

**SUPREME COURT OF CANADA**

|  |  |
| --- | --- |
| **Citation:** Canadian Food Inspection Agency *v.* Professional Institute of the Public Service of Canada, 2010 SCC 66, [2010] 3 S.C.R. 657 | **Date:** 20101223**Docket:** 32880 |

**Between:**

**Canadian Food Inspection Agency**

Appellant

and

**Professional Institute of the Public Service of Canada,**

**Dany Beauregard, Gaston Duchemin, Jacques Vézina,**

**Normand Bélair, Lyn Couture, Jacques Guy,**

**Sonja Laurendeau, Guy Boulard, Stéphano Cagna,**

**Mona Gauthier, Michel Marcoux, Patrick Poulin,**

**François Saulnier, Madjib Boussouira, Nicole Loranger,**

**France Sylvestre, Peter O’Donnell, Johanne Marcotte,**

**Pierre Rousselle, Ginette Caissie, Corine Petitclerc,**

**Patrice Cossette, Brigitte Flibotte, Réjean Germain,**

**Sonia Poisson, Pierre Parrot, Daniel Colas, Martin Rodrigue,**

**Jeanne Dufour, Louis Fortin, Marcel Gourde, Olymel S.E.C.,**

**Exceldor coopérative avicole and Supraliment S.E.C.**

Respondents

**Coram:** Binnie, LeBel, Deschamps, Abella, Charron, Rothstein and Cromwell JJ.

|  |  |
| --- | --- |
| **Reasons for Judgment:**(paras. 1 to 29) | LeBel J. (Binnie, Deschamps, Abella, Charron, Rothstein and Cromwell JJ. concurring) |

Canadian Food Inspection Agency *v.* Professional Institute of the Public Service of Canada, 2010 SCC 66, [2010] 3 S.C.R. 657

**Canadian Food Inspection Agency** *Appellant*

*v.*

**Professional Institute of the Public Service of Canada,**

**Dany Beauregard, Gaston Duchemin, Jacques Vézina,**

**Normand Bélair, Lyn Couture, Jacques Guy,**

**Sonja Laurendeau, Guy Boulard, Stéphano Cagna,**

**Mona Gauthier, Michel Marcoux, Patrick Poulin,**

**François Saulnier, Madjid Boussouira, Nicole Loranger,**

**France Sylvestre, Peter O’Donnell, Johanne Marcotte,**

**Pierre Rousselle, Ginette Caissie, Corine Petitclerc,**

**Patrice Cossette, Brigitte Flibotte, Réjean Germain,**

**Sonia Poisson, Pierre Parrot, Daniel Colas, Martin Rodrigue,**

**Jeanne Dufour, Louis Fortin, Marcel Gourde, Olymel S.E.C.,**

**Exceldor coopérative avicole and Supraliment S.E.C.** *Respondents*

**Indexed as:**Canadian Food Inspection Agency ***v.*** Professional Institute of the Public Service of Canada

2010 SCC 66

File No.: 32880.

2010:  January 20, 21; 2010:  December 23.

Present: Binnie, LeBel, Deschamps, Abella, Charron, Rothstein and Cromwell JJ.

on appeal from the court of appeal for quebec

 *Courts — Jurisdiction — Provincial superior courts — Action brought against Crown servants and union in Superior Court of Quebec alleging civil liability — Defendants bringing recourses in warranty against federal agency — Whether defendants entitled to bring recourses in warranty in Superior Court of Quebec without first proceeding by way of judicial review before Federal Court.*

 *Crown law — Crown liability — Civil liability — Action brought against Crown servants and union in Superior Court of Quebec alleging civil liability — Defendants bringing recourses in warranty against federal agency alleging that cause of damage was agency’s decision — Whether decision of federal agency can constitute fault in Quebec even if it is lawful and valid — Crown Liability and Proceedings Act, R.S.C. 1985, c. C‑50, ss. 2, 3; Civil Code of Québec, R.S.Q., c. C‑1991, art. 1376, 1457.*

 In 2001, veterinarians assigned to inspect slaughterhouses in Quebec were involved in a labour dispute with the Canadian Food Inspection Agency (“CFIA”). They did not report for work during December 2001. The CFIA subsequently issued a direction providing that, since the veterinarians were not available to carry out inspections during the relevant period, the meat and meat products did not meet the requirements of the *Meat Inspection Regulations, 1990*, and therefore had to be destroyed or disposed of as inedible material. The slaughterhouse operators did not apply for judicial review, but commenced an action in the Quebec Superior Court, seeking nearly $1.8 million in damages from the veterinarians and their representative, the Professional Institute of the Public Service of Canada (“Institute”). In their defence, the Institute and the veterinarians argued that any damage resulted from the decision and measures of the CFIA. They each called the CFIA in warranty, but the CFIA brought motions to dismiss the recourses in warranty on the ground that the direction issued by it was a decision of a federal board in respect of which the Superior Court could have no jurisdiction unless the decision was first quashed on judicial review by the Federal Court. The Superior Court dismissed the motions and the Court of Appeal upheld the decision. It held that the recourses in warranty, viewed as a whole, and the nature of the particular conclusions being sought showed that the Institute and the veterinarians were seeking a remedy in the form of damages and were not, at least at this stage, contesting the validity of the CFIA’s decision. The lower courts also held that a decision of the CFIA could constitute a fault in Quebec civil law even if it were valid.

 Held: The appeal should be dismissed.

 For the reasons set out in *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585, successfully challenging an administrative decision of a federal board on judicial review before the Federal Court is not a requirement for bringing an action for damages with respect to that decision. The principle formulated in *Canada v. Grenier*, 2005 FCA 348, [2006] 2 F.C.R. 287, namely that the only remedy for damage resulting from an action of a federal administrative agency lies in an application to the Federal Court for judicial review, should no longer be seen as shielding the federal Crown from civil liability in respect of all damage caused by its agents. In Quebec, the combined effect of the *Crown Liability and Proceedings Act* and the *Civil Code of Québec* is that the federal Crown is subject to the rules respecting civil liability set out in art. 1457 *C.C.Q*. The fact that the federal Crown is subject to Quebec’s rules of extracontractual civil liability where damage allegedly caused by the fault of its agents is concerned does not preclude it from invoking its immunity, but such arguments are more appropriately dealt with at the hearing on the merits. Here, the Superior Court has jurisdiction over the parties and over the subject matter of the dispute. The recourses in warranty could not be characterized as an attack on the legality or the validity of the CFIA’s decision in the guise of an action for damages.

**Cases Cited**

 **Applied:** *Canada (Attorney General) v.* *TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585; **overruled:** *Canada v. Grenier*, 2005 FCA 348, [2006] 2 F.C.R. 287; **approved:** *Montambault v. Hôpital Maisonneuve‑Rosemont*, [2001] R.J.Q. 893; **referred to:** *Welbridge Holdings Ltd. v. Greater Winnipeg*, [1971] S.C.R. 957; *Prud’homme v. Prud’homme*, 2002 SCC 85, [2002] 4 S.C.R. 663.

**Statutes and Regulations Cited**

*Canadian Food Inspection Agency Act*, S.C. 1997, c. 6, ss. 12, 13, 15.

*Civil Code of Québec*, R.S.Q., c. C‑1991, art. 1376, 1457.

*Code of Civil Procedure*, R.S.Q., c. C‑25, art. 216.

*Crown Liability and Proceedings Act*, R.S.C. 1985, c. C‑50, ss. 2 “liability”, 3, 10.

*Federal Courts Act*, R.S.C. 1985, c. F‑7, s. 18.

*Meat Inspection Regulations, 1990*, SOR/90‑288.

 APPEAL from a judgment of the Quebec Court of Appeal (Rochette, Pelletier and Vézina JJ.A.), 2008 QCCA 1726, [2008] R.J.Q. 2093, 80 Admin. L.R. (4th) 43, [2008] Q.J. No. 8906 (QL), 2008 CarswellQue 14621, affirming a decision of Barakett J., 2007 QCCS 1791, [2007] J.Q. no 3353 (QL), 2007 CarswellQue 3131. Appeal dismissed.

 Christopher M. Rupar, Alain Préfontaine and Bernard Letarte, for the appellant.

 *Pierre Labelle*, for the respondent the Professional Institute of the Public Service of Canada.

 *Philippe Ferland* and *France Brosseau*, for the respondents Dany Beauregard et al.

 Louis Huot, for the respondents Olymel S.E.C., Exceldor coopérative avicole and Supraliment S.E.C*.*

 The judgment of the Court was delivered by

1. LeBel J. — The main issue in this appeal is whether three meat producers that wish to sue the Professional Institute of the Public Service of Canada (“Institute”) and certain veterinarians employed by the appellant, the Canadian Food Inspection Agency (“Agency”), for having disrupted the marketing of their meat must first apply to the Federal Court of Canada for judicial review of the Agency’s decision to prohibit the distribution of the meat in question. The appeal also raises the important question whether a decision of a federal administrative agency that has not been determined on judicial review to be unlawful or invalid can ground a finding of civil liability in Quebec civil law.
2. As in the companion case of *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585, the appellant characterizes the action for damages as a collateral attack on the administrative decision of a federal agency. For the reasons given by Binnie J. in *TeleZone*, and for additional reasons set out below that relate to extracontractual civil liability of the federal Crown in the province of Quebec, the objection to the jurisdiction of the Quebec Superior Court must fail. I would therefore dismiss this appeal.

I. Facts

1. The respondents Olymel S.E.C. and Exceldor coopérative avicole and the predecessor to the respondent Supraliment S.E.C. operated pig and poultry slaughterhouses in Quebec (these three respondents will be referred to collectively as the “slaughterhouse operators”). In each slaughterhouse, veterinarians employed by the Agency were assigned to approve the slaughter of animals and carry out ante- and post-mortem inspections. The veterinarians were represented by the Institute as their bargaining agent, and both are respondents in this appeal.
2. In December 2001, the veterinarians were involved in an ongoing labour dispute with the Agency and had been without a collective agreement for over a year. On December 17, 2001, the veterinarians did not report for work.
3. Four days later, the Federal Court issued an interlocutory injunction, ordering the Institute to stop causing the use of pressure tactics that prevented or impeded the inspections the veterinarians were required to perform in the slaughterhouses to which they were assigned under the *Meat Inspection Regulations, 1990*, SOR/90-288 (“Regulations”). This interlocutory injunction was not appealed. On January 30, 2002, the Public Service Labour Relations Board of Canada found that the veterinarians’ refusal to report for work was tantamount to an illegal strike.
4. On February 7, 2002, the Agency’s Executive Director for Quebec issued a direction concerning the release for human consumption to national or international markets of meat and meat products derived from animals slaughtered during the work stoppage. In his opinion, since the veterinarians were not available to carry out inspections in the slaughterhouses during the relevant period, the meat and meat products did not meet the requirements of the Regulations and therefore had to be destroyed or disposed of as inedible material.
5. The slaughterhouse operators did not apply for judicial review of the Agency’s direction. Instead, on December 10, 2004, they commenced an action in the Quebec Superior Court, seeking nearly $1.8 million in damages from the Institute and the veterinarians. In their motion to institute proceedings, the slaughterhouse operators alleged that the veterinarians [translation] “knew or ought to have known that the immediate effect” of their unlawful actions on December 17, 2001, which the Institute had encouraged, “would be to halt slaughtering and that, as a result, after many hours, the animals would die of thirst, hunger, or asphyxia in the pens of the supply trucks in which they were being kept”. The slaughterhouse operators alleged that the meat that had not been inspected on December 17, 2001, could not be distributed for consumption, that their delivery and slaughter schedules were disrupted for several weeks, and that there was therefore an impact on the marketing of their meat.
6. In their defences, the Institute and the veterinarians argued that there was no causal link between the veterinarians’ work stoppage and the alleged damage. Any such damage resulted not from the work stoppage, but from the decisions of the Agency not to proceed with, or to interrupt, the slaughtering of the animals on December 17, 2001, and to subsequently order the destruction of the slaughtered animals. Before filing their defences, the Institute and the veterinarians had each called the Agency in warranty, on the same grounds, under art. 216 of the Quebec *Code of Civil Procedure*, R.S.Q., c. C-25.
7. In response, the Agency brought motions to dismiss the recourses in warranty. It argued that the direction of February 7, 2002 was a decision of a federal board in respect of which the Superior Court could have no jurisdiction unless the decision was first quashed on judicial review by the Federal Court. The Agency added that the recourses in warranty amounted to a disguised appeal of the interlocutory injunction ordered by the Federal Court of December 21, 2001, which was *res judicata*, and that they therefore constituted an abuse of process. The Agency further argued that it was not the principal of the veterinarians, but an agent of the federal Crown, and that it was therefore not liable for their actions. Finally, it argued that the facts alleged by the Institute and the veterinarians in support of their recourses in warranty would not support a finding of extracontractual liability, since no legal relationship existed between them and the Agency.
8. The slaughterhouse operators made only brief submissions — at trial, on appeal and in this Court — in order to clarify certain facts. They submitted that the impugned decision of the Agency was lawful and was made in accordance with the existing legislation in order to protect public health and to preserve public confidence in food safety and the system for slaughtering animals in Canada. If the Institute or the veterinarians considered the Agency’s decision to be wrong, they should have applied for judicial review, which they did not do.

II. Judicial History

A. *Quebec Superior Court (Barakett J.), 2007 QCCS 1791 (CanLII)*

1. Barakett J. dismissed the Agency’s motions to dismiss the recourses in warranty. In his opinion, for the purposes of art. 216 of the Quebec *Code of Civil Procedure*, a recourse in warranty requires the existence of a legal relationship between the plaintiff and the third party and a nexus between the recourse in warranty and the principal action such that they cannot proceed in different courts without a risk of contradictory judgments. The motion judge concluded that the existence of such a legal relationship between the Institute, the veterinarians and the Agency had been established. The Agency had, by its fault, contributed to the damage alleged by the slaughterhouse operators and was therefore, *prima facie*, solidarily liable with the Institute and veterinarians for that damage. In addition, the recourses in warranty and the principal action were related, as they both concerned the same facts, and there would be a risk of contradictory judgments should the claims proceed separately. The motion judge found that, in any event, the presence of the Agency was necessary to permit a complete solution of the question involved in the action within the meaning of art. 216.
2. Barakett J. rejected the Agency’s argument — based on the fact that administrative decisions of a federal board are presumed to be legal and valid unless quashed on judicial review by the Federal Court — that such a decision cannot be the basis for a finding of civil liability against the federal Crown. He noted that a decision of a federal board can constitute a civil fault and form the basis for an action in damages in the Superior Court even if it is lawful and valid.
3. Finally, Barakett J. held that the Agency acted as principal of its veterinarians and that, in any event, a finding that it did not so act would not on its own justify dismissing the recourses in warranty at this preliminary stage. Relying on ss. 12 and 13 of the *Canadian Food Inspection Agency Act*, S.C. 1997, c. 6, he held that the Agency acted as *de facto* principal with respect to its employees. He also found support for the view that the Agency could be sued in its own name in the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and in s. 15 of the *Canadian Food Inspection Agency Act*.

B. *Quebec Court of Appeal (Rochette, Pelletier and Vézina JJ.A.), 2008 QCCA 1726 (CanLII)*

1. Rochette J.A., writing for a unanimous Court of Appeal, upheld the judgment on the motions. Rochette J.A. rejected the Agency’s argument that the motion judge had erred in leaving the issue of the Superior Court’s jurisdiction to the judge who would hear the case on the merits. He concluded that Barakett J. had in fact held that the Superior Court had jurisdiction at this preliminary stage.
2. Rochette J.A. commented that the motion judge had rightly pointed out that the Institute and the veterinarians were challenging the Agency’s decision and measures on the basis not that they were unlawful or that they exceeded the Agency’s jurisdiction, but that they were [translation] “unjustified, excessive and wrongful” (para. 29). The recourses in warranty, viewed as a whole, and the nature of the particular conclusions being sought showed that the Institute and the veterinarians were seeking a remedy in the form of damages and were not, at least at this stage, contesting the validity of the Agency’s decision.
3. Rochette J.A. also agreed with the motion judge that a decision of the Agency could constitute a fault in Quebec civil law even if it were valid. A federal agency can incur civil liability even if its action is lawful. What the Agency was really claiming was a virtually absolute immunity from prosecution — one that would apply even at the stage of a motion to dismiss — with respect to an allegedly wrongful decision it has made unless a court of competent jurisdiction has declared that decision invalid. Rochette J.A. went on to reject the Agency’s argument that the recourses in warranty constituted a collateral attack on its decision. The legality of the Agency’s decision and measures was not being challenged in the Superior Court. The Agency was not arguing that there was a statutory appeal process of which the Institute and the veterinarians had failed to avail themselves. Moreover, the approach proposed by the Agency would result in the dismissal of countless proceedings for damages based on wrongful administrative decisions that could not be characterized as unreasonable. It would also erode the concurrent jurisdiction the Superior Court has with the Federal Court in such matters. Similarly, the recourses of the Institute and the veterinarians could not be characterized as a collateral attack on the interlocutory injunction by which the Federal Court had ordered the veterinarians to return to work.
4. Finally, regarding the motion judge’s remarks to the effect that the Agency’s presence was necessary to permit a complete solution of the question, Rochette J.A. noted that, while it is true that the “necessary presence” criterion applies to the forced impleading of a new defendant rather than to a recourse in warranty, those remarks were made in *obiter* and did not vitiate the judge’s other findings.

III. Relevant Statutory Provisions

1. *Canadian Food Inspection Agency Act*,S.C. 1997, c. 6

 **12.** The Agency is a separate agency under the *Public Service Labour Relations Act*.

 **13.** (1) The President has the authority to appoint the employees of the Agency.

 (2) The President may set the terms and conditions of employment for employees of the Agency and assign duties to them.

 (3) The President may designate any person or class of persons as inspectors, analysts, graders, veterinary inspectors or other officers for the enforcement or administration of any Act or provision that the Agency enforces or administers by virtue of section 11, in respect of any matter referred to in the designation.

 **15.** Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Agency, whether in its own name or in the name of Her Majesty in right of Canada, may be brought or taken by or against the Agency in the name of the Agency in any court that would have jurisdiction if the Agency were not an agent of Her Majesty.

*Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50

 **2.** In this Act,

. . .

“liability”, for the purposes of Part 1, means

 (*a*) in the Province of Quebec, extracontractual civil liability, and

 (*b*) in any other province, liability in tort;

 **3.** The Crown is liable for the damages for which, if it were a person, it would be liable

 (*a*) in the Province of Quebec, in respect of

 (i) the damage caused by the fault of a servant of the Crown, or

 (ii) the damage resulting from the act of a thing in the custody of or owned by the Crown or by the fault of the Crown as custodian or owner; and

 (*b*) in any other province, in respect of

 (i) a tort committed by a servant of the Crown, or

 (ii) a breach of duty attaching to the ownership, occupation, possession or control of property.

 [**10.**](http://laws.justice.gc.ca/fra/C-50/20100916/page-2.html?rp2=SEARCH&rp3=SI&rp4=all&rp5=Crown%20Liability%20and%20Proceedings%20Act&rp9=cs&rp10=L&rp13=50#codese:10) No proceedings lie against the Crown by virtue of subparagraph 3(*a*)(i) or (*b*)(i) in respect of any act or omission of a servant of the Crown unless the act or omission would, apart from the provisions of this Act, have given rise to a cause of action for liability against that servant or the servant’s personal representative or succession.

*Civil Code of Québec*, R.S.Q., c. C-1991

**1376.** The rules set forth in this Book 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.

**1457.** Every person has a duty to abide by the rules of conduct which lie upon him, according to the circumstances, usage or law, so as not to cause injury to another.

Where he is endowed with reason and fails in this duty, he is responsible for any injury he causes to another person by such fault and is liable to reparation for the injury, whether it be bodily, moral or material in nature.

He is also liable, in certain cases, to reparation for injury caused to another by the act or fault of another person or by the act of things in his custody.

*Code of Civil Procedure*, R.S.Q., c. C-25

**216.** Any party to a case may implead a third party whose presence is necessary to permit a complete solution of the question involved in the action, or against whom he claims to exercise a recourse in warranty.

IV. Analysis

A. *Jurisdiction of the Quebec Superior Court*

1. The Agency contends that the Court of Appeal failed to consider the substance of the case before it in that, rather than examining the facts that gave rise to the case, it merely accepted the submissions of the Institute and the veterinarians that their recourses in warranty were concerned not with the legality or the validity of the Agency’s decision, but with their view that the decision was “unjustified, excessive and wrongful”. In the Agency’s opinion, the Institute and the veterinarians were essentially seeking to attack the legality and validity of the Agency’s decision by way of judicial review in the Superior Court, but in the guise of an action for damages.
2. The Agency submits that the Court of Appeal also failed to consider the fact that in federal administrative law, a review of the legality or validity of a decision of a federal board, commission or other tribunal is within the exclusive jurisdiction of the Federal Court pursuant to s. 18 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. It argues that the decision in *Welbridge Holdings Ltd. v. Greater Winnipeg*, [1971] S.C.R. 957, if properly interpreted, stands for the proposition that a government decision, even one that is unlawful for administrative law purposes, does not necessarily constitute a fault giving rise to a civil claim. The Agency adds that *Welbridge* confirms that a party alleging the illegality of an administrative decision must first contest the decision by way of judicial review and cannot, as a collateral attack on the decision, bring an action for damages with respect to its consequences.
3. For the reasons set out in the companion case of *TeleZone*, these arguments must fail. In *TeleZone*, Binnie J. concludes that s. 18 of the *Federal Courts Act*, which grants exclusive jurisdiction to the Federal Court to hear and determine applications for judicial review of decisions of the federal Crown and its agents, does not have the legal effect of ousting the jurisdiction of the provincial superior courts to deal with private law claims against the federal Crown. Successfully challenging an administrative decision of a federal board on judicial review is not a requirement for bringing an action for damages with respect to that decision. The principle formulated by the Federal Court of Appeal in *Canada v. Grenier*, 2005 FCA 348, [2006] 2 F.C.R. 287, namely that the only remedy for damage resulting from an action of a federal administrative agency lies in an application to the Federal Court for judicial review, should no longer be seen as shielding the federal Crown from civil liability in respect of all damage caused by its agents.
4. This is not a case in which the courts below relied on the legal characterization of the dispute by the parties rather than on the substance of the dispute. As the motion judge found, the Agency and the Institute and the veterinarians were, *prima facie*, civilly liable for the damage the slaughterhouse operators claimed to have sustained. The motion judge also found, and the Court of Appeal agreed, that in calling the Agency in warranty, the Institute and the veterinarians were contesting the Agency’s decision on the basis not that it was unlawful or invalid, but that it was “unjustified, excessive and wrongful”. There was sufficient support for such a finding in the facts that gave rise to these proceedings in the courts below. Thus, the recourse in warranty could not be characterized as an attack on the legality or the validity of the Agency’s decision in the guise of an action for damages.

B. *Liability of the Federal Crown in Quebec Civil Law*

1. The Agency also contends that the illegality or the invalidity of a federal government action cannot be the basis for an action in damages in Quebec civil law. It argues that as long as the Federal Court has not quashed the Agency’s decision on judicial review, that decision remains legal and valid. Thus, the recourses in warranty of the Institute and the veterinarians amount to a collateral attack on the legality and validity of the decision.
2. As the Court of Appeal observed, this position would give the Agency a virtually absolute immunity from being proceeded against in damages — an immunity that would apply even at the preliminary stage of a motion to dismiss —unless its decision were to be quashed on judicial review by the court of competent jurisdiction. Apart from being incompatible with the decision in *TeleZone*, the Agency’s position is inconsistent with the law regarding the civil liability of the federal Crown in the province of Quebec.
3. Civil liability of the federal Crown for wrongful acts of its agents is governed by the law of the jurisdiction where the acts were committed. In Quebec, the combined effect of the *Crown Liability and Proceedings Act* and the relevant provisions of the *Civil Code of Québec* is that the federal Crown is subject to the rules respecting civil liability set out in art. 1457 *C.C.Q*.
4. Section 3 of the *Crown Liability and Proceedings Act* provides that in Quebec, the Crown is liable for damages in respect of damage caused by the fault of its servant for which it would be liable if it were a person. Section 2 of the same statute provides that “liability” means “extracontractual civil liability” in Quebec and “liability in tort” in the common law provinces. By virtue of art. 1376 *C.C.Q.*,Quebec’s rules of civil liability apply to wrongful acts by government agencies unless a party can show that other rules of law, such as those of public law, prevail over the civil law rules (*Prud’homme v. Prud’homme*, 2002 SCC 85, [2002] 4 S.C.R. 663, at para. 31). Therefore, in civil liability cases, the Superior Court of Quebec generally has jurisdiction over the parties and over the subject matter of the dispute.
5. The fact that the federal Crown is subject to Quebec’s rules of extracontractual civil liability where damage allegedly caused by the fault of its agents is concerned does not preclude it from invoking its immunity. For example, it remains open to the federal Crown to argue that a particular decision was made by its agents acting in a policy rather than an operational capacity, which would not normally attract liability. However, such arguments are more appropriately dealt with at the hearing on the merits, not on a motion to dismiss at a preliminary stage.
6. The Court of Appeal relied on the approach taken in *Montambault v. Hôpital Maisonneuve-Rosemont*, [2001] R.J.Q. 893 (C.A.). In *Montambault*, Deschamps J.A., as she then was, held that the issue of whether a government agency can invoke its immunity from civil liability for an administrative decision requires a thorough study of the case, including questions of fact, which can be completed, supported and argued only at the stage of the hearing on the merits. The ruling in *Montambault* represents a sound approach to determining whether government agencies are immune from civil liability in Quebec, and it remains open to the Agency to make further submissions on this point at trial.

V. Conclusion

1. The Superior Court of Quebec has jurisdiction over the parties and over the subject matter of the dispute. I would therefore dismiss this appeal with costs to the Institute and the veterinarians. The slaughterhouse operators are not seeking costs in this appeal.

 *Appeal dismissed.*

 Solicitor for the appellant:  Department of Justice, Ottawa.

 Solicitors for the respondent the Professional Institute of the Public Service of Canada:  De Grandpré Chait, Montréal.

 Solicitors for the respondents Dany Beauregard et al.:  Béland, Ferland, Brosseau, Montréal.

 Solicitors for the respondents Olymel S.E.C., Exceldor coopérative avicole and Supraliment S.E.C.:  Stein Monast, Québec.