THE BILL OF RIGHTS AND QUEBEC LAW

F. R. SCOTT*
Montreal

Mr. Diefenbaker's proposed Bill of Rights, as drafted, confines itself to matters within federal jurisdiction. Since in these fields the law of Quebec is the same as that of the other provinces, the Bill will presumably have the same effect, and the same lack of effect, in Quebec as elsewhere in Canada. Section 3, its operative clause instructs the courts to construe and apply all federal statutes and orders so as not to "abrogate, abridge or infringe" the named human rights and freedoms, and Quebec judges will face the same problems as their brethren outside the province in applying this rule of interpretation. What is the meaning of such phrases found in the Bill as "due process of law", "discrimination", "other constitutional safeguards", "cruel, inhuman or degrading treatment or punishment", "principles of fundamental justice"? What is the effect of the Bill upon the interpretation of a future statute running to the contrary? Do the tenor and content of the Bill enlarge the concepts of public order and good morals to be applied in the interpretation of contracts? These are the kinds of questions that will arise, requiring answers in Quebec similar to those that will be found elsewhere.

As no new remedies are given to any individual by the Bill, the basic law protecting civil liberties in Quebec will remain unchanged. That law, like its counterpart in common-law jurisdictions, rests in large part upon the right to an action in damages against anyone, whether private citizen or public officer, who causes damage to another by his negligence or fault. Further important protections for individual freedoms are given by the prerogative writs—habeas corpus, mandamus, prohibition, certiorari, quo warranto. In the wider field of administrative law, Quebec courts insist upon their right to review administrative acts, and have adopted the same "principles of natural justice" as operate in common-law

*F. R. Scott, Faculty of Law, McGill University, of The Quebec Bar, Montreal.

jurisdictions as criteria for administrative behaviour.[1] This is to be expected, since the public law of Quebec is English in origin, and will vary from English or other Canadian precedents only where a local statute has altered it. The criminal law, on the definitions and procedure of which so much civil liberty depends, being in the Criminal Code of Canada, offers no contrasts in Quebec save in the vagaries of judicial interpretation and judicial severity in imposing sentences. Constitutional law, important to civil liberties in its restraints upon legislatures, is also the same for Quebec as for other provinces in so far as the interpretation of sections 91 to 93 of the British North America Act is concerned.

Thus the differences between the civil and common-law jurisdictions in Canada, in respect of the general law protecting human rights and fundamental freedoms, are not as great as might be imagined, since so much of this law is either uniform throughout Canada (criminal law, constitutional law on distribution of legislative powers) or else is public law of English origin (prerogative writs, administrative law). Only in the civil law proper, and in local statutes, do we find particular rules for Quebec, and here the general action in damages before the ordinary courts—Dicey's "rule of law" in action—is permitted on principles not dissimilar from the tort action at common law.

These general propositions deserve closer analysis. The civil law of delict and quasi-delict, for example, not being the same as the common law of torts, provides a somewhat different protection for the victim of wrongdoing. The civil law has evolved a general principle of liability for wrongs, applicable to all situations that present themselves. It is a law of delict and not of delicts; new sets of facts may arise in society to which the rule has never been applied before, yet which it is adequate to cover.[2] Quebec judges do not legislate when so applying the all-embracing principle, they merely subsume new facts under the ancient rule. The common law of torts has not yet been reduced to a single general principle, and a plaintiff must bring his action within a tort already known to the law, though "extensions" of the old concepts may occur.[3] Moreover

[1] See Le Dain, The Supervisory Jurisdiction in Quebec (1957), 35 Can. Bar Rev. 788.

[2] See, for example, *Robbins* v. *Canadian Broadcasting Corporation*, [1958] S.C. 152, where damages were awarded against the Canadian Broadcasting Corporation for injury to plaintiff's practice and invasion of his privacy caused by an invitation to viewers of a television programme to "cheer him up" by telephoning his home. Scott C.J. said: "There is no need to attempt any precise definition of this fault which defendant's servants committed." (at p. 157).

[3] See for instance, Goodhart, English Law and The Moral Law (1953),

the civil law has developed the notion of "abuse of rights" as a protection against the exercise of a right merely for the purpose of injuring another; and while Quebec courts have been hesitant to apply the principle it is available for use in civil-liberties cases in this province to a degree not open to the common-law judge.[4] Thus in theory at least the civil law of Quebec on delicts and quasi-delicts as set out in articles 1053-1056 of the Civil Code should give a wider protection for civil liberties than does the common law. As Mr. Justice Taschereau said in *Chaput* v. *Romain;*[5]

> Il [le dommage moral] comprend certainement le préjudice souffert dans la présente cause. Il s'entend en effet de tout atteinte aux droits extra-patrimoniaux, comme le droit à la liberté, à l'honneur, au nom, à la liberte de conscience ou de parole. Les tribunaux ne peuvent refuser de l'accorder, comme par example, si les *sentiments religieux or patriotiques* ont été blessés.

According to this view, civil liberties such as freedom of conscience, freedom of speech, and freedom of the person are extra-patrimonial rights, any unjustified invasion of which renders the guilty party liable to a damage action. Hence article 1053 of the Civil Code which states: "Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, inprudence, neglect or want of skill", underpins the basic human rights.

Some examples of the application of this rule may be given. The illegal deprivation of the right to vote is actionable in Quebec.[6] Cases abound in which police officers have been condemned to pay damages for false arrest, or for the use of excessive force in making an arrest.[7] Malicious prosecution also gives rise to an action under

---

pp. 98-99: "We do not even know whether there is a law of tort or a law of torts. The law has even been reluctant to hold that all intentional "injuries" involve tortious liability. There are a considerable number of ways in which one person can intentionally injure another without subjecting himself to an action, but it would not be in the public interest to state them in detail."

[4] See the discussions of the comparative legal situation in Baudouin, Le droit civil de la province de Québec (1953), p. 1283 *et seqq.* Also Nadeau, Traité de droit civil du Québec (1949), Chap. V. Mignault, Premier Congrés de l'Association Henri Capitant (1939), p. 643; *cf. Bradford* v. *Pickles*, [1895] A.C. 587 (H. of L.) (use of property case). Of course the notion of abuse of rights might be considered merely as an application of article 1053 and not an independent notion. Responsibility arises when a right is exercised in a faulty manner, whether or not the actor intended to injure the victim. Applying this rule in the field of administrative law, the test is: Would a prudent administrator have exercised his authority in this manner?

[5] [1955] S.C.R. 834, at p. 841.

[6] Mignault, Le droit civil canadien (Vol. 5, 1901), p. 363 and cases there cited.

[7] Nadeau, *op. cit., supra,* footnote 4, p. 208.

article 1053.[8] The same article covers all forms of defamation; such a case as *Morin* v. *Ryan*[9] is a good illustration of the civil law protecting an individual unjustly accused of being a communist—a healthy check on incipient McCarthysm. *Ortenberg* v. *Plamondon*[10] shows that defamation can be committed against a group of persons such as a small Jewish community in Quebec City. No case is reported in Quebec of damages awarded for a direct interference with freedom of speech, unless *le Club de la Garnison de Quebec* v. *Lavergne*[11] be so considered; the court upheld the action of Lavergne against the club which had expelled him from membership because of a speech made in the legislature, but rested (somewhat dubiously) its decision on parliamentary privilege rather than on the civil law. Yet we have the authority of Taschereau J. in the *Chaput* case,[12] for the proposition that any invasion of this right to free speech is a civil wrong.

Within the ambit of article 1053 comes also the general rule, and a very important one, that an act of a public officer exceeding his powers, or a faulty act within his powers, creates a liability to repair the consequent damage. As put by Mackinnon J. in *Roncarelli* v. *Duplessis*,[13] "If acting outside the statutory defined functions of his office defendant has committed a faulty and unauthorized act causing damage he should be held personally liable." Abbott J. in the same case[14] held respondent liable "under Art. 1053 of the Civil Code for the damages sustained by the appellant, by reason of the acts done by respondent in excess of his legal authority", and he expressly found that respondent was acting in what he conceived to be the best interests of the province. Fauteux J., dissenting on the ground that notice of action should have been given, said[15] "Dans l'espèce, l'annulation du permis est exclusivement imputable à l'intimé et précisément pour cette raison, constitue dans les circonstances, un acte illicite donnant droit à l'appelant d'obtenir réparation pour les dommages lui en résultant."

---

[8] *Ibid.* See also *Dufour* v. *Tremblay*, [1954] S.C. 343.
[9] [1957] Q.B. 296. [10] (1915), 24 K.B. 69. [11] (1918), 27 K.B. 37.
[12] *Supra*, footnote 5. See Dalloz, Nouveau repertoire (Vol. 3), p. 831.
[13] [1952] 1 D.L.R. 680, at p. 699 (S.C.). This, in my opinion, states the rule too narrowly, since it suggests that a mere exceeding of authority is not enough unless faulty, whereas the excess is the fault.
[14] (1959), S. Ct. Can., not yet reported. In regard to authority for the rule, Abbot, J. said: "I do not find it necessary to cite from the wealth of authority supporting the principle that a public officer is responsible for acts done by him without legal justification. I content myself with quoting the well known passage from Dicey's 'Law of the Constitution', 9th ed., p. 193 . . . ."
[15] *Ibid.*

This is but the statement in civil-law terms of the rule of public law given by Halsbury as follows:[16]

> 416. The so-called liberties of the subject are really implications drawn from the two principles that the subject may say or do what he pleases, provided he does not transgress the substantive law, or infringe the legal rights of others, whereas *public authorities (including the Crown) may do nothing but what they are authorized to do by some rule of common law or statute.*

In Quebec we must consider that this rule holding public officers to account before the ordinary courts for all their activities derives from English law, since it is part of public law. Yet the measure of the liability it imposes, the definition of fault, the defences available, and the finding of the causal connection between the act and the damage, will seemingly be based on the civil law. Thus common law and civil law blend in Quebec administrative law. The civil law excludes anything in the nature of punitive or exemplary damage, since the purpose of the delictual action is to compensate and not to punish. This at any rate is the way the problem is dealt with in the more recent Quebec cases against public officers. Doubt has been cast upon this interpretation, however, by Kellock J., in the *Chaput* case, at least in so far as concerns actions which fall within the scope of the Magistrates Privileges Act[17] of Quebec. The statute is designed to give certain procedural protections to public officers provided that (1) they were acting within their functions and (2) they were in good faith. The words of the statute expressly allow the court or jury to award such damages "as they think proper". Said the learned judge:[18]

> In *Lachance* v. *Casault, ubi cit.* the Court of Appeal, after argument on the point, felt entitled to award punitive damages and did so. Whether that result was in harmony with the view that the defendant had ceased to bear the character of a public officer engaged in the performance of his duty need not be here considered. In a case to which the statute is applicable it may be that the right to recover "such damages as they (the court or jury) think proper" (s. 2, R.S.Q., c. 18) is to be construed, like other provisions of the statute, in accordance with English law, and authorizes an award of common law damages. The statute is a special, while the Code is a general Act. Both have stood side by side since the enactment of the Code in 1866. It is, however, not necessary to decide that question on this occasion.

The point is therefore still open. It did not have to be decided in the *Roncarelli* case any more than in the *Chaput* case, since in neither were the defendants acting within their functions when

[16] Halsbury, Laws of England (3rd ed. 1955)l vol. 7, par. 416. Italics mine.
[17] R.S.Q., 1941, c. 18.
[18] *Supra*, footnote 5, at p. 860.

causing damage, and hence neither was within the ambit of the Magistrates Privileges Act. It would be an odd result, however, if it were found that the public officer acting in bad faith outside his functions was liable to pay less damages, being restricted to civil-law compensation, than the officer who comes under the protecting statute where good faith and acting within the functions are required, and where defendant can be made to pay whatever damages are "proper". The protected officials would then be worse off than the unprotected.

In view of the wide applicability of article 1053, how are we to explain the restrictive attitude of the Quebec courts in the recent important civil-liberties cases coming from that province? True, not all of these involved civil law principles: *Boucher* v. *The King*,[19] *Saumur* v. *City of Quebec*,[20] *Birks* v. *City of Montreal*[21] and *Switzman* v. *Elbling*[22] turned on points of constitutional and criminal law. In each of these cases, however, the Quebec Court of Appeal upheld the more authoritarian view of the law against the more liberal view, and in each it was overruled by the Supreme Court—in *Boucher* and *Saumur* by majorities of five to four, in *Birks* unanimously and in *Chaput* by eight to one. In the *Chaput*, *Roncarelli* and *Lamb*[23] cases the civil law of delict was invoked to support a claim for damages against public officers violating civil liberties; in each article 1053 of the Quebec Civil Code was in question; in each the plaintiff lost his action before the Quebec Court of Appeal and won it before the Supreme Court, unanimously or by substantial majorities (9—0, 6—3, 6—3). There seems little point in calling attention to the safeguards for civil liberties inherent in the Civil Code if in fact the Quebec courts refuse to apply them in concrete cases. The law at any given time is what the judges say it is, not what is written down in the books. The climate of Quebec, it must be admitted, has not recently been favourable to certain opinions, and with rare exceptions the judiciary has merely expressed the prevailing social outlook. If to these seven leading cases one adds the *Alliance*[24] case, where the Supreme Court held invalid the decertification of a trade union by the Quebec Labour Relations Board for lack of any notice to the union officers, which decertification the Court of Appeal had upheld, we have eight recent examples where the Supreme Court of Canada

---

[19] [1951] S.C.R. 265.
[20] [1953] 2 S.C.R. 299.
[21] [1955] S.C.R. 799.
[22] [1957] S.C.R. 285.
[23] (1959), S. Ct. Can., not yet reported. See [1958] Q.B. 237
[24] *L'Alliance de Professeurs Catholiques de Montreal* v. *the Labour Relations Board of Quebec*, [1953] 2 S.C.R. 140.

overruled the highest court in Quebec and gave a better support for human rights and fundamental freedoms. Surely the time has come for the tide to turn in Quebec. The civil law is waiting for a wider application than the Quebec judges seem willing to give it.

A special protection for religious freedom exists in Quebec, and also it seems in Ontario, through the existence in those provinces of the Freedom of Worship Act.[25] Enacted by the old province of Canada before Confederation, and hence covering the two central provinces, it has been continued in the Revised Statutes of Quebec till the present day, but was last consolidated in Ontario in 1897.[26] The present Quebec version of the Act declares that:

> 2. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, provided the same be not made an excuse for acts of licentiousness, or a justification of practices inconsistent with the peace and safety of the Province, are by the constitution and laws of this Province allowed to all His Majesty's subjects living within the same.

After the Supreme Court decision in the *Saumur* case, and apparently to offset its possible effects, the Quebec legislature amended the Act[27] by adding a section which states that it does not constitute the free exercise or enjoyment of religious profession and worship to distribute, in public places or from door to door, books, magazines or tracts containing abusive or insulting attacks upon the religion of any portion of the population. The constitutional validity of this amendment is now before the Quebec courts.[28] In the light of the *Birks* decision, it would seem that laws affecting freedom of religion and religious observance fall within federal jurisdiction under the criminal law power. If this proves to be the constitutional law on the point, and it is submitted that it is, then the original Freedom of Worship Act of 1851 is now binding on both Quebec and Ontario, by virtue of section 129 of the British North America Act, and cannot be amended by either legislature in so far as the principle set out in section 2 is concerned. It is a "Bill of Religious Rights" for two provinces, more precise than Mr. Diefenbaker's Bill, and containing penalties for its breach.

Little need be said about the manner in which the prerogative writs and injunctions are applied in Quebec in civil liberties cases, since the law governing their use, with minor variations set out in the Quebec Code of Civil Procedure, is the same as that in other

[25] R.S.Q., 1941, c. 307. [26] R.S.O., 1897, c. 306.

[27] Stats. of Que., 1953-4, c. 15.

[28] See *Procureur Général de la Province de Québec* v. *Saumur*, [1956] Q.B. 565, dealing with interlocutory questions that have arisen in the action.

jurisdictions. The writs remain the essential weapons for the individual who is attempting to assert his rights and protect his freedoms against public authorities and public officers. The Quebec rules seem unnecessarily complicated in some instances, particularly with regard to the issuance of injunctions, and a procedural reform is overdue. Trade unions in Quebec find themselves handicapped by long and costly court battles which seem to belong to a primitive stage of industrial law, though it is not only in Quebec that this happens. There is evident need to reconsider the proper use of injunctions in labour cases. Habeas corpus operates in Quebec in both private and public law situations, and the other prerogative writs are ready for use in appropriate cases. There is, however, a growing use of privative clauses ousting the supervisory power of the superior courts public authorities, and article 87a of the Quebec Code of Civil Procedure contains the following sweeping provision:

> 87a. No proceeding by way of injunction, mandamus or other special or provisional measure shall lie against the Government of this Province or against any Minister thereof or any officer acting upon the instructions of any such Minister for anything done or omitted or proposed to be done or omitted in the exercise of the duties thereof including the exercise of any authority conferred or purporting to be conferred upon same by any Act of this Legislature.

This leaves open the action in damages against the ministers or officers of the Crown acting under their instructions, but severely reduces the area left subject to the special writs. Like all privative clauses, however, it will be strictly interpreted by the courts so as to restrict their supervisory power as little as possible.

How can we relate these principles of Quebec law to Mr. Diefenbaker's Bill of Rights? There would seem to be very little direct relationship, since the Bill relates to federal matters only. The judges may perhaps be strengthened in their none too evident determination to uphold the liberties of the subject, if the Bill is enacted, but respect for the Supreme Court and the danger of being overruled there might seem more potent influences. As already pointed out, any Quebec judge who feels an injustice has been done to human freedoms can find ample reasons in Quebec law, administrative or civil, for giving protection to the individual, especially since the recent holding in *Roncarelli* v. *Duplessis*. Of course a specific rule of law cannot be set aside merely because it violates human rights and fundamental freedoms, unless it be *ultra vires* the legislature. Where the Civil Code discriminates between the rights of married and unmarried women, as in the right to contract or to sue (ester en justice), the judges must of course apply,

and continue to apply, the written law. The Quebec legislature in 1953 set an evil example when it deprived a trade union by retroactive legislation of the effect of a judgment in its favour rendered by the Supreme Court.[29] No one would contend that such legislation was beyond the powers of the province, however much it may be thought to violate democratic principles and human rights. Nor will the passage of the Bill of Rights make any difference, for it does not attempt to abridge provincial sovereignty.

The possible effect of the Bill of Rights in the enlargement of human rights in Quebec may be illustrated by taking a specific case and asking ourselves whether the decision would be changed by the passage of the Bill. In *Christie* v. *The York Corporation*,[30] plaintiff was a negro who held a season box ticket to the Montreal Forum for the hockey season. He was accustomed to enter the York Tavern, which is in the Forum building, for refreshments. On the night in question he went in as usual with two friends and asked the waiter for three glasses of beer. The waiter refused to serve him because he said he had orders not to serve coloured people. Christie called in the police, but the refusal was repeated. In an action for breach of contract and damages, the trial judge awarded $25.00, but the Court of Appeal and the Supreme Court of Canada reversed the judgment on the ground that freedom of commerce made every proprietor a *maître chez lui*, able to carry on his business in the manner that seems best to himself. The obligatory duty to serve travellers, imposed on hotels and restaurants, was held not to apply to this tavern though it operated on licence. The insult to Christie went unpunished.

What difference would a federal Bill of Rights make in such a situation? The case turned on the interpretation of Quebec civil law and Quebec statutes. But it is significant that not only the trial judge, but Galipeault J. in the Court of Appeal and Davis J. in the Supreme Court dissented. These dissents were based upon an analysis of the same law that the majority used to deny plaintiff's claim. Had the case gone the other way we would still have said that Quebec law was being applied. Thus the courts here, as in many situations, become the determining factor in the preservation of civil liberties, more important than new Bills and Declarations. They so often have liberty in their hands, to dispense or to withold. The most we could hope for in future *Christie* cases in Quebec if Mr. Diefenbaker's Bill passes is that the judges themselves will

[29] Stats. of Que., 1952-53, c. 11, setting aside the *Alliance* judgment, *supra*, footnote 24.

[30] [1940] S.C.R. 139, and note by Laskin in (1940), 18 Can. Bar Rev. 314.

feel urged to limit the effects of this judgment and to distinguish new situations on the facts. We can scarcely hope they will cease to follow it altogether. The decision must be overruled, by re-interpretation or by legislation, if a gross form of racial discrimination is to be checked.

Despite the apparent ineffectiveness of the proposed Bill in respect of much of the law of Quebec, there are some ways in which perhaps it will strengthen the law protecting civil liberties and fundamental freedoms. We must start by remembering that federal law does not impose any personal liability upon federal officers in Quebec; it is imposed by provincial law. The damages occasioned by individual postmen or Canadian Broadcasting Corporation employees or officers of the Royal Canadian Mounted Police, in Quebec, will be judged by Quebec law. When the further question arises as to whether the federal Crown or agency or department which employs the wrongdoer can be sued, then federal law must be looked to. If liability is to be imposed on the federal instrumentality of government, the rule must be found in the Crown Liability Act or other relevant federal statute; and if it is found, and the Crown or agency is liable, provincial law measures that liability. But in so measuring it, provincial courts will look to any standards that may be laid down in the federal law. The Quebec rule that a public officer exceeding his powers commits a fault that renders him liable for subsequent damage, when applied to federal officers, must depend upon the actual powers set out in the federal law. The postman's powers are found in the Post Office Act, and so on; damage within the powers will be *damnun sine injuria.* Hence it follows that any restraint upon federal officers that may be found in the Bill of Rights, any limitation it may impose upon discretions they possess under existing statutes, will operate to impose stricter standards upon them and hence to increase the likelihood that they may act in an *ultra vires* fashion. Thus the ambit for the application of article 1053 of the Quebec Civil Code may be enlarged, and the law in Quebec (much of which is necessarily federal law) extended, by the passage of the Bill.

We can foresee a similar enlargement of the exercise of the power of judicial review over administrative actions. The supervisory power of the Quebec courts extends to federal as well as to provincial agencies in Quebec.[31] That power, as has been said, is employed to protect the principles of natural justice in the work-

[31] *The Montreal Street Railway Co.* v. *The Board of Conciliation and Investigation et al.* (1913), 44 S.C. 350 (Ct.Rev.).

ings of administrative tribunals. The well-known rules that a man should not be tried unheard or by his accuser, that he should be given notice of any charges against him and allowed a fair hearing, are part of Quebec law, deriving from the public law. To the presently accepted rules of natural justice the Bill of Rights appears to add some others. The right to "retain and instruct counsel without delay" is spelled out in section 3 (b); denial of this would seemingly constitute grounds for quashing the decision of the "tribunal, commission, board or other authority". A bold judge might now assert that the right to retain counsel before federal agencies is an extra-patrimonial right within the meaning of the passage from Taschereau J.'s judgment in the *Chaput* case, giving rise to moral damages if refused. Once again we are in the hands of the judges.

A further question may be asked. Will the Bill of Rights constitute a legislative definition of part of the content of "public order and good morals" as that phrase is used in the Civil Code? The possibility should not be set aside on any simple notion that federal statutes cannot invade the field of property and civil rights. This of course is true, but does not dispose of the problem. It is the Civil Code itself which says in article 13 that:

> No one can by private agreement, validly contravene the laws of public order and good morals.

But the Code does not define the terms. Various cases have applied the rule to establish the validity or invalidity of contracts, gifts and testamentary dispositions. In *Weingart* v. *Stober*[32] a stipulation in a marriage contract limiting access of the parties to the courts of justice was held illegal; in *Renaud* v. *Lamothe*[33] the Supreme Court of Canada, overruling a previous Quebec decision in *Kimpton* v. *La Compagnie du Chemin de Fer du Pacifique Canadien*,[34] held valid a legacy conditional on the legatees being Catholic. If non-discrimination between Canadian citizens is proclaimed by Parliament in the Bill of Rights as public policy, it would not seem to be straining the law were the courts in Quebec to admit this principle when interpreting article 13 and similar provisions of the Code. In other words, judicial discretion in Quebec is wide enough to embrace non-discrimination without departing from the Civil Code, since the Code refers the courts to a concept the content of which must be found outside its provisions. Moreover, if Girouard J. was right in *Renaud* v. *Lamothe*,[35] and there can be two kinds of

[32] (1919), 57 S.C. 321; (1922), 60 S.C. 55 (Ct.Rev.).
[33] (1902), 32 S.C.R. 357. See also (1953), 31 Can. Bar Rev. 227.
[34] (1888), 16 R.L. 361 (Que. S.C.).

"public order" in Quebec, depending on whether the question arises in a field of civil or of common law, then non-discrimination should be considered as belonging to an area of public law in which the federal Parliament, with its jurisdiction over citizenship, may validly proclaim a rule of public policy for all Canada.[36]

---

[35] Baudouin shares this view: *op. cit., supra*, footnote 4, p. 876.

[36] Note that in *Gauvin* v. *Rancourt*, [1953] R.L. 517 (Que. C.A.) which recognized the validity of a Michigan divorce, Marchand J. (at p. 575) and Gagné J. (at pp. 576-580) dissenting, maintained that the recognition of foreign divorces was against Quebec public order and good morals as expressed in article 185 C.C., while divorces rendered in other parts of Canada would have to be recognized in this province owing to federal jurisdiction over divorce.