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***Provincial contract law, not federal maritime law, applied to a contract for ship-engine parts, the Supreme Court has ruled.***

Desgagnés Transport was a shipping company in Quebec. Wärtsilä was a company that made and sold ship engines. In 2006, Desgagnés Transport ordered \$1 million in parts from Wärtsilä to fix a ship engine. The contract said Wärtsilä would only have to pay up to €50,000 if the parts didn't work. Three years later the ship had a major engine failure. One of the parts had been faulty all along. Desgagnés Transport sued Wärtsilä for the cost of repairing the ship and for its lost profits. The total was over \$5.6 million.

The issue in this case was which body of law applied. When parties make a contract, they can say which law they want to apply. Since they both agree to it by signing the contract, courts will generally respect the choice. In this case, the contract didn't say which law applied, so the courts had to decide. There were two possibilities. The first was provincial contract law. In Quebec, this is the civil law found in the *Civil Code*. Under these rules, Wärtsilä would not be able to limit its liability (its legal responsibility) by saying so in the contract. This meant it would be liable for the defective part and would have to pay Desgagnés Transport the full cost. The second possibility was federal maritime law. This is a separate system of law, like common law or civil law, and covers all kinds of disputes closely tied to navigation and shipping. If federal maritime law applied, Wärtsilä wouldn't be liable for the defective part. It would only have to pay what the contract said.

The reason two possible bodies of law could apply was that provincial and federal governments have different powers. These are set out in Canada's Constitution. The Constitution says the federal government has power over navigation and shipping. Provincial governments have power over property and civil rights. Contracts usually fall under provincial powers.

The trial judge said provincial contract law applied. The majority of the Court of Appeal said federal maritime law applied.

All the judges at the Supreme Court agreed that provincial contract law applied. (Though some said this for very different reasons.) That meant Wärtsilä had to pay the full \$5.6 million.

The majority noted that issues can't always be divided easily into federal or provincial powers. In these cases, courts must be flexible. Where there is overlap, they try to make sure both levels of government have as much of a role as possible.

The majority said selling ship-engine parts fell under federal maritime law. This was because it is closely tied to navigation and shipping, a federal power. However, selling goods is also covered by property and civil rights, which the provinces have power over. In constitutional law, a situation like this is called a "double aspect scenario." It means both levels of government have power at the same time. If this happens, courts will look at whether there is any reason why only one government's power should apply. In constitutional law, two possible reasons are "interjurisdictional immunity" and "federal paramountcy." "Interjurisdictional immunity" is when something goes to the core of a power, so the other level of government isn't allowed to impair (lessen) it. In that case, one government has "immunity" from the other's power. "Federal paramountcy" applies when laws passed by federal and provincial governments are at odds. It means federal law prevails, and the parts of provincial law that go against it aren't applied.

In this case, the majority said contracts for ship-engine parts didn't go to the core of navigation and shipping. That meant the federal power didn't have immunity from the provincial power. So the first reason (interjurisdictional immunity) didn't apply. For the second reason, the majority noted that federal paramountcy is meant to make sure provincial legislatures don't override the federal Parliament. But federal maritime law is mostly based on court decisions and custom, not laws written and passed by Parliament. Court decisions and custom can't trump laws created by legislatures, like Quebec's *Civil Code*. That meant the second reason, federal paramountcy, didn't apply. So, provincial contract law applied and Wärtsilä had to pay the full \$5.6 million.

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Maritime law has both common and civil law roots. It is one of the oldest bodies of law. While maritime cases used to be heard in their own separate courts, today they are heard by regular courts.

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**Breakdown of the decision:** *Majority:* Justices Clément [Gascon](#), Suzanne [Côté](#), and Malcolm [Rowe](#) allowed the appeal (Justices [Moldaver](#), [Karakatsanis](#), and [Martin](#) agreed) | *Concurring:* Chief Justice [Wagner](#) and Justice Russell [Brown](#) said the only real issue in this case was the contract, which falls under a provincial power, so Quebec contract law applied (Justice [Abella](#) agreed)

**More information (case # 37873):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** [trial](#) (Superior Court of Quebec) | [appeal](#) (Court of Appeal of Quebec, some reasons in French)

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