demand. Instead, the court found that the Demand falls under s. 462(2) of the *Bank Act*, which it noted, is consistent with the conclusion in *Québec (Sous-ministre du Revenu) v. Banque Toronto-Dominion*, [2001] R.D.F.Q. 90.
4. Contrary to Alberta Ltd.’s submissions, the court was of the view that the correct reading of s. 462(2) does not treat the branch as a separate legal entity for the purposes of receipt of notifications; “the bank is the legal entity to which the notice is addressed” and it is the bank who must act on the notice if properly communicated (para. 36). This conclusion was reinforced by common sense. Were it otherwise, Quebec taxpayers could deposit their assets in bank branches outside of Quebec to prevent the ARQ from obtaining information from their banks.
5. The court reasoned that the case law cited by Alberta Ltd. was of no assistance to its position, as it did not support the proposition that a person outside of Quebec cannot be asked for information (para. 40). Perhaps the most relevant case, *Equity Accounts Buyers Ltd. v. Jacob et la Banque Royale du Canada, tierce-saisie*, [1972] R.P. 326 (Que. Prov. Ct.), also did not apply. That case related to seizures, which would properly fall under s. 462(1), but the Demand “is not equivalent to a seizure” (para. 45).
6. The court reasoned, following this Court’s decision in *Fundy Settlement*, that the residence of a trust cannot be determined merely by the residence of the trustee. Instead, it is a question of control and management of the trust (para. 47). The ARQ’s audit is to determine whether the Trust is in fact subject to Quebec’s tax laws (para. 48). Thus, the court found that “it is perhaps premature to call the Demand extra-territorial” (para. 54). In any event, the court concluded that any extraterritorial effect was merely incidental to Quebec’s power to tax within the province.
	1. Decision of the Quebec Court of Appeal — 2018 QCCA 8
7. The Court of Appeal upheld the decision of the court below. In the Court of Appeal’s view, the ARQ properly sent the Demand pursuant to its taxation and auditing power under s. 92 of the *Constitution Act, 1867*.Any extraterritorial effect was incidental to this power and did not cause the ARQ to exceed its jurisdiction.
8. The Court of Appeal found that the Demand was intended for National Bank, which has its head office in Quebec, and that the ARQ sent the Demand to the Calgary Branch in order to comply with s. 462(2) of the *Bank Act*, which provides that a bank is only considered to have been notified if notice is sent to the branch where the client’s account is located. The objective of s. 462(2), according to the Court of Appeal, is to recognize the “complexity of large modern banks” (*Deloitte & Touche Inc. v. Bank of Nova Scotia* (1993), 22 C.B.R. (3d) 317 (Sask. Q.B.), at para. 8) and to ensure that notice is received at the appropriate place.
9. The Court of Appeal explained the operation of s. 462. It distinguishes between two categories of documents: the first, enumerated in subss. (1) and (3), and the second, in s. 462(2), which encompasses all notices sent to the bank concerning a client other than those enumerated in subss. (1) and (3). The Court of Appeal reasoned that a formal demand does not fall within the scope of s. 462(1) or (3), as it is not among the documents referred to in those provisions, nor does the Demand seek to bind property belonging to a client in the sense of s. 462(1). Thus, the Demand was properly sent according to the requirements of s. 462(2). The court noted that s. 462(2) does not confer legal personality on a branch distinct from the bank. In the court’s view, the ARQ sent the Demand to the Calgary branch as the law requires. The ARQ did not exceed the scope of its competence in so doing.
10. Issues
11. I would state the issues differently than the parties. There are three:
	1. Does s. 462(1) of the Bank Act apply?
	2. If not, does s. 462(2) of the Bank Act apply?
	3. Given the answers to the first two questions, did the ARQ act extraterritorially in sending the Demand?
12. I find that s. 462(2) applies to the Demand, but that the ARQ did not act extraterritorially in sending the Demand.
13. Analysis
14. Before considering the issues, I would highlight what is not in dispute in this appeal. First, the parties agree that the Demand is a seizure — though they disagree about the significance of this fact. The Demand, and formal demands like it, compel the production of documents and information. Under s. 61 of the *TAA* there are penalties for failure to comply. Assuming the Demand was validly issued, it was not merely a request which National Bank was free to disregard. I would agree with Alberta Ltd.’s oral submissions that National Bank’s furnishing of the requested information and documents cannot be said to be purely voluntary. Thus, sending the Demand was an exercise of authority that could in principle raise concerns about jurisdiction.
15. Second, the parties accept that absent the operation of the *Bank Act*, the ARQ could have sent the Demand to National Bank in Quebec. Alberta Ltd. agreed that this would be the case, even if some of the records requested by the ARQ were physically located in a different province. At the hearing, counsel for Alberta Ltd. agreed that under the ordinary rules of corporate personality, National Bank would be a single entity, from which the ARQ could request information — provided of course that the Demand was sent to National Bank in Quebec. In Alberta Ltd.’s submission, it is the *Bank Act* and the Branch Entity Rule that divide National Bank’s legal personality and direct that the Demand be sent out of province.
16. Thus, in the absence of the *Bank Act*, no concerns about extraterritoriality would arise. In brief, the parties agree that the ARQ has authority to issue a formal demand to a corporate body operating in its territory. (Again, Alberta Ltd. adds that any such demand must be sent within Quebec.) The debate is over whether the ARQ was compelled by the *Bank Act* to send the Demand to the Calgary Branch, and if in so doing the ARQ acted extraterritorially. I turn now to these questions.
	1. Issue 1 — Does Section 462(1) of the Bank Act Apply to the Demand?
17. Alberta Ltd. submits that s. 462(1) applies to the Demand, as this provision applies to any seizure on a bank. Alberta Ltd. concedes that its position is not supported by the plain language of s. 462(1), but submits that a purposive reading of the provision supports its application to the Demand. It submits that the Demand is more like the coercive documents listed under s. 462(1) than documents that merely notify and which are captured by s. 462(2). I am not persuaded by this submission, and reject the proposition that s. 462(1) has any application to the Demand. A review of the history and purpose of s. 462(1) does not support Alberta Ltd.’s position. Section 462(1) was not enacted to set out general preconditions for seizures or coercive action on banks. Instead, its purpose is to set out the preconditions for binding customer property held by the bank, either in the form of valuable assets or bank account debt. This provides certainty and thereby protection to banks in dealing with claims to customer property. After reviewing the purpose and history of s. 462(1), I turn to its text. The Demand is neither among the enumerated documents in s. 462(1)(a) to (d) nor does it seek to “bin[d] . . . property belonging to a person and in the possession of a bank”, or “money owing to a person by reason of a deposit account in a bank”, as stipulated in s. 462(1). Thus, s. 462(1) does not apply to the Demand, and so it follows that the application of s. 462(1) could not have rendered the Demand extraterritorial.
	* 1. History and Purpose of Section 462(1)
18. Professor Bradley Crawford has succinctly described the purpose of s. 462(1) in the following terms:

When the branch of account has been properly served as required by sub-s. 212(1) [now s. 462(1)], if a bank were to pay out money in full or partial satisfaction of its debt to its customer to anyone other than the sheriff as directed by the writ and notice of seizure, it would do so at its peril. If the branch of account has not been properly served, however, the bank is not answerable for continuing to honour the payment order of its customer. [Footnote omitted.]

(*Crawford and Falconbridge, Banking and Bills of Exchange: A Treatise on the Law of Banks, Banking, Bills of Exchange and the Payment System in Canada* (8th ed. 1986), vol. 1, at p. 548)

1. The history of s. 462(1) illustrates why setting out such requirements to bind customer property was necessary. I turn to this now.
2. In property law, a deposit account is characterized as a debt owed by a bank to its customer (art. 2327 of the *Civil Code of Québec*; N. L’Heureux and M. Lacoursière, *Droit bancaire* (5th ed. 2017), at p. 120; *Foley v. Hill* (1848), 2 H.L.C. 28, 9 E.R. 1002). Section 461(2) of the *Bank Act* provides that

[t]he amount of any debt owing by a bank by reason of a deposit in a deposit account in the bank is payable to the person entitled thereto only at the branch of account and the person entitled thereto is not entitled to demand payment or to be paid at any other branch of the bank.

While a bank is free to permit a customer to draw on their account elsewhere, the customer is only *entitled* to withdraw funds at a particular branch of a bank.

1. Long before this notion was codified, it was recognized as part of the bank and customer relationship at common law. The historical rationale provided in *Woodland v. Fear* (1857), 7 El. & Bl. 519, 119 E.R. 1339 (K.D.B.), at paras. 521-22, by Lord Campbell C.J., was that bank branches, unable to communicate instantly, would not be able to share account information in a timely fashion. If a customer withdrew funds from one branch of the bank, another branch would not immediately have information about the status of the customer’s account. The customer could overdraw their account to the detriment of the bank. In view of this risk, Lord Campbell C.J. concluded that bank branches “are therefore, for certain purposes, distinct” (para. 522). Notwithstanding the fact that the customer is in a creditor/debtor relationship with the *bank*, it is as if that relationship is between the customer and the *branch* for the purpose of drawing on their account. This is perhaps the origin of what Alberta Ltd. refers to as the Branch Entity Rule. It was this feature of the contractual relationship between the bank and customer — the account debt being recoverable only in a particular place — that was eventually central in fixing the *situs* of the account debt.
2. This is exemplified in *R. v. Lovitt*, [1912] A.C. 212 (J.C.P.C.). In that case, Mr. Lovitt was domiciled in Nova Scotia, but had deposited a sum at a branch of a bank in New Brunswick prior to his death. The Judicial Committee of the Privy Council had to determine whether the sumwas property situate in the province, and therefore subject to New Brunswick’s succession duty. Citing *Woodland*, Lord Robson noted that the relationship between the bank and customer was “localized” so as to confine the bank’s obligations to its customers primarily to a particular branch. Accordingly, he concluded that the property was situate in New Brunswick. However, the bank is a single entity and the bank, not the branch, would be ultimately accountable to the customer for the debt.
3. Following this, *McMulkin v. Traders Bank of Canada* (1912), 21 O.W.R. 640 (Ont. Div. Ct.), created a certain level of uncertainty in the law by treating jurisdiction over the account debt differently. In that case, a judgment creditor recovered judgment in Ontario for a sum of $211.33 and then obtained a garnishing order attaching any debt due from Traders Bank to the judgment debtor. The order was served at the Traders Bank at Ingersoll in Ontario where at the time of the initial judgment, the judgment debtor had money on deposit. However, the judgment debtor withdrew his funds from Ingersoll and deposited them in Calgary before the garnishing order was obtained. Thus, at the time the garnishing order was issued, the account debt was no longer property situate in the province — at least from the perspective of *Lovitt*. The question before the Ontario Divisional Court was whether the bank’s indebtedness to the judgment debtor was subject to attachment by the order of an Ontario court.
4. Justice Middleton found that it was. What was significant according to the Ontario rules of civil procedure was not the *situs* of the debt but the jurisdiction over the *debtor*. Thus, Middleton J. found that if the garnishee (bank) was in Ontario, and could be served within Ontario, the judgment creditor had the right to collect any debt that the garnishee bank owed to the judgment debtor. The bank was accordingly ordered to pay the judgment creditor.
5. Justice Middleton was aware of the apparent tension with the decision in *Lovitt*. However, he found that any tension was resolved based on the differences between the relevant statutes. For the rules of civil procedure, there was no need to look to the *situs* of the debt to determine the court’s jurisdiction, thus *Woodland* was irrelevant. This created practical problems. First, the branch with knowledge of the customer account would not necessarily be the one to receive the order. Second, one court could garnish or tax a bank account on the basis of the *situs* of the debt; another on the basis of jurisdiction over the debtor bank. Thus courts from different jurisdictions who may not recognize the validity of the other’s order, could simultaneously and validly issue an attaching or garnishing order against a bank, each to different branches. In this way, *McMulkin* exemplifies a problem that bedevils debt and other intangible property at common law: a “debtor may be susceptible to a multiplicity of actions” (P. J. Rogerson, “The Situs of Debts in the Conflict of Laws — Illogical, Unnecessary and Misleading” (1990), 49(3) *C.L.J.* 441, at p. 450). In such circumstances, it would be difficult for banks to be confident as to their obligations in respect of customer property.
6. Parliament eventually acted and restored a measure of certainty to the law with amendments to the *Bank Act* in 1923 (*Equity Accounts*, at p. 329; *Bank of Nova Scotia v. Mitchell* (1981), 30 B.C.L.R. 213 (C.A.), at p. 220). Upon its enactment, s. 96(4) of the *Bank Act*, S.C. 1923, c. 32, read:

An attaching or garnishee order or summons shall only affect and bind moneys to the credit of the debtor at the branch, agency or office of the bank where such order or summons or notice thereof is served.

1. Notably, this provision does not fix the *situs* of the account debt but it proceeds on the assumption that bank account debt has a location. The purpose was to prescribe a single method for binding account debt. According to it, the branch dealing primarily with the customer’s account would receive all claims made to the customer’s account. Further, the rule limited how such claims could be made. Only courts with the authority to issue a garnishment order where the account is located would have the authority to garnish it. Through the enactment of this provision, banks were provided a measure of protection from double liability. As E. R. Edinger explains, “[t]he object of the English courts in developing a single situs rule was protection for the garnishee” (“Garnishment of Interprovincial Corporations” (1980), 38 *Advocate* 385, at p. 389).
2. Section 96(4) of the 1923 *Bank Act* remained relatively constant through various amendments of the statute. Notably, it was expanded to include documents beyond “[a]n attaching or garnishee order or summons”. A “writ of extent” was added to the documents which would only affect and bind property at the branch of the bank where it was served (*Bank Act*, S.C. 1953-54, c. 48, s. 96(4)). In 1967, the wording of s. 96(4) was also changed to encompass writs or processes and injunctions seeking to bind property (*Bank Act*, S.C. 1966-67, c. 87, s. 96(4)).
3. Parliament made further changes in the *Banks and Banking Law Revision Act, 1980*, S.C. 1980, c. 40, s. 2 (“*Revision Act, 1980*”), including by introducing the concept of “branch of account” (s. 211(1), now s. 461(2)). Section 211(2) provided that customers were only *entitled* to repayment at the “branch of account” and s. 211(4), today s. 461(4), fixed the *situs* of the account debt to the branch of account. This latter provision was introduced in response to the concern that technological advancements might undermine the notion that a bank account debt was located in a particular place (Department of Finance, *Summary of Banking Legislation 1978* (1978), at pp. 13-14).
4. The trend of progressively expanding the legal documents captured by the provision continued. In 1980, s. 212(1) included “a notice by any person purporting to assign, perfect or otherwise dispose of an interest in any property or in any deposit account”, in addition to writs, processes, orders, and injunctions. Consistent with the previous amendments, the notices captured were specifically concerned with binding *property*. As before, Parliament expanded the scope of s. 212(1) in recognition of the many ways that a bank account or property deposited with a bank could be bound. Section 212(1) became s. 462(1) of the *Bank Act* in 1991. The purpose of s. 462(1) remains to prescribe a method to bind customer property held by the bank.
5. With the purpose and history of s. 462(1) of the *Bank Act* in view, I will now consider whether it applies to the Demand. I find that it does not.
	* 1. The Demand Is Not One of the Documents Listed in Section 462(1)(a) to (d)
6. Section 462(1) of the *Bank Act* sets out a list of documents that must be served at a specific branch in order to bind property (“the following documents are binding” or in French “*les documents ci-après* [. . .] *produisent leurs effets*”). Of the listed documents, Alberta Ltd. contends that the Demand is a “writ or process” issued in the context of “a legal proceeding” in the sense of s. 462(1)(a) (transcript, at p. 12). In its factum, Alberta Ltd. submits that a legal proceeding is not limited to a judicial proceeding, and that in this case a tax audit is the relevant legal proceeding since it is a fact-finding inquiry conducted under the authority of the law. It adds that evidence may be collected in the context of a tax audit and points to the broad definition of legal proceeding in the *Canada Evidence Act*, R.S.C. 1985, c. C-5, ss. 29(9) and 30(12): “legal proceeding means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration” (A.F., at paras. 71-80). Alberta Ltd. submits that it follows from a broad understanding of “legal proceeding” that the Demand constitutes a “writ or process” “issued in or pursuant to” a tax audit, a “legal proceeding”.
7. Significantly, Alberta Ltd. has not successfully explained how the Demand, an administrative action, is a “writ” or “process”. There is settled jurisprudence that writs and processes are documents issued by courts or as part of court proceedings. In defining “writ” in *Fleishman v. T. A. Allan & Sons* (1932), 45 B.C.R. 553 (C.A.), McPhillips J.A. reviewed various definitions and concluded that a writ is “the initial process issuing out of the Court” (p. 560). Consistent with this, *Black’s Law Dictionary* (10th ed. 2014), defines writ as “[a] court’s written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act”.
8. The term “process”, while having a broader range of uses, also refers to “something issued by or out of the court” (*R. v. Soucy* (1975), 11 N.B.R. (2d) 75 (S.C (App. Div.)), at para. 11. The *Canadian Law Dictionary* (7th ed. 2013) defines “process” as “[a] formal writing **(writ)** used by the court to exercise **jurisdiction** over a person” (emphasis in original). In *Re Selkirk*, [1961] O.R. 391, the Ontario Court of Appeal defined process:

In its broadest sense it is equivalent to “proceedings” or “procedure” and may be said to embrace all the steps and proceedings in a case from its commencement to its conclusion. “Process” may signify the means whereby a Court compels a compliance with its demands. Every writ is, of course, a process, and in its narrowest sense the term “process” is limited to writs or writings issued from or out of a Court under the seal of the Court and returnable to the Court. [p. 397]

1. While “process” may have a broad meaning, the court in *Soucy*, citing *Stroud’s Judicial Dictionary*, stated that “that which may be done without the aid of a Court is not a ‘process’” (para. 9; see also *Canadian Credit Men’s Trust Association v. Edmonton* (*City*) (1925), 21 Alta. L.R. 160 (A.D.); see *Stroud’s Judicial Dictionary of Words and Phrases* (9th ed. 2016), vol. 3, at p. 1999).
2. Both “writ” and “process” therefore refer to documents issued by courts or as part of court proceedings. A document issued by an administrative agency, in this case, the Demand issued by the ARQ, is not a writ or process.
3. Notwithstanding the foregoing jurisprudence, Alberta Ltd. asks this Court to interpret “writ or process” more expansively, owing to the Demand’s coercive nature. It submits that the Demand is more similar to coercive “writs or processes” or court “orders” than it is to “*mere* notifications”, which Alberta Ltd. says, are dealt with under s. 462(2). Alberta Ltd. submits that formal demands are intrusive, coercive and prosecutable and therefore “akin to ‘writs or processes’ or court ‘orders’ under subsection 462(1)” (A.F., at para. 84 (emphasis deleted)). Alberta Ltd. reasons that because the Demand is not a mere notification, it must be a writ or process. I am not persuaded by this argument. Alberta Ltd. relies on a mischaracterization of s. 462(2) as pertaining only to documents that serve as mere notification — an argument which I discuss and reject below.
4. Implicit in Alberta Ltd.’s submissions is that we should approach s. 462(1) as providing an illustrative list of examples. However, in my view, what s. 462(1) provides is an exhaustive list of documents (“the following documents are binding” or “*les documents ci-après* [. . .] *produisent leurs effets”).* For s. 462(1) to apply, the document must be one of the enumerated documents; it does not suffice for the documents to be “similar” to the listed documents. This is reinforced by the residual structure of s. 462, whereby documents that do not fall under s. 462(1) or (3) thereby fall under s. 462(2).
5. Thus, I conclude that the Demand is not one of the documents on the closed list of documents set out in s. 462(1), and therefore, that s. 462(1) does not apply.
	* 1. The Demand Does Not Seek to Bind “Property Belonging to a Person and in the Possession of a Bank, or on Money Owing to a Person by Reason of a Deposit Account in a Bank”
6. There are further reasons why s. 462(1) does not apply to the Demand, which are also sufficient to dispose of this appeal. Section 462(1) provides that the enumerated documents will only be “binding on property belonging to a person and in the possession of a bank, or on money owing to a person by reason of a deposit account in a bank” if served at the branch that has possession of the property or that is the branch of account. Accordingly, the documents to which it applies are documents that seek to bind property. The documents are those that seek to bind *customer* property. Thus, if s. 462(1) is to apply to the Demand, the Demand must seek to bind property that belongs to a customer, in this case, the Trust. As I will explain, the Demand does not attempt to bind property in a manner that would engage s. 462(1) — the Demand neither seeks to be “binding on property”, nor does it target the Trust’s property. I will consider each of these elements in turn.
7. While a demand for information may compel information about objects that are someone’s property, the obligation does not seek to encumber the property itself. The above history of s. 462(1) suggests that the use of the phrase “binding on” property is intended in the sense of encumbering property. Indeed, the concern that gave rise to its enactment pertained to a bank’s liability in respect of claims to customer property. The Demand is thus unlike the documents listed in (a) through (d), all of which are types of documents which may seek to bind property (e.g. an enforcement notice), in the sense of encumbering that property.
8. In contrast, the Demand imposes an obligation on the person or entity from whom the information or documents are requested. That person or entity is required to provide certain information and documents to the ARQ. The Demand therefore does not encumber the information or records themselves because it does not limit how National Bank can deal with those records or information. This is illustrated by the fact that the same documentation could be provided simultaneously to the federal and provincial tax authorities.
9. Alberta Ltd. also argues that the Demand binds and produces effects on money owing by reason of a deposit account. This, it argues without citing authority, means that the document at issue must have a “compulsory and legal effect on such money owing in a manner that alters the existing *status quo* between the branch and the customer” (A.F., at para. 61). Alberta Ltd. argues that since the Demand affects the client’s privacy interests as well as their right to confidentiality, the Demand falls within s. 462(1).
10. I am not persuaded by this submission, as it fails to distinguish between the *debt* itself and the records which relate to the debt. While it is true that confidentiality and privacy are aspects of the banking relationship, and that in general, banks have an obligation to maintain the confidentiality of their clients’ financial records, it does not follow that when a bank is compelled to provide information about its clients’ accounts, there is effect on the account debt that is the subject of those records. Accepting Alberta Ltd.’s submission would require conceptualizing the right to confidentiality or privacy as a property right held by the bank on behalf of the customer. Section 462(1) is simply not concerned with confidentiality — it would be inappropriate for confidentiality and privacy concerns to change the interpretation of s. 462(1).
11. In any event, even if one could conceive of the Demand as “binding” on property in the relevant sense, the Demand does not seek to bind property *belonging to the Trust*. Section 462(1) refers to property that belongs to a customer, and not the bank itself (as the property that may potentially be bound by a listed document). Banking records and information are the property of the bank and not the customer (see *Royal Bank, Re* (2002), 25 O.S.C.B. 1855 (Ont. Sec. Comm.) (“*Re Royal Bank*”); *Re Royal Bank of Canada and Ontario Securities Commission* (1976), 14 O.R. (2d) 783 (“*Royal Bank v. OSC*”)).
12. Alberta Ltd. appears to accept this conclusion — that account information belongs to the bank — but questions its applicability to the present case, at least as it relates to cheques. Citing *Droit bancaire*, Alberta Ltd. notes that it is a well-established principle that signed cheques are the property of the client and not the bank, and that the bank holds cheques as a mandatary on behalf of the customer. According to Alberta Ltd., there was no reason for the Court of Appeal to conclude that the wording “property belonging to a person and in the possession of a bank” did not apply to cheques as well. The ARQ argues in response that there is no basis to find that the cheque belongs to the customer or that a bank holds a cheque as a mandatary of the customer.
13. I am persuaded that the Court of Appeal did not err when it found that the wording “property belonging to a person and in the possession of a bank” did not apply to the cheques. The Demand asks for “The bank records (including returned cheques, deposit books, debit memo, credit memo, etc.) of all accounts held by the [T]rust” and “The lines of credit and credit card statements (including returned cheques, deposit books, debit memo, credit memo, etc.) held by the [T]rust”. It is clear that the Demand asks for the information available on the cheques, as part of the bank records, rather than seeking a proprietary interest in the cheque. Like the other information sought by the ARQ, the information on the cheques does not “belong” to the customer, Alberta Ltd. In any event, since I have already concluded that the Demand is not one of the document listed in s. 462(1), my ultimate conclusion on s. 462(1) remains intact even if Alberta Ltd. did have a proprietary interest in this information.
14. To summarize, the text of s. 462(1) does not support Alberta Ltd.’s position. Further, I am persuaded that the purpose of s. 462(1) is much narrower than Alberta Ltd. contends. Rather than fixing the jurisdiction of any seizure on a bank, irrespective of its objects, as it submits, s. 462(1)is concerned with the *debt* owed by the bank to its customers by reason of deposit accounts or valuable property held by the bank for its customers. Its purpose is to prescribe clear requirements for binding that property. The reason for these requirements is plain: the risk of double liability. Section 462(1) may incidentally affect who has the power to bind that property, but that is not its purpose. One can thus see why s. 462(1) is directed towards circumstances which differ from those involved by the Demand. A formal demand for information or documents does not engage the same concerns as a claim to a customer’s debt. Unlike claims to account debt, a bank can simultaneously respond to multiple requests for account information; responding to the ARQ’s demands does not preclude responding to a similar type of demand from Canada Revenue Agency, nor does it diminish the information available. This reinforces my conclusion that s. 462(1) does not apply to the Demand.
15. Having found that s. 462(1) does not apply to the Demand, I will now consider whether s. 462(2) does.
	1. Issue 2 — Does Section 462(2) of the Bank Act Apply to the Demand?
16. In my view, s. 462(2) provides requirements by which documents that pertain to a particular customer — other than those enumerated in s. 462(1) and (3) — are to be communicated to a bank, in order for the bank to be considered to have notice of the documents sent. Given that the Demand pertains to a customer of National Bank, and having found that s. 462(1) does not apply, I agree with the ARQ that the method of communicating the Demand is prescribed by s. 462(2) of the *Bank Act*.
17. Section 462(2) is residual in structure. It applies to “[a]ny notification sent to a bank with respect to a customer of the bank, other than a document referred to in subsection (1) or (3)”. Thus, s. 462 distinguishes between two types of documents. The first category consists of those documents referred to in s. 462(1) and (3); the second category consists of documents *other* than those enumerated in s. 462(1) and (3). The latter are covered by s. 462(2).
18. The Demand is in “respect to a customer of the bank”. It asks for bank records and account information of the Trust. Moreover, it is the kind of document of which a bank must have notice in order to comply. Section 462(2) on its face therefore seems to apply and provide the conditions for when a bank will be considered to have notice of the Demand.
19. The biggest point of contention between the parties regarding the application of s. 462(2) pertains to whether the provision only applies to documents that serve a “mere notification” function. In Alberta Ltd.’s submission, because the Demand *compels* the recipient to furnish the requested documents, it cannot be described as a “mere notification”, and therefore, s. 462(2) does not apply. In support of this position, it relies on the Ontario Securities Commission’s (“OSC”) decision in *Re Royal Bank*, in which the OSC found that s. 462(2) of the *Bank Act* did not apply to a summons issued in the course of an OSC investigation. Alberta Ltd. points to this conclusion in support of its point that s. 462(2) does not apply to the Demand.
20. I am not persuaded by this submission. The OSC decision dealt with a different type of request — a summons rather than a formal demand — under a different statutory scheme — s. 13 of the *Securities Act*, R.S.O. 1990, c. S.5, rather than the *Bank Act* — and thus says little about whether the Demand is covered by s. 462(2) of the *Bank Act*.
21. Instead, I find the Court of Québec’s decision in *Banque Toronto-Dominion*, at pp. 93-94, more instructive as it too dealt with a formal demand by the Quebec tax authorities sent pursuant to s. 39 of the *Act respecting the Ministère du Revenu*, R.S.Q., c. M-31 (now the *Tax Administration Act*). In that case, the Court of Québec found that s. 462(2) applied to a formal demand sent to a bank. The court’s conclusion was based on reading of the French and English versions of the provision. The court held that the failure to send the notice according to the conditions in s. 462(2) (and the substantially similar s. 448 of the *Trust and Loan Companies Act*, S.C. 1991, c. 45) meant that the notice was not properly sent and thus did not fix the bank with notice.
22. In any event, I do not accept the argument that s. 462(2) only applies to non-coercive documents that provide notice to the recipient bank. Rather, the purpose of s. 462(2) is to provide the requirements for notifying a bank when sending documents other than those enumerated in s. 462(1) and (3), in order for the bank to be considered to have notice of the documents. However, the use of the word “notification” in s. 462(2) contemplates not only documents that serve a notification function, but also documents that may impose positive obligations on a bank. The provision pertains to “[a]ny notification sent to a bank with respect to a customer of the bank, other than a document referred to in subsection (1) or (3) . . .”. Implicit in the wording of this provision is the premise that documents that fall under subs. (1) or (3) may also be “notifications”. Thus, the term “notification” as used in s. 462(2) may capture documents that require further action on the part of the recipient bank, for example, garnishment orders — although it may be s. 462(1) which ultimately applies to them.
23. I see no basis for limiting the scope of s. 462(2) to documents that serve only to notify, and have no other function. Just because s. 462(2) specifies when a bank will be said to have notice of a certain document does not mean that the effect of those documents is only to provide information — the documents may require further action. The provision describes when a bank will have notice of a document; it does not describe the purpose of the document.
24. This interpretation is also supported by the history of s. 462(2), which shows that it was enacted to provide a condition for certain documents to be binding on banks. The predecessor to s. 462(2) was included to address the situation of bank head offices receiving notices from financial organizations. One comment accompanying the proposed amendment read:

From time to time Head Offices of banks receive notifications from financing organizations advising of financing arrangements with a specified company and their obtainment and the registration of a floating charge debenture. We wish to ensure that these notices only be acted upon as binding upon the recipient bank if received at the branch of account of the account affected.

(House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Finance, Trade and Economic Affairs*, No. 17, 4th Sess., 30th Parl., December 7, 1978, at p. 17A : 115)

1. Thus, the proposal to add the predecessor to s. 462(2) was based on a practical concern that the affected bank branch actually receive notice of the bank’s obligations before they are considered binding. From its inception, s. 462(2) was concerned with documents that could impose obligations on recipient banks.
2. Thus in my view, the Demand comes within the scope of s. 462(2). Indeed, it is consistent with s. 462(2)’s concern with practical convenience for the ARQ to send the Demand to the Calgary Branch, as this is where some of the requested documents are located (as found by the Superior Court judge).
3. Accordingly, the ARQ properly sent the Demand to National Bank. The effect of s. 462(2) is to require that a document be sent to the branch of account. Doing so fixes the bank with notice of the Demand. Thus, in this case, National Bank had notice of the Demand, and the Demand is binding on the bank as a whole.
	1. Issue 3 — Was the Demand Issued Extraterritorially?
4. I turn now to the question of whether the Demand was issued extraterritorially. The parties agree that in the ordinary course, the ARQ could issue the Demand to National Bank in Quebec. The complicating feature in this case is the interaction of the *Bank Act* and the *TAA*. Specifically, does the application of the *Bank Act*, and the requirement imposed by s. 462(2) to send the Demand to the Calgary Branch, render the ARQ’s actions extraterritorial? I agree with the Quebec Court of Appeal that it does not. The effect of s. 462(2) is to prescribe a particular method of delivery, one that does not alter the nature of the Demand or the entity with respect to which the ARQ is exercising authority.
5. Alberta Ltd. advances two arguments in support of its position that the Demand was issued extraterritorially and, thus, *ultra vires*. First, it argues that the so-called “Branch Entity Rule” applies to sever any connection between National Bank and the Calgary Branch, such that in issuing the Demand, the ARQ impermissibly compelled the production of documents from a branch outside its territorial jurisdiction. Alternatively, Alberta Ltd. argues that even if the Calgary Branch is not deemed to be distinct from National Bank, the ARQ is not permitted to serve coercive documents like the Demand outside of its territorial boundaries. I consider each of these arguments in turn.
	* 1. Section 462(2) and the Branch Entity Rule
6. I will first address the relationship between s. 462(2) and the Branch Entity Rule. In its written submissions, Alberta Ltd. stresses that the operation of s. 462(2) requires treating the branch of account as distinct from the bank, as it argued of s. 462(1). Alberta Ltd. asserts that the Quebec Court of Appeal’s conclusion that “it is the bank itself that is seized, and not the bank branch” should be rejected because it is “inconsistent with a homogeneous application of the Branch Entity Rule” (A.F., at paras. 97-98). Alberta Ltd. adds that nothing in the text of s. 462(2) “creates an exception to the Branch Entity Rule” (A.F., at para. 98).
7. This is faulty reasoning; one might say that it is perfectly backwards. The bank, as a corporation, is a single entity; its branches are treated as distinct only for limited and specific purposes. The wording of s. 462(2) does not carve out an exception to the Branch Entity Rule because it does not need to; no such legal rule operates in the circumstances. Branches of a bank are only regarded as distinct where “practical exigencies” require it (*Equity Accounts*, at p. 330). As explained above, there is no basis in the text of s. 462(2), in the underlying policy, or in the practicality of bank operations, to regard a branch as distinct in order to make a formal demand of the bank.
8. As the ARQ highlights and the Quebec Court of Appeal found, the purpose of s. 462(2) is to provide a practical means by which the *bank* as a whole will be fixed with notice. It is to the *bank* that the Demand is made. One is not required to conceptualize the bank and its branches as separate entities to achieve this purpose. Instead, s. 462(2) is premised on the idea that a branch is part of the bank. This is exemplified by the fact that nothing further is required from a branch upon receiving a document under s. 462(2) for the bank to be fixed with notice; the entities are one and the same. I would liken it to prescribing a mode of entry into a home: when one walks through the side door rather than the front, one enters the same house.
9. In this regard, s. 462(2) differs from s. 462(1).Both subsections direct that certain documents pertaining to customers be sent to the branch of account. However, s. 462(1) contemplates an effect that occurs at the branch only — the binding of property (deemed to be) located there — while s. 462(2) pertains to an effect on the bank as a whole. As a result, where s. 462(1) *is* found to apply, the authority to issue certain legal documents to a branch of account might be restricted by provincial borders. Accordingly, in *Equity Accounts*, the Provincial Court in Montréal could not garnish an account located in Ontario. In *Univar Canada Ltd. v. PCL Packaging Corp.*, 2007 BCSC 1737, 76 B.C.L.R. (4th) 196, the effectiveness of a garnishment order depended on the British Columbia Supreme Court’s jurisdiction to make service *ex* *juris*, and serve the branch of account in Toronto.Thus,the ARQ may not have the authority to make an order attaching to the account debt at the Calgary Branch. I decline to say anything further on this issue given that this is not the question before us.
10. In this case, the ARQ sent a formal demand for information, one that I have concluded is captured by s. 462(2) of the *Bank Act*. The question is thus whether s. 462(2)’s requirement to send the Demand to the Calgary Branch rendered the actions of the ARQ extraterritorial and thereby *ultra vires*. As s. 462(2) does not require the Calgary Branch to be treated as a distinct entity for the purposes of the Demand, we still must address whether there is some other basis on which to say that the Demand was issued extraterritorially.
	* 1. The ARQ’s Authority to Send the Demand Out of Province
11. I will now address Alberta Ltd.’s alternate argument — that the ARQ did not have the authority to send the Demand to the Calgary Branch, even if the Branch Entity Rule does not apply. In its view, issuing the Demand outside of Quebec was itself *ultra vires*. This argument, advanced primarily in oral submissions, is independent of the application of the Branch Entity Rule. Alberta Ltd. asserts that the territorial limits on the ARQ’s powers are strict; it is not permitted to make formal demands outside Quebec. Thus, if the *Bank Act* requires sending the Demand outside Quebec, rather than to National Bank’s head office in Quebec, it directs the ARQ to do something it does not have the jurisdiction to do. On the other hand, the ARQ does not regard the location of National Bank or its branches as a relevant factor in delineating the ARQ’s jurisdiction; it has the power to make a formal demand for information or documents because it is incidental to its provincial taxation powers. The parties’ submissions on this issue are notably scant.
12. As this Court explained in *R. v. Hape*, 2007 SCC 26, [2007] 2 S.C.R. 292, territory is central to jurisdiction:

It is as a result of its territorial sovereignty that a state has plenary authority to exercise prescriptive, enforcement and adjudicative jurisdiction over matters arising and people residing within its borders, and this authority is limited only by the dictates of customary and conventional international law. [para. 59]

The Constitution is the primary limit on provincial authority. As R. Sullivan explains, the principle that jurisdiction is territorially limited is based on the equality of sovereigns (“Interpreting the Territorial Limitations on the Provinces” (1985), 7 *S.C.L.R.* 511, at p. 516). The *Constitution Act, 1867*, limits the authority of provinces in recognition of their equality within a federation:

The provinces of Canada . . . are of equal dignity and each is vested with identical exclusive jurisdiction over the subjects listed in section 92. This jurisdiction is necessarily confined to matters “in the Province” because any other arrangement would permit one province to violate the internal sovereignty of its fellow provinces.

(Sullivan, at p. 528)

1. Territory is intimately connected with authority. However, the fact that the exercise of the ARQ’s power has some impact outside Quebec does not *ipso facto* render such action impermissible or extraterritorial. Before considering whether action with extraterritorial effect is permissible, one must first determine whether (and if so, the extent to which) the action in question has some impact of significance outside of a province’s boundaries, like an impact on the rights or entitlements of individuals in another province. This is reflected in the reasoning of the Quebec Court of Appeal:

[translation] I would recall that a law has extraterritorial effect only if it is intended to apply to persons, property, acts or juridical facts in another country that do not have a real and substantial link with the state that enacted it. Although the issue here is not whether the law has extraterritorial reach, a similar reasoning applies. The ARQ was not, by sending a formal demand to the [National Bank of Canada] at a branch in Calgary in order to comply with the Bank Act, trying to “apply the law to persons, property, acts or juridical facts that do not have a real and substantial link with Quebec”. [Footnote omitted; para. 53.]

1. In the absence of the application of the Branch Entity Rule, Alberta Ltd. asks this Court to conclude that the mere fact of sending the Demand to the Calgary Branch was beyond the authority of the ARQ, notwithstanding the fact that the Demand is directed at National Bank, a corporate entity that operates in Quebec. The sending of the Demand, it argues, still amounts to an exercise of coercive power outside of the province. To this end, Alberta Ltd. repeatedly characterized the ARQ’s actions as “effecting a seizure of information and documents outside of Québec” (transcript, at p. 2). In effect, Alberta Ltd. claims that because the Demand letter is sent to Calgary, this where the administrative seizure must take place.
2. In my view, it is a sounder approach to focus on the place where enforcement of the Demand may be sought as the determinative point in characterizing the exercise of the coercive power at issue. In this case, both the consequences of a failure to comply and the potential enforcement of the Demand can only be effected in Quebec.Given that National Bank operates in Quebec, the Court of Québec could make an order against National Bank for failure to comply with the Demand pursuant to s. 39.2 of the *TAA*. Had National Bank refused to comply with the Demand, the ARQ would have been able to enforce the Demand through imposing penalties on National Bank as per s. 61 of the *TAA*, or by seeking a court order to force the production of documents pursuant to s. 39.2 of the *TAA*. This is so (see *Royal Bank v. OSC*). even if the hypothetical order required the production of documents located outside of the jurisdiction
3. There is no dispute that National Bank operates in Quebec. Nor is there any dispute that the ARQ is requesting information and records from National Bank over which the bank has control. In this case, none of the foregoing is altered by the application of s. 462(2). What s. 462(2) does is provide a particular means to effect notice on a bank. The destination of the Demand does not change the party to whom the Demand is made, nor the party against whom any enforcement action would be brought. In this case, it doesn’t matter where the letter is sent. By sending the Demand to another province, the ARQ is not attempting to exercise its taxation or enforcement powers outside Quebec.
4. It would be absurd if the procedural requirements imposed by s. 462(2) of the *Bank Act* were understood to affect the ARQ’s authority to issue a formal demand to a bank that operates within its territorial jurisdiction. This result conforms to the principles that limit the exercise of provincial authority. There is no interference with Alberta’s territorial sovereignty in communicating a formal demand to National Bank through one of the bank’s branches in Alberta. Nor is there any unfairness in subjecting a corporation that operates in multiple jurisdictions in Canada to a formal demand from a jurisdiction in which it operates.
5. Stated simply, the rule is that if the ARQ in the absence of s. 462(2) would have authority to issue the Demand, the application of s. 462(2) does not detract from this. The provision does not alter the authority that is exercised by the ARQ with respect to National Bank. Therefore, I find that in sending the Demand to the Calgary Branch as required by s. 462(2), the ARQ did not act extraterritorially. The Demand was validly sent.
6. Conclusion
7. As I have explained it, the fundamental issue in this appeal is whether the *Bank Act* limits the authority of the ARQ under the *TAA* to issue a formal demand pursuant to s. 39. I find that it does not. Because s. 462(2) does not treat a bank’s branches as distinct from the bank itself, what matters is that the ARQ has the jurisdiction to make a Demand of National Bank, a corporate entity operating within its borders. In another case, if a corporate entity had no operations in Quebec, it is not clear whether the ARQ would have the authority to issue a formal demand to that entity. On the facts before us, however, the ARQ had the authority to issue the Demand to National Bank and send the Demand letter via the Calgary Branch. Accordingly, I dismiss the appeal with costs.

 *Appeal dismissed with costs.*

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