

Book Review
Compte rendu

Elements of Quebec Civil Law: A Comparison with the Common Law of Canada

Edited by Aline Grenon and Louise Bélanger-Hardy
Toronto: Thomson Canada Limited, 2008

Reviewed by Melanie R. Bueckert*

Canada is an extraordinary place. While all Canadians might acknowledge this fact – perhaps with respect to Canada's scenery, culture or history – it is especially true from a comparative law perspective. In comparative law scholarship, the designation “extraordinary place” is a term of art.¹ It is generally used to denote a place with mixed legal systems (such as the common law and civilian traditions that co-exist alongside the chthonic and religious legal systems which form Canadian law’s plurality) that inform and shape each other’s development. As the editors of *Elements of Quebec Civil Law: A Comparison with the Common Law of Canada* note in its opening chapter, “With its common law, civil law and indigenous law traditions, its two official languages and the recognition of numerous aboriginal languages in its territories,” Canada is obviously an “extraordinary place.”²

Unfortunately, many Canadian lawyers remain woefully unaware of the incredible richness and diversity of legal traditions operating in their country. It is hoped that this two-volume set, intended to introduce English-speaking common lawyers to Quebec’s civil law system and French-speaking civilians to Canadian common law, will go a long way towards rectifying this lamentable situation.³ It can safely be said that

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¹ Esin Örücü, “Comparatists and Extraordinary Places” in Pierre Legrand and Roderick Munday, eds., *Comparative Legal Studies: Traditions and Translations* (Cambridge: Cambridge University Press, 2003) 467.

² Aline Grenon and Louise Bélanger-Hardy, eds., *Elements of Quebec Civil Law: A Comparison with the Common Law of Canada* (Toronto: Thomson Canada Limited, 2008) at 1 and 22 [Grenon and Bélanger-Hardy, *Elements*].

³ The French language volume, *Éléments de common law canadienne : comparaison avec le droit civil québécois*, was reviewed by Professor Adrian Popovici in (2009) 88 Can. Bar Rev. 189. This review is restricted in scope to a discussion of the English language volume on civil law in Quebec.

this text fills an important gap in the existing Canadian scholarship and is indeed the only current work of this magnitude on the subject.⁴ I share Professor Popovici's sentiment that this is a major, ambitious work that is more than useful – it is necessary.⁵ In fact, I would suggest that the preliminary chapter, which is the same in both texts and discusses the current state of comparative law in Canada, should be mandatory reading for all first year law students across Canada.

In terms of their content and structure, in addition to excellent introductory material both the French and English volumes include chapters on property, trusts, contracts, civil liability and private international law. Each chapter, except the shorter preliminary chapter, is approximately seventy-five pages in length. All of the chapter authors demonstrate an amazing facility with common law concepts. The chapters are excellent summaries of the key points of Quebec law, replete with comparisons to familiar common law concepts.

After the preliminary chapter on comparative law in Canada in the twenty-first century, the text provides an overarching introduction to Quebec civil law in a chapter prepared by Professor Sylvio Normand of the Université Laval. The chapter provides a brief overview of the historical development of Quebec's civil law and also introduces some key civil law concepts. The author usefully identifies twenty articles from the *Civil Code of Quebec* that are said to have "a structural effect"⁶ and outlines several of the Code's major themes.

The second chapter, prepared by Professor François Brochu of the Université Laval, focuses on the law of property. As with the first chapter, it begins with a historical overview of the development of the law, then proceeds with a discussion of fundamental civil law property concepts, in some cases delving into significant detail regarding various aspects of Quebec's complex property laws.

The third chapter, written by Professor Jacques Beaulne of the University of Ottawa, is dedicated to the law of trusts. While it too begins with the history of trust law in Quebec, the focus of the article

⁴ Prior works of a similar nature include John E.C. Brierley and Roderick A. Macdonald, eds., *Quebec Civil Law: An Introduction to Quebec Private Law* (Toronto: Emond Montgomery, 1993); and Aline Grenon and Louise Bélanger-Hardy, eds., *Éléments de common law et aperçu comparatif du droit civil québécois* (Scarborough: Carswell, 1997). However, neither of these older works addresses both the new *Civil Code of Quebec* (in force on January 1, 1994) and the enactment of ss. 8.1 and 8.2 of the federal *Interpretation Act*, R.S.C. 1985, c. I-21 on June 1, 2001.

⁵ Popovici, *supra* note 3 at 189.

⁶ Grenon and Bélanger-Hardy, *Elements*, *supra* note 2 at 61.

quickly shifts to the key underlying legal concepts and the classification and administration of trusts in Quebec today. The chapter also addresses the potentially thorny issues of modification, duration and termination of trusts. The author provides useful tables that set out, at a glance, the types of trusts available in Quebec and their modes of administration.

In chapter four, Professor Michelle Cumyn of the Université Laval provides an overview of the law of contracts in Quebec. While the opening of the chapter overlaps slightly with Professor Normand's chapter on the history of civil law in Quebec, it is not unduly repetitive. The organization of the chapter is reminiscent of the structured approach taken by the civil law to the topic of contracts. The author moves quickly and logically through the complex and highly nuanced civil law of contracts, providing the reader with a flavour of the law in this area in Quebec.

The chapter on civil liability is divided into two parts. The first part, which introduces the topic, was written by Professor Nathalie Vézina of the Université de Sherbrooke. The second part, which focuses on injury, causation and means of exoneration, was prepared by Professor Patrice Deslauriers of the Université de Montréal. The figure on page 336 goes a long way towards explaining graphically to the common lawyer how Quebec's law of contract and law of civil liability are intertwined. The authors helpfully go out of their way to explain to common lawyers, who are used to the topics of torts and contracts occupying almost entirely separate spheres, why and how they are related within the Quebec civil law regime.

The final chapter, on private international law, was written by Professor Gérald Goldstein of the Université de Montréal and may be the most practically relevant to Canadian common lawyers, as it tackles the vexing issues of conflicts of laws, choice of law rules and the effect of foreign judgments in Quebec. It also addresses a number of special topics, including the validity and scope of forum selection clauses and consumer contracts in Quebec, along with other matters relating to extra-contractual obligations and civil liability.

This book is certainly not intended to act as a quick reference guide. It is more properly viewed as a helpful starting point for the common lawyer intending to learn more about civil law in Quebec. Each chapter provides an in-depth overview of these diverse areas of law. However, headings and subheadings are used liberally to allow readers to focus on topics of interest and each chapter concludes with a

selective bibliography, pointing readers to further research sources. All of the chapters feature thorough references to case law, legislation and commentary, both recent and historical. The text also includes tables of cases and statutes and a detailed index.

Some of the chapters seem a bit slow-going, but this likely depends on each reader's area of interest. While all of the authors have their own unique style, they are all obviously well acquainted with their subjects. They display an astounding ability to summarize complex legal concepts within relatively short chapters, providing an overview of the structure and key concepts of their subjects, but at the same time providing glimpses of the nuances and complexities lurking beneath the surface. Some authors go to great lengths to underscore the uniqueness of Quebec law and its differences from the common law operating in the rest of Canada. While at times overdone, this emphasis does help to remind common law readers not to assume that civil law concepts which sound familiar necessarily originate from or have the same features as corresponding common law notions.

The main limitation of this text is its focus on certain elements of Quebec private law. It is not, nor does it profess to be, a comprehensive review of all aspects of Quebec law. It is clearly focused on the *Civil Code* and does not address to any great extent public law or other areas governed by special statutes. The editors chose to focus on the law of property, trusts, contracts, civil liability and private international law because "they have been less affected by the proliferation of statute law and, as such, they constitute fertile ground for comparative law analysis."⁷

I agree with this text's editors that "comparative law will become increasingly important in Canada in the years to come."⁸ As they explain:

In particular, we hope that the two books will foster greater dialogue between the civil law of Quebec and the common law of Canada. An enhanced knowledge of other traditions will make it possible for legal professionals to begin or to pursue a critical examination of certain elements of their own traditions, to identify strengths and weaknesses, and perhaps change certain components in order to remedy problems that emerge from that examination. We believe that this is the direction that Canadian comparative law will take in the 21st century.⁹

⁷ *Ibid.* at 6.

⁸ *Ibid.* at 10.

⁹ *Ibid.* at 23.

There can be no doubt that this two volume set provides an informative and invaluable roadmap for progressive legal professionals seeking to discover and explore what makes Canada such an extraordinary place.