



The Supreme Court rules it was unconstitutional to raise the monetary value of cases that can be heard by the Court of Québec.

The Supreme Court of Canada was asked to decide if a change to the *Code of Civil Procedure* in Quebec infringed on the constitutionally protected jurisdiction of superior courts. In 2016, the provincial government changed article 35 of the *Code of Civil Procedure* to raise the monetary value of cases that could be heard by the Court of Québec from any amount under \$70,000 to any amount under \$85,000. The Court was also asked if certain powers of the Court of Québec, pertaining to appeals of administrative decisions, infringed on the powers of the Superior Court.

Superior Court judges in Quebec disagreed with the increase. They said that giving the Court of Québec the exclusive power to hear cases involving amounts of less than \$85,000 violated section 96 of the Constitution. They argued that the Superior Court should have retained the power to hear cases of \$70,000 and above. They also contested the appeal powers granted to the Court of Québec with respect to certain administrative decisions.

Quebec eventually asked the Court of Appeal for an opinion on the matter, saying that access to justice considerations had motivated it to increase the value of cases that could be heard by the Court of Québec. It said there are often no superior courts in small towns, and wanted to help people living outside of major cities to access the courts without having to travel long distances. It also argued that the appeal powers of the Court of Québec related to administrative decisions did not infringe on the powers of the Superior Court.

The Court of Appeal concluded that article 35 was unconstitutional, but that the appeal powers of the Court of Québec in administrative matters had no effect on those of the Superior Court. The Supreme Court was then asked for its opinion on both questions.

The court system in Canada

The court system across Canada is essentially the same. This is thanks to the Constitution, which divides provincial and federal government powers. Each province has a three-level court system: provincial (or lower) courts, superior courts, and appeal courts.

The Constitution recognizes that provinces are responsible for administering justice in their respective jurisdictions. This includes organizing and maintaining the civil and criminal provincial courts, as well as civil procedure in those courts.

Section 96 of the Constitution mentions special types of courts in Canada, known as the “superior courts”. These courts are the highest courts in a province and benefit from a special protected status. In Quebec, the Superior Court and the Court of Appeal are the “superior courts”. The federal government has a certain amount of power over those courts. For instance, the federal government is responsible for appointing superior court judges.

The Supreme Court’s answers to the questions

On the first question, the majority of the judges concluded that article 35 was unconstitutional.

They noted that when the Constitution was enacted in 1867, the monetary ceiling for lower courts was \$100. Based on expert evidence, they agreed that this amount would be equivalent to between \$63,698 and \$66,008, Canada-wide, today. However, they said that establishing this amount is only a first step in the analysis, and that a determination on whether the new ceiling amount was actually too high depended on several other factors. The majority concluded that the monetary increase gave the Court of Québec the exclusive jurisdiction to handle too wide a range of legal matters. This, they said, prevented the Superior Court from exercising its constitutionally protected right to decide on many legal matters at the heart of Quebec private law.

As such, the majority concluded the monetary ceiling of less than \$85,000 was too high for the Court of Québec. They also said the provincial government failed to prove that access to justice was facilitated by the increase in the monetary ceiling for cases heard by the Court of Québec.

The Supreme Court did not answer the second question. It said it was irrelevant given its recent decision in [Canada \(Minister of Citizenship and Immigration\) v. Vavilov](#) and given the effects of a recent Quebec law which limits how the Court of Québec exercises its appeal powers over administrative decisions.

Breakdown of the decision: *Majority:* Justices Suzanne [Côté](#) and Sheilah L. [Martin](#) found article 35 of the *Code of Civil Procedure* unconstitutional and found the second question was not relevant (Justices [Moldaver](#) and [Karakatsanis](#) agreed) | *Dissenting in part:* Chief Justice [Wagner](#) found that article 35 was constitutional. He said the powers given to the Court of Québec by article 35 of the *Code of Civil Procedure* did not exclusively belong to superior courts under section 96 of the *Constitution* at the time of Confederation. He also said that article 35 did not remove any power that is within the core jurisdiction of the Superior Court in civil matters, highlighting the importance of striking a balance between access to justice considerations and preserving the jurisdiction of superior courts. He agreed with the majority that the second question was not relevant (Justice [Rowe](#) agreed) | *Dissenting:* Justice Rosalie Silberman [Abella](#) found article 35 constitutional. She said that both the superior and provincial courts shared jurisdiction over substantial monetary claims at Confederation and that the expansion of the jurisdiction of the Court of Québec did not impair the core jurisdiction of Quebec's Superior Court judges. She did not address the second question.

More information (case # 38837): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: [Reference](#) (Court of Appeal of Quebec)
