SUPREME COURT OF CANADA

CITATION: Société de l'assurance automobile du Québec *v.* Cyr, 2008 SCC 13

DATE: 20080328
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BETWEEN:

Société de l'assurance automobile du Québec
Appellant
v.
Yvan Cyr and 9052-0479 Québec Inc. (Centre de vérification mécanique de Montréal)
Respondents

OFFICIAL ENGLISH TRANSLATION: Reasons of Deschamps J.

CORAM: McLachlin C.J. and Bastarache, Binnie, LeBel, Deschamps, Fish, Abella, Charron and Rothstein JJ.

REASONS FOR JUDGMENT: (paras. 1 to 53)	Bastarache J. (McLachlin C.J. and Binnie, LeBel, Fish and Rothstein JJ. concurring)
DISSENTING REASONS: (paras. 54 to 94):	Deschamps J. (Abella and Charron JJ. concurring)

Saaq *v.* cyr

Société de l'assurance automobile du Québec *Appellant*

v.

Yvan Cyr and 9052-0479 Québec Inc. (Centre de vérification mécanique de Montréal) *Respondents*

Indexed as: Société de l'assurance automobile du Québec *v.* Cyr

Neutral citation: 2008 SCC 13.

File No.: 31657.

2007: October 18; 2008: March 28.

Present: McLachlin C.J. and Bastarache, Binnie, LeBel, Deschamps, Fish, Abella, Charron and Rothstein JJ.

on appeal from the court of appeal for quebec

Administrative law — Procedural fairness — Distinction between private and public actions of public administration — SAAQ entering into contract with mechanical inspection centre to carry out, on its behalf, inspection of road vehicles and to issue certificates of mechanical inspection — Contract appendix designating centre employee as accredited mechanic for purposes of execution of contract — Appendix signed by

SAAQ, centre and employee — Employee's accreditation subsequently revoked by SAAQ — Act respecting administrative justice requiring Quebec government bodies to comply with procedural fairness in their discretionary decision-making processes — Whether centre employee entitled to procedural fairness with respect to SAAQ's decision to revoke his accreditation — Whether relationship established by appendix between centre employee and SAAQ precluded application of principles of public law — Act respecting administrative justice, R.S.Q., c. J-3, s. 5 — Highway Safety Code, R.S.Q., c. C-24.2, s. 520.

Pursuant to s. 520 of the *Highway Safety Code* ("*HSC*"), the Société de l'assurance automobile du Québec ("SAAQ") entered into a contract with CVMM to carry out, on its behalf, the mechanical inspection of road vehicles. Appendix A-1 of the contract designated C, an employee of CVMM, as an "accredited mechanic" for the purpose of the SAAQ's vehicle inspection program and holds C to certain regulatory standards. C did not sign the contract but his signature and that of the SAAQ and CVMM appear on the appendix. Following notices of breach for failure to apply the appropriate standards during certain inspections, C's accreditation was revoked. As a result, he was unable to continue his employment with CVMM. C and CVMM filed a motion for judicial review, along with a motion for a suspension of the decision to revoke the accreditation. They argued that the revocation of C's accreditation was illegal because the decision had not been rendered in a manner consistent with the *Act respecting administrative justice* ("*AAJ*"). The Superior Court concluded that the actions of the SAAQ in sending the notices of breach and subsequent revocation of accreditation were an exercise of contractual rights and dismissed the application. The majority of the Court of Appeal set aside the decision, holding that C had the right to procedural fairness with respect to the SAAQ's decision to revoke his accreditation. The majority also held that

the existence of a contract could not be used by the SAAQ to avoid the obligations codified by s. 5 of the *AAJ*, which applied to any unilateral decision taken pursuant to the administrative authority conferred by the *HSC*.

Held (Deschamps, Abella and Charron JJ. dissenting): The appeal should be dismissed.

Per McLachlin C.J. and **Bastarache**, Binnie, LeBel, Fish and Rothstein JJ.: C is entitled to procedural fairness under s. 5 of the *AAJ*. C cannot be considered a party to the contract. C signed the Appendix to acknowledge his acceptance of the regulatory standards applicable to his designation as an "accredited mechanic". While C, the SAAQ and CVMM have signed the appendix which defines C's obligations, under the contract, CVMM is the mandatary of the SAAQ, not C. C is an employee of CVMM. The relationship between C and the SAAQ is described in the contract as a "formal agreement" by which C is simply authorized to carry out CVMM's mandate. The agreement is clearly not a contract for services adopted pursuant to art. 2098 *Civil Code of Québec*. It is a mechanism under which C is appointed by the SAAQ subject to a number of conditions, including an employment contract with CVMM. This agreement is governed by public law in that C's designation as an accredited mechanic for the purposes of the SAAQ's mechanical inspection program constitutes an administrative authorization. Section 5 of the *AAJ* and its procedural requirements are applicable to the present matter because (1) the revocation of C's designation is a "decision concerning a permit or licence or other authorization of like nature", and (2) C is a "citizen" as contemplated by the *AAJ*. Delegations of government power are authorizations. In delegating to C the power to conduct vehicle inspections, the SAAQ was granting him the authorization to act on its behalf, as an employee of CVMM, in a manner that would otherwise contravene the law.

That accreditation thus derives from the "police" powers of the state. The authorization in the present case is specifically provided for in s. 520 of the *HSC*. The legislative origin of the authorization further confirms its administrative nature. Not all acts of the SAAQ are subject to public law, but the act of authorization has specifically been deemed worthy of procedural fairness protection by the legislature. [26-28] [34-36] [41-44] [52]

Per **Deschamps**, Abella and Charron JJ. (dissenting): The *AAJ* does not apply to decisions of the SAAQ that affect C. The parties are bound by contract and the remedies available to them are governed by the rules of private law. A mechanic appointed under s. 520 of the *HSC* is authorized to conduct the mechanical inspection of road vehicles on the SAAQ's behalf. In every situation where a person acts as a mandatary of the SAAQ or is designated to act on its behalf, the *HSC* provides for no rules of procedural fairness. It can be seen from an analysis of the mechanisms established by the *HSC* that the legal rules applicable to mandataries of the SAAQ are those of private law, whereas the rules applicable to users are those of public law. [54] [56] [61] [70] [91-92]

In the instant case, the documents signed by the parties govern the SAAQ's relationship with its mandataries. That relationship is a contractual one. The contract signed by the SAAQ and CVMM authorizes CVMM to act as a mandatary of the SAAQ. According to that contract, the appendixes, including Appendix A-1 concerning the appointment of the mechanic, form part of the contract, and it is clear that all those who signed that appendix, the SAAQ, CVMM and C, were aware that the appointment of the mechanic was not made independently of any contractual relationships. Appendix A-1 meets all the conditions for formation of a contract subject to the *Civil Code of Québec* and is an accessory contract to the contract between the SAAQ and CVMM. The

mandate given to CVMM must be carried out by a natural person, and according to Appendix A-1, the accredited mechanic who conducts the mechanical inspection of road vehicles carries out a "mandate". The rules applicable to the mechanic appointed in Appendix A-1 are therefore not different from those applicable to CVMM. [56] [73] [75]

Since the SAAQ chose to use a contract to appoint the persons authorized to conduct the mechanical inspection of road vehicles on its behalf, the rights and obligations of the parties are governed by the contract. There is no provision of the *HSC* that justifies resorting to the rules of public law in addition to the rules of contract law, nor is there any principle of administrative law that justifies requiring that the rules of public law be applied in addition to those of contract law. The contract between the SAAQ and CVMM sets out the conditions for resiliating or suspending the mandate, and Appendix A-1 provides that the conditions for interrupting the contract apply to the appointment. The SAAQ gave C several warnings concerning breaches that appear to have been serious. If the SAAQ has not complied with the rules for interrupting the contract, all the remedies provided for in the *Civil Code of Québec* and the *Code of Civil Procedure* are available to C. There is no deficiency that would justify imposing rules of procedural fairness where C is protected by a contract and by the rules of the law of contract. [56] [70] [88] [91]

Cases Cited

By Bastarache J.

Referred to: *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653; *Imperial Oil Ltd. v. Quebec (Minister of the Environment)*, [2003] 2 S.C.R. 624, 2003 SCC 58; *Desrochers v. Canada (Industry)*, [2007] 3 F.C.R. 3, 2006 FCA 374; *Wells v. Newfoundland*, [1999] 3 S.C.R. 199; *Reilly v. The King*, [1934] A.C. 176.

By Deschamps J. (dissenting)

Quebec (Attorney General) v. Labrecque, [1980] 2 S.C.R. 1057; *Wells v. Newfoundland*, [1999] 3 S.C.R. 199; *Dunsmuir v. New Brunswick*, 2008 SCC 9; *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653.

Statutes and Regulations Cited

Act respecting administrative justice, R.S.Q., c. J-3, ss. 2, 4, 5.

Civil Code of Quebec, S.Q. 1991, c. 64, arts. 1385, 2098, 2130.

Code of Civil Procedure, R.S.Q., c. C-25, art. 846.

Highway Safety Code, R.S.Q., c. C-24.2, ss. 1, 9, 69.1, 81-82, 162, 520, 520.2, 521, 538, 538.0.1, 543.13, 543.2, 543.3.1, 543.3.2, 546, 546.1, 547-555, 557, 560, 624, 628.1, 629.

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APPEAL from a judgment of the Quebec Court of Appeal (Baudouin, Doyon and Giroux JJ.A.), [2006] R.J.Q. 1743, [2006] Q.J. No. 6840 (QL), 2006 QCCA 932, reversing a decision of Chabot J., [2005] R.J.Q. 463, 29 Admin. L.R. (4th) 74, [2004] Q.J. No. 11871 (QL). Appeal dismissed, Deschamps, Abella and Charron JJ. dissenting.

Julie Baril and *Josée Goupil*, for the appellant.

Guy Régimbald, for the respondents.

The judgment of McLachlin C.J. and Bastarache, Binnie, LeBel, Fish and Rothstein JJ. was delivered by

BASTARACHE J. —

1. Introduction

[1] This appeal raises the issue of distinguishing between the private and public actions of a public authority, the Société de l'assurance automobile du Québec ("SAAQ"), with a view to determining whether that public authority is subject to ss. 2, 4 and 5 of the *Act respecting administrative justice*, R.S.Q., c. J-3 ("*AAJ*"), in its dealings with the respondent Yvan Cyr, who was designated as an "accredited mechanic" under s. 520 of the *Highway Safety Code*, R.S.Q., c. C-24.2 ("*HSC*"). More generally, the Court has to decide whether the SAAQ has insulated itself from the requirements of administrative law by implementing a contract-based scheme to meet its statutory duties.

2. Facts

[2] This appeal arises from a motion to dismiss by the appellant, the SAAQ, in response to a motion for a suspension of proceedings and a motion for judicial review filed by the respondents Cyr and 9052-0479 Québec Inc. (Centre de vérification mécanique de Montréal) ("CVMM" or "mandatary corporation").

[3] Pursuant to s. 520 of the *HSC*, the SAAQ has an exclusive jurisdiction in Quebec to ensure the mechanical safety of certain road vehicles — including vehicles of public utility, such as buses and minibuses, taxis, and driving school vehicles (s. 521 of the *HSC*) — through mechanical inspections and the issuance of compliance certificates. Section 520 provides:

> 520. The Société shall have exclusive jurisdiction to carry out the mechanical inspection of road vehicles and to issue certificates of mechanical inspection

> and inspection stickers. For that purpose, the Société may, on the conditions it determines, appoint persons authorized to carry out, on its behalf, the inspection of the road vehicles it determines and authorize those persons to issue certificates of mechanical inspection and inspection stickers in respect of those vehicles.

As can be seen, s. 520 grants the SAAQ a wide discretion as to how to meet its statutory duty. The SAAQ chose to fulfill this duty by entrusting the inspections to private parties through a system of contracts of appointments coupled with professional accreditations.

2.1 *The Contract*

[4] Pursuant to s. 520, the SAAQ entered into a contract ("the Contract") with the respondent CVMM. By necessity, this contract requires actual natural persons capable of carrying out the inspections. Appendix A-1 of the Contract ("the Appendix"), signed by CVMM, the SAAQ, and Mr. Cyr, an employee of CVMM, designates Mr. Cyr as an "accredited mechanic" for the purpose of vehicle inspections and holds Mr. Cyr to certain regulatory standards.

[5] The body of the Contract, signed only by the SAAQ and CVMM, primarily addresses the relationship between those two parties, but also addresses the relationship with mechanics themselves through discussion of the mandatary corporation's responsibilities with regard to them.

[6] Article 10.1 of the Contract specifies that the mandatary corporation is responsible for the hiring of competent personnel to perform the contract. Article 10.3 of the Contract requires that the mandatary corporation obtain the SAAQ's consent when replacing mechanics accredited for the purposes of the mechanical inspection program.

The Contract also specifies that mechanics must pass an exam offered by the SAAQ. The mechanics must further receive training from the SAAQ and sign the written engagement found in the Appendix.

[7] Article 11 of the Contract is titled [TRANSLATION] "Obligations of accredited mechanics". Article 11.1 requires that only those mechanics accredited by the SAAQ be assigned to the mechanical inspection program. Article 11.2 further stipulates that accredited mechanics must conduct vehicle inspections pursuant to the policies and procedures defined in the "Guide du mandataire" [Mandatary's Guide] as periodically modified by the SAAQ. The mechanic must also conform to all other directives and norms created by the SAAQ which were transmitted to him or her, as well as all other obligations established in the *HSC*, the Mechanical Inspection Guide, the "Guide du mandataire" and the Contract itself.

[8] Articles 6, 7 and 8 of the Contract address the suspension and resiliation. While the Contract acknowledges that a breach of contract may arise due to an action of a mechanic, the steps provided for in the event of such an occurrence apply strictly to the mandatary corporation.

[9] As noted above, the Appendix designates Cyr as an accredited mechanic for the purposes of the execution of the Contract established with CVMM. The duration of designation is stipulated as being the same as that of the Contract, subject to the same conditions of renewal and suspension, so long as the mechanic remains an employee of CVMM. The Appendix further re-stipulates the obligations of accredited mechanics found at art. 11 of the main Contract.

2.2 *Alleged Breach by Cyr*

[10] In November 2003, the SAAQ forwarded a notice of breach to Cyr, relating to an inspection that he had conducted. The notice informed Cyr that he had failed to apply the standards delineated in the Mechanical Inspection Guide. The notice further stipulated that in the event of subsequent breaches of the same nature, Cyr's accreditation could be revoked. In 2004, three other notices of breach were given to Cyr.

[11] On July 21, 2004, the SAAQ advised Cyr that his accreditation had been revoked. In its letter, the SAAQ did not refer to the Contract or state that it had been terminated. Instead, the SAAQ informed Cyr that his accreditation as mechanic for the vehicle inspection program of the SAAQ had been revoked.

[12] As a result of the loss of his accreditation, Cyr was unable to continue his employment with CVMM.

[13] Counsel for the respondents Cyr and CVMM requested in writing that the decision to revoke Cyr's accreditation be reconsidered. The letter went unanswered. On August 2, 2004, the respondents brought a motion for judicial review before the Administrative Tribunal of Québec, which they subsequently withdrew following a motion for dismissal filed by the SAAQ. On August 19, 2004, the respondents filed a motion for judicial review in the Superior court, along with a motion for a suspension of the decision to revoke Cyr's accreditation.

[14] It is worth noting that the SAAQ also terminated its contract with CVMM. This resiliation is being addressed in a separate case.

3. Judicial History

3.1 *Superior Court of Quebec*, [2005] R.J.Q. 463

[15]The respondents argued that the decision of the SAAQ to revoke Cyr's accreditation was illegal because the decision had not been rendered in a manner consistent with the *AAJ*. The case was heard by Chabot J.

[16]Chabot J. first noted that nothing in the *AAJ* defined or limited the appointment power accorded to the SAAQ by s. 520. He therefore held that the SAAQ had complete discretion to establish conditions of appointment. The Contract was the means through which this power was exercised.

[17]Pursuant to this finding, Chabot J. held that any remedy available to the respondent Cyr was to be found in the private law of contract, not in administrative law. He held that the actions of the SAAQ in sending the notices of breach and subsequent revocation of accreditation were an exercise of contractual rights, as opposed to any administrative power. Despite the status of the SAAQ as a public entity, its Contract with Cyr originates not from its public nature, but from its role as contracting party. Consequently, Chabot J. held that the SAAQ was not subject to a duty of fairness. Any obligations owed by the SAAQ were defined in the Contract.

[18]Chabot J. further rejected the application of this Court's decision in *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, holding that the

present relationship is purely contractual, as opposed to the contractual relationship incorporating certain aspects of public law in *Knight*.

3.2 *Quebec Court of Appeal*, [2006] R.J.Q. 1743, 2006 QCCA 932

[19]The majority at the Quebec Court of Appeal allowed the appeal, holding that the regime to which Cyr was subject incorporated aspects of public law and could not be considered to be purely contractual. Giroux J.A. (Doyon J.A. concurring) noted that s. 520 gave the SAAQ exclusive jurisdiction to carry out mechanical inspections. The task of conducting vehicle inspections is consistent with the "police" mission of the state. Section 520 establishes powers of appointment and authorization so that others may carry out the task that is otherwise exclusively within the competence of the SAAQ.

[20]Giroux J.A. noted that it was difficult to characterize the contractual relationship that, according to the SAAQ, existed between it and Cyr. He further observed that it would be difficult to view the Appendix as a contract of service between Cyr and the SAAQ pursuant to art. 2098 of the *Civil Code of Quebec*, S.Q. 1991, c. 64 ("*C.C.Q.*") in light of the absence of autonomy of Cyr, who must, on top of respecting the requirements of his employer, CVMM, conform to the policies and procedures of the SAAQ. Furthermore, according to art. 9.9 of the Contract, the respondent mandatary must assume all responsibility for the exercise of the activities described in the contract and is responsible for its directors, staff and representatives.

[21]The majority noted that not only is Cyr performing a function clearly defined in the *HSC*, but that his responsibilities under the scheme relate directly to the protection of the public. As such, the majority held that when Cyr conducted vehicle

inspections, he held a public office of sorts. Consequently, the majority held that the relationship established between Cyr and the SAAQ by the Appendix did not preclude the application of the principles of public law, most notably that of procedural fairness.

[22] With respect to procedural fairness, the majority first applied this Court's test in *Knight* and found that Cyr did have a right to procedural fairness with respect to the SAAQ's decision to revoke his accreditation. The majority also held that the existence of a contract could not be used by the SAAQ to avoid the obligations codified by s. 5 of the *AAJ* which applied to any unilateral decision taken pursuant to the administrative authority conferred by the *HSC*. It would be up to the trial judge to decide whether or not the SAAQ had observed these requirements.

[23] Finally, on a question of procedure, the majority noted that art. 846 of the *Code of Civil Procedure*, R.S.Q., c. C-25 invoked by the respondents, was not the proper recourse in this case. Instead, the matter should proceed as a direct action in nullity.

[24] Baudouin J.A., dissenting, acknowledged that the SAAQ is a public entity and, in certain capacities, is clearly subject to the *AAJ*. However, in this case, he agreed with the trial judge that the performance of the Contract derived from the SAAQ's capacity as a contracting party as opposed to as an administrative body. In revoking Cyr's accreditation, the SAAQ was merely exercising a right to resiliation which was permitted by the Contract.

4. Analysis

[25]In an era of increased privatization of public services and the rise of public-private partnerships, this case provides an opportunity to consider whether a government body will avoid public law duties when delegating its functions by way of contract or other form of agreement.

4.1 *The Relationship Between Cyr and the SAAQ*

[26]Both Cyr and the SAAQ, as well as CVMM, have signed the Appendix which defines the obligations of Cyr in art. A-3. It must be noted, however, that the CVMM is the mandatary of the SAAQ, and not Cyr. The relationship between Cyr and the SAAQ is described in art. 4.1 (h) of the main Contract as [TRANSLATION] "a formal agreement" by which Cyr is authorized to carry out CVMM's mandate. The employment relationship is between Cyr and CVMM (see art. 10 of the main contract). Cyr cannot be considered a party to the main Contract. The Appendix incorporates portions of that Contract by reference, but does not render Cyr a party to it.

[27]The agreement is clearly not a contract for services adopted pursuant to art. 2098 *C.C.Q.* It is a mechanism under which Cyr is appointed by the SAAQ subject to a number of conditions including an employment contract with CVMM. I view the

Appendix as a unilateral exercise of the power of appointment of the SAAQ, Cyr's signature simply being required because of the acknowledgment referred to in art. A-3.5.

4.2 *Application of Public Law and Section 5 of the AAJ*

[28] Given the relationship between Cyr and the SAAQ, defined in the "formal agreement", the question remains as to whether this instrument defines all aspects of the relationship between the two parties. In my opinion, it does not.

[29] The agreement is governed by public law because it constitutes an administrative authorization. This authorization and its subsequent revocation are subject to the *AAJ* and its procedural requirements.

[30] The *AAJ* was conceived as a codification of the principles of administrative law, in part derived from the case law of this Court. In his annotated version of the Act, M[e] Denis Lemieux describes the relationship between the Act and the common law as follows (*Justice administrative — loi annotée* (2001), at p. 71):

> [TRANSLATION] The *Act respecting administrative justice* recognizes certain legal principles, such as the duty of fairness and respect for basic procedural safeguards.
>
> Insofar as these principles were established and developed by the courts, the case law will continue to be used to determine the meaning and scope of the provisions of the *Act respecting administrative justice* that came, in a way, to codify them.
>
> In some cases, the Act provides guarantees that go beyond those required by the existing case law. This is true, for example, of the requirements that reasons be given for decisions and that a case be decided in a reasonable time. It would therefore be to the advantage of interested parties to rely on the wording of these provisions and to give them a liberal interpretation consistent with the general context of the Act and, more particularly, of its initial provision.

> Where the *Act respecting administrative justice* and the related regulations and rules of procedure offer no solution on a given point, the general principles of administrative law can be applied to complement the legislature's work.
>
> In the event of conflicts between the Act and a general legal principle, the Act will prevail.

[31] Lemieux does emphasize that the *AAJ* remains subject to both the *Canadian Charter of Rights and Freedoms* and the *Charter of Human Rights and Freedoms* (p. 72).

[32] The *AAJ* requires Quebec government departments and bodies to comply with procedural fairness in their discretionary decision-making processes. Section 5 describes the obligations with which an administrative authority must comply before making an unfavourable decision in respect of a citizen (*Imperial Oil Ltd. v. Quebec (Minister of the Environment)*, [2003] 2 S.C.R. 624, 2003 SCC 58, at para. 26). The provision restates the requirement that the interested parties be given prior notice; it also sets out the right to present observations and produce documents concerning the proposed decision and reiterates that reasons must be given in support of the decision.

[33] Section 5 of the *AAJ* provides:

> An administrative authority may not issue an order to do or not do something or make an unfavourable decision concerning a permit or licence or other authorization of like nature without first having
>
> (1) informed the citizen of its intention and the reasons therefor;
> (2) informed the citizen of the substance of any complaints or objections that concern him;
> (3) given the citizen the opportunity to present observations and, where necessary, to produce documents to complete his file.

> An exception shall be made to such prior obligations if the order or the decision is issued or made in urgent circumstances or to prevent irreparable harm to persons, their property or the environment and the authority is authorized by law to reexamine the situation or review the decision.

[34] The applicability of this provision to the present matter has been argued to depend primarily on (a) whether the revocation of Cyr's designation constitutes "an unfavourable decision concerning a permit or licence or other authorization of like nature", and (b) whether Cyr is a "citizen" as contemplated by the Act.

4.2.1 *Was the revocation of Cyr's accreditation a "decision concerning a permit or licence or other authorization of like nature"*?

[35] As earlier mentioned, Cyr's designation as an accredited mechanic for the purposes of the SAAQ's mechanical inspection program constitutes an administrative authorization.

[36] In delegating to him the power to conduct vehicle inspections, the SAAQ was granting him the authorization to act on its behalf, as an employee of its mandatary, CVMM, in a manner that would otherwise contravene the law. That accreditation thus derives from the "police" powers of the state.

> [TRANSLATION] Authorization relates to the government's policing activities. It consists in a permission, often subject to conditions, granted by the government to a natural or legal person, to perform an act or engage in an activity that would otherwise be unlawful. Requiring authorization of this act or activity by an administrative authority implies that the legislature considered it necessary, in the public interest, to limit the freedom of citizens in this regard.
>
> (P. Issalys et D. Lemieux, *L'action gouvernementale: Précis de droit des institutions administratives* (2nd ed. 2002, at pp. 815-16).

[37] In this case, the activity which Cyr is authorized to engage in, inspecting vehicles, is otherwise illicit. This is evidenced by s. 538 of the *HSC* which provides that "[n]o person may issue a certificate of mechanical inspection or affix an inspection sticker to a road vehicle unless he is authorized for such purpose by the Société in accordance with section 520". Section 546 further provides that persons who contravene that section are guilty of an offence and liable to a fine of $300 to $600.

[38] Furthermore, as seen above, administrative authorizations are typically accompanied by conditions which much be observed. If the recipient of the authorization fails to observe these conditions, a common remedy is revocation:

> [TRANSLATION] The punitive effect of such a decision resides in the loss, either temporary or definitive, of the possibility of carrying out the authorized activity and, consequently, of reaping the material benefits of doing so. However, punishing the offender is not the main goal here: the purpose of compelling the offender . . . to cease carrying out the activity is above all to safeguard the public interest that was in issue when the authorization scheme was implemented . . . .
>
> (P. Issalys et D. Lemieux, at pp. 870-71).

This passage describes well what happened in this case.

[39] The reference to permits and licences in the legislation along with authorizations is apposite in this instance. In the context of a licence, the licensee will often have to agree to abide by the applicable terms and conditions before being granted the licence. Where the granting body is governmental, the awarding and revocation of licences is nevertheless subject to the principles of administrative law.

[40]The authorization given in this case is of a similar character.

[41]The Federal Court of Appeal recently affirmed that delegations of government power are authorizations in *Desrochers v. Canada Industry*, [2007] 3 F.C.R. 3, 2006 FCA 374, at para. 50:

> [D]elegation . . . and ratification are both modes of authorization. The *Nouveau Petit Robert* defines "*ratification*" as a confirmation or approval (*homologation*) and "*delegation*" as a mandate or power of attorney (*procuration*). Synonyms of "*authorization*", or having the same meaning as the verb "to authorize", are accreditation, confirmation, agreement, approval, consent, acceptance and permission. This applies as well to a partnership, which evokes the notion of agreement and hence of reciprocal authorization.

[42]The authorization in the present case is specifically provided for in s. 520 of the *HSC*, which provides the SAAQ with the ability to both appoint and authorize mandataries to act on its behalf. The legislative origin of the *AAJ* further confirms its administrative nature. It is also useful to look at the revocation letter sent by the SAAQ. The letter makes no reference to Cyr's obligations under the Contract or the Appendix; instead, the SAAQ points out that Cyr's negligence would endanger public road safety. This should be contrasted with the letter in which the SAAQ terminates its contract with CVMM, and refers to its contractual right of termination.

[43]None of this is to suggest that all acts by the SAAQ are subject to public law. However, the act of authorization has specifically been deemed worthy of procedural fairness protection by the legislature and was thus made subject to s. 5 of the *AAJ*.

[44]I also note at this point that the characterization of Cyr's designation as an authorization in no way implies that he is a "public office holder", as argued by the

respondents. While the mechanical inspection does involve some degree of delegated discretion, it is not the kind of responsibility discussed in this Court's decision in *Knight*. That decision is of no moment in this case, there being no "public office" and no contract of employment between the SAAQ and Cyr.

[45] In *Wells v. Newfoundland*, [1999] 3 S.C.R. 199, Major J. explains, at para. 26:

> Traditionally, the Crown's relationship with its servants was not characterized as contractual: *Lucas v. Lucas*, [1943] p. 68; *Washer v. British Columbia Toll Highways and Bridges Authority* (1965), 53 D.L.R. (2d) 620 (B.C.C.A.); L. Blair, "The Civil Servant — A Status Relationship" (1958), 21 *Mod. L. Rev.* 265. The Crown appointed individuals to positions which they fulfilled until the Crown directed that they be dismissed. As a result, appointments were unilateral and subject to arbitrary dismissal: cf. *Reilly*, *supra*, J. Chitty, *A Treatise on the Law of the Prerogatives of the Crown* (1820).

This approach was rejected in *Reilly v. The King*, [1934] A.C. 176 (P.C.), where the Privy Council resolved that whether there was a contractual relationship or not, the Crown could be relieved of its obligation by abolishing the statute which provided for the creation of the office.

[46] Citing *Knight*, the Supreme Court held in *Wells* that the Crown was still required to act fairly in dismissing a civil servant in the absence of contractual rights (para. 24).

[47] What is at issue in these cases, is the state's role and obligations in dealing with its employees (*Wells*, para. 29), and not its responsibilities regarding holders of licences and permits.

4.2.2 *Is Cyr a "Citizen" or "Administr_" Pursuant to Section 5 of the AAJ?*

[48] The French term "administr_" and its English equivalent "citizen" are not defined within the legislation, or in the case law. One author has provided a definition of "administré":

> *Administré*:
> [TRANSLATION] This expression designates any legal or natural person to whom the law applies. It is a term borrowed from French administrative law, although it has been dropped in favour of the word "citoyen" in recent French legislation.
>
> (D. Lemieux, at p. 89.)

[49] This definition is extremely broad. The choice of the legislature to use the term "administr_" in French as opposed to "citoyen" arguably suggests a desire to encompass a greater number of subjects. That said, the English version of the Act uses the term "citizen". In any event, Cyr is an individual citizen and, in my opinion, fits within the scope of either term.

[50] The appellant relies on comments in the literature on the nature of what is an administrative function to argue that Cyr is not an "administr_".

> Decisions that are considered to have been made in performing an administrative function include front-line decisions made by various government officials in applying standards and implementing social programs in the context of the regulation or supervision of economic activities. Such decisions are primarily individual in nature and concern, first and foremost, the citizen . . . .
>
> For the most part, these organizations perform functions of the executive that the legislature has, for reasons relating to volume, to the specificity of programs, to a need to distance them from political involvement, removed

> from the executive. These are functions of management, regulation, supervision and monitoring of an area of activity, investigation, study and research involving, among other things, the granting, management and monitoring of authorizations, privileges, permits, benefits or other advantages.
>
> (M. J. Longtin, "La réforme de la justice administrative: genèse, fondements et réalités", in *Actes de la XIII^e^ Conférence des juristes de l'État* (1998), at pp. 80-81).

[51] These paragraphs do not persuade me that there is cause to reject the application of the *AAJ* to Cyr. The scheme established by the *HSC* fits well within the scope of the second paragraph above. As noted, the accreditation granted to Cyr can be considered an administrative authorization.

5. Conclusion

[52] In light of the foregoing analysis, I conclude that the respondent Cyr is entitled to procedural fairness under s. 5 of the *AAJ*.

[53] I would therefore dismiss the appeal with costs.

English version of the reasons of Deschamps, Abella and Charron JJ. delivered by

[54] DESCHAMPS J. — I have read the reasons of the majority and am unable to agree with them. In my opinion, the parties are bound by contract and the remedies available to them are governed by the rules of private law. As a result, I would have

allowed the appeal and, like the dissenting judge of the Court of Appeal, would have restored the judgment of the Superior Court.

[55] The sole issues in this appeal relate to the forum where the respondents must present their case and the rules that apply to their relationship with the appellant, the Société de l'assurance automobile du Québec (the "Société"). The Court has not been asked to rule on the merits of the case.

[56] The purpose of the *Highway Safety Code*, R.S.Q., c. C-24.2 (the "Code"), is to establish "the rules relating to highway safety, to the registration of road vehicles, to licences and permits which are under the administration of the Société de l'assurance automobile du Québec, and to the control of highway transportation of persons and goods" (s. 1). The Code forms a consistent body of rules. To understand its workings, the Société's role and the rules applicable to users (i.e., users of road vehicles), it will be necessary to consider all the Code's provisions. Only by doing so will it be possible to fully understand the various mechanisms adopted by the legislature to achieve this statute's objectives. It will be seen from this review that the legal rules applicable to mandataries of the Société are those of private law, whereas the rules applicable to users are those of public law. The documents signed by the parties in the instant case govern the Société's relationship with its mandataries. That relationship is a contractual one. It falls within the realm of private law, which has its own remedies. There is no provision of the Code that justifies resorting to the rules of public law in addition to the rules of contract law. Nor is there any principle of administrative law that justifies requiring that the rules of public law be applied in addition to those of contract law.

1. Internal Consistency of the Code

[57]The Code is divided into several titles. I will be referring to provisions from virtually every one of the Code's titles. The provisions are set out as follows: scope and definitions (ss. 1 to 5.2); registration of road vehicles (ss. 6 to 60); licences to drive road vehicles (ss. 60.1 to 146.1); special obligations of dealers and recyclers (ss. 151 to 166); obligations in case of accident (ss. 166.1 to 179); cancellation and suspension (ss. 180 to 209.26); rules respecting vehicles and their equipment (ss. 210 to 287.2); road and traffic signs and signals (ss. 288 to 318); rules of the road (ss. 319 to 519); special rules respecting owners and operators of heavy vehicles (ss. 519.1 to 519.78); mechanical and photometric inspection of vehicles and preventive maintenance program (ss. 520 to 546.0.4); rebuilding of damaged vehicles (ss. 546.1 to 546.8); procedure and proof (ss. 547 to 602); transmission of information (ss. 603 to 611.2); regulatory provisions (ss. 618 to 628.1); and miscellaneous and transitional provisions (ss. 629 to 675).

[58]The Société's responsibilities are set out throughout the Code. The Société performs both regulatory and administrative functions. In some cases it may delegate its powers on conditions it sets and enter into contracts, while in others it must act on its own. It is governed sometimes by the rules of public law and sometimes by those of private law. These roles and rules are not interchangeable or superimposable. They are laid down in the Code.

[59]The Société's power to make regulations is expressly provided for in s. 624. Numerous rules applicable to its relations with users are set out in ss. 547 to 554. Strict rules of procedural fairness are then imposed on it (ss. 550 and 552). The Société may reconsider its decisions (ss. 550 and 557). Certain of its decisions may also be

appealed to the Administrative Tribunal of Québec ("ATQ") (s. 560). The scope of the provisions to which such public law rules as procedural fairness and the right of appeal to the ATQ are applicable is vast.

[60] It should be noted that all the decisions to which the rules of procedural fairness expressly apply have a common denominator. All of them affect the rights of persons as road vehicle *users*. Here are a few examples that show clearly that status as a user is the common denominator in the application of public law rules: refusal to issue a driver's licence (s. 81), refusal to change a condition for a driver's licence (s. 82), refusal of a dealer's or recycler's licence (s. 162), and the exemption pertaining to a preventive maintenance program (s. 543.3.2). Rules of public law therefore apply where the relationship between the Société and the person in question is one of regulatory authority and user.

[61] The legislature decided that a different scheme should apply to decisions that do not affect persons as users. Thus, wherever a person acts as a mandatary of the Société or is designated to act on its behalf, the Code provides for no rules of procedural fairness or right of appeal. Should the Court infer from this that judicial review is available despite the privative clause in s. 555? I do not think so. Different schemes are provided for in the Code. For example, whereas the Minister of Transport enters into certain agreements with municipalities (s. 628.1), it is the Société that enters into other agreements with other bodies (s. 629). I will limit my discussion to the provisions that elucidate the scheme established in s. 520 for the appointment of persons authorized to sign certificates of mechanical inspection on behalf of the Société, which is the one in issue in the case at bar.

[62] Section 1 of the Code provides that the Société is responsible for the rules relating to highway safety, for administration of the registration of road vehicles and of licences and permits, and for controlling highway transportation. As a result, it must provide a service of issuing driver's licences, registration certificates and certificates of mechanical inspection. When performing this service delivery role, the Société is sometimes required by the Code to provide the service itself. In other cases, when issuing documents for example, it may either provide the service itself using its own employees or appoint persons authorized to represent it; when it opts to appoint representatives, it must establish the conditions applicable to the provision of the service in question to the public.

[63] Section 543.13 is an example of a case in which the Société is not authorized to use a third party to provide a service. The Code requires it to designate a member of its own staff who has the required qualifications to act as a mechanical inspection controller:

> **543.13.** The Société may designate any member of its personnel having the required qualifications to act as a mechanical inspection controller to ensure that sections 519.6, 519.15 and 539, the provisions of this chapter and the regulatory provisions made under paragraphs 32.1 to 32.7 of section 621 are complied with.

[64] By contrast, s. 520 of the Code provides as follows:

> The Société shall have exclusive jurisdiction to carry out the mechanical inspection of road vehicles and to issue certificates of mechanical inspection and inspection stickers. For that purpose, the Société may, on the conditions

> it determines, appoint persons authorized to carry out, on its behalf, the inspection of the road vehicles it determines and authorize those persons to issue certificates of mechanical inspection and inspection stickers in respect of those vehicles.

Section 520 is thus an example of a situation in which the Société has a choice: it may either provide the service itself or appoint a third party subject to conditions it sets. In the case at bar, it opted to appoint a third party. Following a competitive bidding process, it entered into a contract in accordance with the terms of the call for tenders. The contract laid down the conditions to be met by the persons authorized to carry out mechanical inspections and issue inspection stickers. Is this choice questionable? Is it more so than a choice to have employees of the Société do the work rather than a third party? Is it more questionable than a choice to have a public body award a contract to build or repair roads?

[65] Several provisions of the Code authorize the Société to appoint a third party to act on its behalf where it must provide a service. For example, sections 9 and 69.1 of the Code provide that the Société may appoint persons authorized to collect registration and driver's licence fees. The Société is granted the same authority in ss. 520.2 and 546.1 with respect to photometric inspections and technical appraisals of rebuilt vehicles. In a sense, these provisions authorize the Société to contract out services for which it is legally responsible as an administrator and service provider under s. 1. As is the case with the services related to the mechanical inspection of road vehicles in issue in this appeal (s. 520), that is one option that is available to the Société. It could just as well have its own employees perform the services rather than a third party. I note that in every case where the Code authorizes the Société to appoint a mandatary, the measure to

which the authorization applies concerns the organization of service delivery and does not — as where a driver's licence is issued or suspended — affect users' rights.

[66] It is also interesting to compare the case of a refusal to issue a certificate of competency in preventive maintenance (s. 543.3.2) with that of revocation of an appointment of a mechanic accredited for the certification of mechanical maintenance (s. 520). As a result of s. 550, the first of these decisions is subject to the rules of public law, whereas the second is subject to the rules of contract. At first glance, it is not clear why the same rules do not apply to both of them. When the statuses of the two mechanics are considered, however, the reason for the distinction becomes apparent.

[67] An owner of a road vehicle who is required to submit to periodic inspections may have his or her preventive maintenance program certified to stand in place of mechanical inspection (s. 543.2). The owner may then, under certain conditions, obtain a certificate of competency for one of *his of her* mechanics assigned to preventive maintenance (s. 543.3.1). A decision to revoke a certificate (s. 538.0.1) or to refuse an exemption may be appealed to the ATQ. It is clear that the certificate for the mechanic in question is valid only with regard to the vehicles of the owner, who is subject to the Code as a user. Moreover, s. 538.0.1 specifies that the mechanic's certificate of competency will be revoked if he or she uses it to issue a certificate of mechanical inspection. A mechanic assigned to the preventive maintenance of an owner's vehicles does not act as a representative of the Société. The certificate of competency is required only to enable the Société to ensure that mechanics so assigned are competent.

[68] The application of different rules to the two mechanics is justified by differences in their roles. The expressions used are different: issuance of a certificate of

competency and appointment of a person authorized to carry out inspections on behalf of the Société. A mechanic appointed under s. 543.3 is an employee of a vehicle owner, and therefore of a user, whereas one appointed under s. 520 acts on behalf of the Société. The former — a representative of the user — is subject to the rules of public law, and more specifically to s. 550 of the Code, whereas the latter — a representative of the Société — is subject to rules established by the Société at the time of his or her appointment, that is, to the rules of contract law, or private law. The fact that s. 550 does not mention decisions of the Société under s. 520 cannot be an oversight on the legislature's part or, as the respondents argue, an anomaly. It is merely a manifestation of the internal consistency of the Code.

[69] Thus, an analysis of the Code reveals that it provides for rules of procedural fairness for users and that none of these rules apply to persons acting on behalf of the Société. There is a very simple reason for the legislature's silence regarding representatives of the Société: the establishment of any conditions for service delivery has been left up to the Société. In the case at bar, the appointment was made in a tripartite contract to which the respondent Cyr was a party. I will now review the contract.

2. Contractual Framework

[70]The Société chose to use a contract to appoint the persons authorized to conduct the mechanical inspection of road vehicles on its behalf. The contract is entitled [TRANSLATION] "Contract for Services for the Mechanical Inspection of Road Vehicles". In the case at bar, the contract was signed by the Société, represented by its vice-president of highway transport enforcement, on May 27, 2002, and by 9052-0479 Québec Inc., represented by its president, on June 7, 2002. The contract's first clause authorizes 9052-0479 Québec Inc. to act as a mandatary of the Société. The contract contains several appendixes, including Appendix A-1, entitled [TRANSLATION] "Appointment and Obligations of the Mechanic". This appendix was signed by 9052-0479 Québec Inc. and by Mr. Cyr, in his capacity as a mechanic, on June 7, 2002, and by the director of the Société's highway transport enforcement unit on June 13, 2002.

[71]It is common ground that the "contract" signed by the Société and 9052-0479 Québec Inc. is a contract in the civil law sense. Moreover, this agreement clearly meets the conditions of contract formation set out in art. 1385 of the *Civil Code of Québec*, S.Q. 1991, c. 64 ("C.C.Q."). It was formed between persons having capacity to contract who gave their consent, its cause is not prohibited by law and its object is to provide services, which is a juridical operation recognized in civil law. No one has argued that this contract is subject to the rules of public law. The contract has a three-year term (clause 5.1), and it states the terms for early termination (clause 5.3) and resiliation (clause 6.1) and sets out the obligations of the mandatary (clause 9.1) and the accredited mechanics (clause 11.1).

[72]However, it is argued that Mr. Cyr is not a party to a contract. The majority see the appendix as merely constituting a unilateral act of appointment. According to them, Mr. Cyr's signature on the appendix was required only because, in

clause A-3.5, he [TRANSLATION] "declare[d] that he ha[d] read" the statutory provisions reproduced in an appendix as well as article 14 of the contract. In my opinion, this is a quite incomplete reading of the contract and the appendix.

[73] First of all, clause 29.1 of the contract stipulates that all the appendixes form part of the contract. Next, although this is obviously a contract of adhesion, I think it is clear from the language used in the appendix's introductory clause, such as [TRANSLATION] "agree to the terms", that all those who signed the appendix — the Société, 9052-0479 Québec Inc. and Mr. Cyr — were aware that the appointment of the mechanic was not made independently of any contractual relationships. Clause A-2.1 of the appendix states that the mechanic's appointment is valid for the same term as that of the contract and that it is also subject to the same conditions for renewal and interruption as the contract. In addition, clause A-3.1 requires the mechanic to comply with and maintain, throughout the term of the contract, the conditions set for his eligibility. Although the word [TRANSLATION] "undertaking" is not expressly used, it would be surprising if this clause could be interpreted independently of the introductory clause, which states that the parties have agreed to the stated terms. Similarly, in clause A-3.2, the mechanic undertakes to carry out his [TRANSLATION] "mechanical inspection mandate" in accordance with various requirements, including those set out in the contract. The appendix entitled [TRANSLATION] "Appointment and Obligations of the Mechanic" meets all the conditions for formation of a contract subject to the C.C.Q. It is an accessory contract to the contract with 9052-0479 Québec Inc.

[74] Moreover, all the terms of the appendix could have been incorporated into the contract with 9052-0479 Québec Inc. It can be inferred from the different signing dates of the appendix and the contract, and from the different authority levels of the

representatives of the Société mentioned in the contract (vice-president of highway transport enforcement) and the appendix (director of the highway transport enforcement unit), that the Société resorted to an appendix for reasons of efficiency. Using an appendix facilitated the implementation of the contract by ensuring that a new contract would not have to be signed every time a mechanic had to be replaced.

[75] The mandate given to 9052-0479 Québec Inc. must be carried out by a natural person. The Code provides that this natural person must be a mechanic. According to clause A-3.2, the mechanic carries out a [TRANSLATION] "mandate". Mandate is a nominate contract under the C.C.Q. (art. 2130). The rules of the C.C.Q. may supplement the terms provided for in the appendix should those terms prove insufficient. The rules applicable to the mechanic appointed in the appendix are not different from those applicable to 9052-0479 Québec Inc.

[76] Nevertheless, it is argued that the rules of public law apply to the appointment of Mr. Cyr. Where is the logic in this point of view?

3. Applicability of the Rules of Public Law

[77] As presented by the majority, the issue is whether a public body may evade its public law obligations by delegating its functions by contract or another form of agreement. I do not believe that to be the issue raised in this appeal. All that we are being asked to do is to identify the scheme created by the legislature in authorizing the Société to appoint third parties to act on its behalf as mandataries.

[78] Determining which legal rules apply is of definite practical significance. If the rules of private law apply, the court will consider the respective rights of the parties and, in the event that obligations have not been performed, it will grant the appropriate civil law remedy, generally damages. If, on the other hand, the rules of public law apply, the court will evaluate the decision, respecting the appropriate standard of review. But this is not a popularity contest between the two fields of law or a situation in which one party may unilaterally choose the rules that best suit its purposes. If that were the case, the Court would not have held in *Attorney General of Quebec v. Labrecque*, [1980] 2 S.C.R. 1057, *Wells v. Newfoundland*, [1999] 3 S.C.R. 199, and *Dunsmuir v. New Brunswick*, [2008] SCC 9, that common law rules apply to the employment contract of a person holding public office.

[79] The Court's interpretation of the Code and of the documents signed by the parties will therefore probably serve in the future as a guide for the development of mechanisms that Parliament and the legislatures wish to implement to deliver services to the public. The majority's conclusion therefore raises the question of the sufficiency and clarity of the statutory provisions and stipulations required for a court to hold that either public law rules or private law rules, or in some cases both, should apply. There have been cases in which courts have held that public law obligations could be superimposed on private law ones. It will therefore be interesting to consider the circumstances in which public law rules have been held to supplement the contractual obligations of a public body.

[80] In the opinion of the majority, Quebec's *Act respecting administrative justice*, R.S.Q., c. J-3 (the "*AAJ*"), applies, because the appointment of Mr. Cyr is part of the state's "policing" mission rather than of its service delivery mission. As is clear from

the analysis of the Code set out above, I do not at all regard the appointment of a mechanic under s. 520 as falling within the Société's policing mission. I will explain why.

[81] The Code contains a number of provisions whose purpose is to regulate the use of road vehicles. They require a user to, among other things, have a licence and a registration certificate, obey speed limits, and drive a vehicle that is in good working order. These provisions, which impose obligations on users, fall within the state's policing mission. The obligations in question limit users' freedom to use their road vehicles as they see fit. For that matter, where the examples I have given are concerned, enforcement of the Code's provisions is the responsibility of peace officers.

[82] However, requiring users to have licences and to register their vehicles or have them inspected presupposes that the state organizes the issuance of the necessary documents and ensures the provision of mechanical inspection services. When it provides the service of issuing licences and registration certificates or of inspecting vehicles, the state is carrying out its mission as a service provider in the most basic sense of the term. P. Issalys and D. Lemieux describe the state's two missions as follows in *L'action gouvernementale* (2nd ed. 2002):

> [TRANSLATION] When the modern state's actions in the economic and social spheres are analysed, actions related to its "service" mission are sometimes contrasted with those related to its "policing" mission. The latter term covers all actions by the state that, to varying degrees, restrict private activities and the exercise of individual freedoms. From this standpoint, the regulatory function appears to be a manifestation of the policing powers conferred on the government by the legislature. In contrast, the activities of a government corporation . . ., like an administrative contract . . . or the granting of benefits . . ., are generally viewed as instruments used by the government in performing its service mission. [p. 815]

[83]When it appoints a mechanic, the state is not performing its policing mission. Rather, it is providing users with a service. I see no support in ss. 538 and 546, on which my colleagues rely, for the view that the Société is performing its policing mission when it exercises its powers under s. 520. Section 538 simply states that only a mechanic appointed under s. 520 may issue a certificate of inspection. If a mechanic who has not been appointed to do so improperly issues a certificate, he or she does not act as a mandatary of the Société and, what is more, he or she commits an offence.

[84]My colleagues see this appointment as an administrative authorization. With respect, care must be taken not to adopt this characterization for the sake of convenience, as this could create confusion among the existing tools of administrative law. Issalys and Lemieux define authorization as follows:

> [TRANSLATION] [Authorization] consists in a permission, often subject to conditions, granted by the government to a natural or legal person, to perform an act or engage in an activity that would otherwise be unlawful. Requiring authorization of this act or activity by an administrative authority implies that the legislature considered it necessary, in the public interest, to limit the freedom of citizens in this regard. [Emphasis added; bold in original omitted; pp. 815-16]

Under the Code, a driver's licence is an authorization to engage in an activity on which the state considered it necessary to place limits. The freedom of drivers is limited in this regard. Under other statutes, authorization is required where a permit must be obtained to, for example, operate a business or engage in an activity on which the state considered it necessary to place limits, such as selling alcohol, operating an establishment or doing

construction work. In contrast, issuing certificates of mechanical inspection on behalf of the Société is not an activity that Mr. Cyr would otherwise be free to engage in as he wished but on which statutory limits have been placed. Even if no such limits existed, Mr. Cyr would not be "free" to sign on the Société's behalf. As a result, I am not at all persuaded by my colleagues' argument that Mr. Cyr's relationship with the Société should be subject to the *AAJ*.

[85] Moreover, to consider the appointment in isolation from the rules governing the contract with 9052-0479 Québec Inc. is not in my view consistent with the mechanism provided for in the Code. The appointment cannot be interpreted in the abstract, without considering its context.

[86] There are nevertheless situations in which an agreement between a public body and an individual can be subject to rules of public law in addition to those of private law (Issalys and Lemieux, at p. 998). However, the situations in question are not disparate, nor are they cases in which the rules of public law are imposed because such a duality of systems would be appropriate in particular circumstances. The cases are specific and relate, for example, to the awarding of contracts or to budgetary appropriations. Thus, the public body concerned is required to act fairly when awarding a contract and contractors must ensure that proper authorization has been given for expenditures. For that matter, it is apparent from the terms of the contract that 9052-0479 Québec Inc. was selected following a call for tenders. The existence of such rules does not mean that the administrative contract falls into a fundamentally distinct legal category, though. The state is subject to the C.C.Q., and the C.C.Q. applies to administrative contracts (P. Garant, *Droit administratif*, 5th ed. 2004, at p. 385).

[87] If I understand the majority's approach, my colleagues conclude that the rights and obligations arising from the appendix apply concurrently with the rules of procedural fairness provided for in the *AAJ*, while adding that Mr. Cyr is not a public office holder. This last nuance is somewhat surprising. Under the terms of his or her appointment, a mechanic issues certificates on the Société's behalf. If the mechanic acts neither under a conventional mandate nor as a public officer holder under a legal mandate, it might be asked what new hybrid category the Code has created. This approach marks a departure from developments in the case law in this area over almost 30 years.

[88] As long ago as 1980, in *Labrecque*, the Court unanimously rejected an argument similar to the one my colleagues have adopted. In that case, Quebec had argued that the state's relations with a public servant "result from a unilateral act of public authority by which the State appoints the civil servant to his position, in accordance with previously established general conditions, and thereby confers on him a status which is peculiar to him and from which his duties and rights are derived" (p. 1080). It is true that the case in question concerned a public servant. However, I see no conceptual distinction between appointing a mechanic pursuant to the appendix in the case at bar and appointing a public servant pursuant to the legislative authority the Court was considering in *Labrecque*. As I mentioned above, s. 520 gives the Société the option of appointing a third party. It could also have appointed a mechanic from its own staff. In either case, the rights and obligations are governed by a contract, be it a contract of employment or a mandate.

[89] The Court pursued its approach favouring application of the rules of contract in *Wells*. In that case, Mr. Wells had been appointed as a member of a public utilities board. His position was abolished, and he sued for damages. Although Mr. Wells

had been appointed under a statute, the Court considered the written and verbal manifestations of the agreement under which he was appointed, as well as the applicable statutes and regulations and the common law. It concluded that there was an employment contract to which common law rules were applicable (paras. 33 to 36). The Court, in an *obiter dictum* in *Wells*, contemplated only one situation in which the rules of public law would apply: where no contractual rights existed (para. 24).

[90] The only decision in which the Court imposed a general duty to comply with the public law rules of procedural fairness in addition to contractual obligations was *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653. However, the import of that decision was recently tempered by the decision in *Dunsmuir*, in which the Court noted that the distinction between public office holders and employees is difficult to maintain both in practice and in theory. The Court pointed out that the distinction has caused uncertainty and led to conflicting decisions. It rejected the distinction for a number of reasons. One of them was that, historically, public office holders could be dismissed without compensation and without reasons being given, which warranted placing obligations on the state where no mechanism protected the individual in question. The deficiencies that justify resorting to the rules of public law are not present where there is an established contractual relationship. Thus, where an individual is protected by a contract of employment, public law remedies are not required. The protection afforded by private law rules is sufficient. *Wells* and *Dunsmuir* are therefore part of a process of modernizing and simplifying the rules applicable to relations between the state and the persons with whom it contracts.

[91] In the case at bar, if the *AAJ* does not apply to decisions of the Société affecting Mr. Cyr, he is still protected by the rules of the law of contract. His mandate

cannot be terminated without just cause before its term has expired. The contract between the Société and 9052-0479 Québec Inc. sets out the conditions for resiliating or suspending the mandate. Clause A-2.1 of the appendix provides that the conditions for interrupting the contract apply to the appointment. The Société gave Mr. Cyr several warnings concerning breaches that appear to have been serious. If Mr. Cyr feels that the Société has violated his rights, he is not without recourse. If the Société has not complied with the rules for interrupting the contract, all the remedies provided for in the C.C.Q. and the *Code of Civil Procedure*, R.S.Q., c. C-25, are available to him. I see no deficiency that would justify imposing rules of procedural fairness where Mr. Cyr is protected by a contract and by the rules of the law of contract. I do not think that the Court should create a special hybrid scheme for the appointment of mechanics under s. 520. With respect, that is what the majority is doing.

4. Conclusion

[92] It can be seen from an analysis of the mechanisms established by the Code that there are three main types of relationships: those between the Société and its employees, those between it and persons who act on its behalf and, lastly, those between it and persons on whom it imposes restrictions as road vehicle users. The first two types of relationships are contractual in nature and are governed by the law of contract and the other applicable rules. In the third type, the persons concerned are subject to the Code and the other applicable rules.

[93] The appendix has all the characteristics of a contract. A conclusion that it is not a contract has no basis in either private or public law, and it creates confusion as regards the application of the Code

[94]For these reasons, I would have allowed the appeal.

Appeal dismissed with costs, DESCHAMPS, ABELLA *and* CHARRON JJ. *dissenting.*

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