

YOUR BUSINESS INFORMATION CONTINUES TO BE PROTECTED IN QUEBEC - A RECENT JUDGMENT OF THE QUEBEC SUPERIOR COURT

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Introduction

In a judgment rendered on September 24, 2018,^[1] the Superior Court reaffirmed the significance of the protection of business information, in particular if it could confer an advantage to a competitor. The Court also reiterated that third parties that are not involved in a dispute may object to a request to produce documents even though they are not parties to the case.

Background

The judgment was released in connection with a class action by Montreal taxi drivers against Uber which was authorized on January 24, 2017.

The judgment rules on Uber's requests for documents from third parties, namely taxi intermediaries and other entities such as municipal transit and commuter train authorities, car2go, Netlift and Bixi. In support of its requests, Uber argued its right to a full defence against the allegations of the class action.

car2go and Netlift

car2go and Netlift are the only entities that opposed the request on the basis that their activities could enter in competition with Uber's. car2go operates a car rental business through a mobile platform. It was considered by the Court to be a "potential direct competitor of Uber".^[2] Netlift, a business offering a customized car-sharing service through a mobile platform was considered a "direct competitor of Uber".^[3]

Right of third parties to oppose the production of documents without being parties to the case

Initially, Uber objected to the very presence of third parties not involved in the proceedings. The Court rejected this argument and reaffirmed the power of the Court to weigh third parties' arguments in light of their limited role in the case. This judgment therefore recognizes that it is appropriate for a business to assert and enforce its rights (e.g. the right to privacy and the protection of confidential information) even in proceedings to which

it is not a party.^[4]

Business data protection

After giving the third parties an opportunity to submit arguments against the request to produce documents, the Court allowed the objection raised by car2go and Netlift on the following grounds:

- The documents requested were not relevant to the dispute

First, the Court held that the requested by Uber amounted to a “fishing expedition”.^[5] The information sought was not relevant to Uber’s defence at the current stage of the proceedings. The request was rather an attempt by Uber to obtain information in the hope that, one day, it would prove to be useful.^[6]

- The right to privacy had precedence over the right to a full defence – in this particular context.

The Court also recognized that the entities’ right to privacy prevailed in this case over Uber’s right to a full defence, due to the high risk of harm to the business activities of car2go and Netlift, in the event of disclosure of confidential business information.^[7]

Conclusion

We applaud the precautionary approach taken by the Court in granting heightened protection to a company’s confidential business information. It should be noted that both entities’ business information was afforded by the Court the same protection, even though car2go was considered to be a “potential direct competitor” of Uber, while Netlift was regarded as its “direct competitor”.^[8] Quebec law therefore recognizes that business data, in particular that of third parties not involved in the proceedings, must be granted broad protection, regardless of the level of competition.

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[1] Jean-Paul c. Uber Technologies Inc., 2018 QCCS 4127[ps2id id='1' target='']

[2] p. 72 (Schedule C)[ps2id id='2' target='']

[3] p. 72 (Schedule C)[ps2id id='3' target='']

[4] paras. 28 and 31[ps2id id='4' target='']

[5] paras. 52 and 64-65; p. 72 (Schedule C)[ps2id id='5' target='']

[6] paras. 49, 52 and 107[ps2id id='6' target='']

[7] p. 72 (Schedule C) and para. 107[ps2id id='7' target='']

[8] p. 72 (Schedule C)[ps2id id='8' target='']

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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