

Book Review  
*Compte rendu*

*Wounded Feelings: Litigating Emotions in Quebec, 1870–1950.*

By Eric H Reiter

Toronto: Osgoode Society for Canadian Legal History/University of Toronto Press, 2019

Reviewed by: Thomas McMorrow\*

Early morning on Remembrance Day, 1987, Montreal police responded to a call from a cab driver that his passenger had refused to pay the fare. The passenger was a nineteen-year-old Black man named Anthony Griffin. After discovering that Griffin was under an outstanding warrant for break and enter, officers Campbell and Gosset arrested him. Once the cruiser door opened at the police station, Griffin fled. Here's how the Supreme Court of Canada in *Augustus v Gosset* recounted what happened next:

Gosset began chasing him. At the same time, he drew his revolver, and ordered Anthony to stop running, shouting for the first time, “Stop”. Anthony immediately stopped and turned to face the respondent Gosset, shifting his weight from foot to foot; he did not stand perfectly still. [Gosset] shouted “Stop” a second time and then, aiming his revolver at Anthony, shouted “Stop or I’ll shoot”. At that instant, a gunshot hit Anthony in the head. The victim was taken to the Jewish General Hospital, where he never regained consciousness, and died at 11:45 a.m. the same day.<sup>1</sup>

The question before the Court was whether Anthony Griffin’s mother could obtain compensatory damages for *solatium doloris*—“injury to feelings caused by the death of a loved one.”<sup>2</sup> Was Ms. Augustus—who had lost her only son in this senseless, violent fashion—entitled to moral damages for her grief under Quebec civil law? Reversing century-old precedent, the Court unanimously answered, “yes.”<sup>3</sup>

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<sup>1</sup> *Augustus v Gosset*, [1996] 3 SCR 268 at 277, 138 DLR (4th) 617 [Gosset] (Gosset was twice tried for manslaughter; both times he was acquitted. He maintained the gun went off “accidentally”. Although he was terminated from the police force—after word got out about the 1982 police settlement with the Quebec Human Rights Commission in relation to Gosset’s beating of a Black motorist while on duty—he was subsequently reinstated by an arbitrator). See Isa Van Dusen, “[Charges of racism](#)” (30 November 1987), online: *Macleans* <archive.macleans.ca/article/1987/11/30/charges-of-racism>.

<sup>2</sup> *Gosset*, *supra* note 1 at 282, citing the Court of Appeal of Quebec’s ruling.

<sup>3</sup> *Ibid.* The SCC overturned its ruling in *Canadian Pacific Railway Co v Robinson* (1887), 14 SCR 105, 1887 CanLII 45; *Robinson v Canadian Pacific Railway* (1891), 19 SCR 292, [1892] AC 491 (PC).

An award of civil damages for one's grief and distress, is little solace to a mother whose son has been shot dead.<sup>4</sup> And yet, even this thin shred of acknowledgement for the wrong she suffered may have remained out of reach. Framing damages in material terms, the common law has long closed the door to compensation for emotional harm. In contrast, Quebec civil law has been more receptive. Late 19th Century precedents established by the Supreme Court of Canada and the Judicial Committee of the Privy Council applied considerable pressure on the Quebec civil law system's *ouverture d'esprit* in this regard.<sup>5</sup> The way social identities, systemic inequalities, judicial sensibilities, and raw human emotion intersect in the course of applying private law doctrine is not only on display in *Augustus v Gosset*; it is the subject matter of Eric Reiter's thoughtful, engaging study, *Wounded Feelings: Litigating Emotions in Quebec, 1870–1950*.

*Augustus v Gosset* is but a footnote in the work—having been decided nearly fifty years after the period Reiter examines. The book sheds light, though, on how the legal bar to compensation for non-economic losses finally struck down in that decision never fully aligned with social expectations or litigation practices in Quebec. Reiter exposes the doctrinal significance of cases involving claims to emotional injury, while communicating the larger context in which such decisions were taken. He invites the reader to attend carefully to how a given court judgment never

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<sup>4</sup> See Adelle Blackett, "Follow the Drinking Gourd: Our Road to Teaching Critical Race Theory and Slavery and the Law" (2017) 62:4 McGill LJ 1251 at 1254–1255 (recalling the "mass community protest of systemic, anti-Black racism" following Griffin's killing). See also John F Burns, "[Montreal Journal: A City's Blacks, No Longer Merely Les Invisibles](#)" (11 December 1987), online: *The New York Times* <[www.nytimes.com/1987/12/11/world/montreal-journal-a-city-s-blacks-no-longer-merely-les-invisibles.html](http://www.nytimes.com/1987/12/11/world/montreal-journal-a-city-s-blacks-no-longer-merely-les-invisibles.html)> (chronicling how "among blacks, the incident was seen as the culmination of a pattern of disregard among the authorities going back many years ... involv[ing] the police [but also] charges of discrimination in housing, in public and private employment and in schools"); Antoni Nerestant, Dionne Codrington & Cassandra Leader, "[A 'senseless' death, but have things changed? Remembering police shooting victim Anthony Griffin](#)" (9 November 2017), online: *CBC News* <[www.cbc.ca/news/canada/montreal/anthony-griffin-30-year-anniversary-1.4387950](http://www.cbc.ca/news/canada/montreal/anthony-griffin-30-year-anniversary-1.4387950)> (acknowledging Griffin's shooting death "galvanized Montreal's black community and led to changes in policing" but querying "if much has changed"); Esmeralda MA Thornhill, "So Seldom for Us, So Often against Us: Blacks and Law in Canada" (2008) 38:3 J Black Studies 321 (referencing Griffin's killing and examining Canadian law's role in aiding and abetting racism and racial discrimination); Eric H Reiter, "Chapter 7: Indignation, Anger, Fear" in *Wounded Feelings: Litigating Emotions in Quebec, 1870-1950* (Toronto: Osgoode Society for Canadian Legal History/ University of Toronto Press, 2019) 259 (showing the refusal of appellate courts in Quebec and the Supreme Court of Canada to do anything but reinforce racial discrimination in services and contracts, while blaming Black plaintiffs for courting their own mistreatment and trumpeting freedom of commerce).

<sup>5</sup> *Ibid.*

tells the whole human story. Meanwhile, his adept analysis traces how the narrative devices deployed in Quebec's civil litigation during 1870–1950 reconstructed conflict for formal dispute processing, all the while reflecting underpinning values of the legal system and its proponents.

The tryptic of vignettes Reiter presents makes this a colourful, immersive read. Jilted fiancées, snobby in-laws, difficult husbands, intrepid activists, scholarly judges, imperious solicitors—the cast of characters is rich and varied. The scenes are evocative and nimbly sketched—whether it's queuing couples baking in the summer sun or an indignant passenger inveighing haughtily against a train conductor who is equally nonplussed. Tracing emotions from shame and mortification to grief and betrayal—from dishonour and bodily intrusion to anger and fear—Reiter reveals the ways in which expressions of feeling were deeply embroidered into legal arguments, and strongly textured by the fabric of social life.

To borrow a phrase from mediation theorists Folger & Bush, Reiter's balanced treatment exposes how “there are facts in the feelings.”<sup>6</sup> Conversely, he shows how the “feelings in the facts” could bear decisive weight in judicial decisions. Norms of propriety as much as rules of law—refracted through the prism of class, gender and race—inflect the reasoning of judges, the formulation of litigation strategies and the testimony of witnesses. Reiter unpacks the dense contents of legal doctrine (*e.g. action d'injures, biens*), displaying both a feel for their weight and sense of their value. He holds these legal concepts and jurisprudential developments up to the light of historical analysis in a manner that is at once sensitive and unflinching. The effect is a dynamic, interactive rendering from the post-Confederation/ pre-Quiet Revolution archive.

Reiter's thematic inquiry into Quebec civil law's treatment of emotion raises tantalizing questions about how the law has changed since, and what the causes and ramifications of those changes may be. His attention to the delicate, even abstruse distinctions of private law is matched by an awareness of how specific legal outcomes can hang on grand beliefs (as well as petty assumptions) about what (or who) the law ought to serve. This ably researched, eminently readable work of legal history captures with care and subtlety how law is not totally insensate to the cries of the human heart, but time and again, for a host of reasons, demonstrates selective hearing. Reading this kind of scholarship, one cannot help but think about whose expressions of wounded feelings—in law or life—we ignore, discount, or rationalize today.

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<sup>6</sup> Joseph Folger & Robert Bush, “Transformative Mediation and Third-Party Intervention: Ten Hallmarks of a Transformative Approach to Practice” (1996) 13:4 *Mediation Q* 263 at 271.