

Notes and Comments

From Chancellor Day to Today: McGill and the 130 Years of the Québec Civil Code

By Robert F. Clarke

Law Librarian

In 1996 the McGill Law Library celebrated the 130th anniversary of the enactment of the first Québec Civil Code. The Faculty of Law has a long and honourable tradition of involvement with the development and revision of this unique Code. An exhibition of works from the collections of the McGill Law Library was held in Chancellor Day Hall from September 20 to November 3, 1996. The documents in this exhibition illustrated the *provenance* of the development of the Code. The article below was written in connection with the exhibition.

A Civil Versus Common Law Tradition

The modern Québec Civil Code traces its origins to the *Coutume de Paris*. The civil law tradition, exemplified by the *Code Napoléon* and perfected in the French *Code civil (1804)*, proscribes and codifies the relationship in law between persons and property. The Civil Code is enacted as a statute, whereas the Common Law tradition, practised in all provinces of Canada except Québec, relies on the interpretation of **prior judicial decisions, or precedent, to determine legal boundaries.** The Common Law is not a code and thus is not defined by statute.

The **unique quality of the duality of the Canadian legal system has gained the admiration of many over the years. Sir Wilfrid Laurier, a McGill law graduate who would go on to become Prime Minister of Canada and one of the nation's greatest statesmen, expressed his view to the McGill University convocation in 1864:**

Two different legislations govern this country: French legislation and English legislation. Each of these legislations are not confined to the race to which they are intended but rather each rules simultaneously the two races, and, a fact worthy of note, this introduction in the same country of two systems of legislation entirely different has been done without violence or usurpation but simply by means of law and justice.

(From: **Young, Brian.** The Politics of Codification: the Lower Canadian Civil Code of 1866. Montreal: McGill-Queen's University Press, 1994. p. 112)

Charles Dewey Day: Principal, Chancellor and Codifier

By the mid-19th century, it had become apparent that the application of seigneurial law was no longer viable in a society which was becoming increasingly industrialized and complex. In the French-speaking legal community of Québec, a succession of legal theorists **underlined the need for a uniquely Canadian civil code, to be enshrined in law and which would assure the distinctiveness of the French-Canadian legal**

tradition. From the English-speaking legal community came a growing unrest with a legal tradition that was neither written in English nor representative of the main facets of British Common Law.

During the same period, a number of legislative developments occurred which further underlined the inadequacies of the existing civil law regime. Consequently, the legislature of Lower Canada passed an act in 1857 which established a Codification Commission charged with the writing of a civil code for the province. This Commission began to meet in 1859. Among the five Commissioners was Charles Dewey Day, a judge and future Chancellor of McGill University.

Born in Vermont in 1806, Charles Dewey Day came to Lower Canada during the War of 1812 and was admitted to the Bar of Lower Canada in 1827. The Faculty of Law was established in 1853 while Day was Acting Principal of McGill, an appointment he held until 1855. Day's influence in the drafting of the first Civil Code was considerable. Although it is not clear whether his roots in Montreal's anglophone community and his influence on the bench in commercial matters were factors, Day undertook the responsibility for authoring most of the Code's chapters on the law of Obligations (contracts) and commercial transactions. Day's strong personality, and his drafting of Obligations, gave a central role in the Code to contracts and to Day's interpretations and definitions. Articles of Obligations subsequently influenced titles of the Code drafted by other codifiers.

In 1864 – two years before the enactment of the Civil Code – Charles Day was named Chancellor of McGill University, a post he held until 1883. Much of Day's success in drafting the major portions of the code has been attributed to his interactions with McGill colleagues during the Commission period.

The Code, officially titled the *Civil Code of Lower Canada* (C.C.L.C.), was ultimately brought into being by an act of the Legislature of the Province of Canada in 1865 and came into effect in 1866. The C.C.L.C. had originally been intended by some as a timeless document that would rarely need to be changed, although a number of important and regular amendments were made to it throughout its 125 year history.

McGill and the Revision of the Civil Code

It was not until 1955 that the Québec legislature decided to **systematically revise the Code with a view to putting it more in step with the social, political and economic realities affecting private law relations in Québec.** The **Civil Code Revision Office (CCRO)** was created in that year, with the **Honourable Thi**baudeau Rinfret, former Chief Justice of the Supreme Court of Canada, as its **first Chairman.** In 1966, Professor Paul-André Crépeau of McGill University's Faculty of Law was appointed Chairman. Several other McGill law professors – John E.C. Brierley, Madeleine Cantin Cumyn, Yves Caron and Ethel Groffier, to name only a few – were prominent participants in the activities of the CCRO during the period of its operation. The task before the CCRO was an enormous one: to update the **1866 Code** and to **articulate the basis for reform and revision that a new code might touch upon.** Under the **direction of Crépeau, the Civil Code Revision Office created some 40 committees, each charged with examining a particular portion of Québec's private law with a view to its reform.** By 1977 the CCRO's work was completed in draft. **The Report on the Québec Civil Code (1977–78)** represents the principal manifestation of the work of the **CCRO.**

1991: A Completely New Civil Code for Québec

In spite of the work of Brierley, Crépeau and their colleagues, the Québec **government** was slow to **move on** the recommendations of the CCRO as set out in its final report. During **the 1980s,** some **additional changes** were brought to **the C.C.L.C.,** for example in the area of family law. The **Québec National Assembly** passed a series of laws **which updated the Civil Code** but did not completely revise it as proposed **by the CCRO.**

Notes and Comments

Finally, commencing in 1987, the Québec National Assembly passed a series of implementation laws to bring into effect a new civil code, to be called the *Civil Code of Québec* (C.C.Q.). A 1997 Act of the National Assembly set the final stage for the implementation of the new Code.

Most of the provisions of the new Code had come into force by January 1, 1994. The 3,168 articles of the C.C.Q. bear some resemblance to the original *Civil Code of Lower Canada* but incorporate a significantly different interpretation of private law.

Further information about McGill University and its involvement with the development of the Civil Code of Québec may be obtained by contacting the Law Library at (514) 398-4715, extension 1556.

Information about the Archives of the Civil Code Revision Office may be obtained via the World Wide Web at URL: <http://www.library.mcgill.ca/ccro/>

A Frank Scott letter from 1937

By A.J. Hobbins

Associate Director, Administration, Libraries

John Peters Humphrey (1905–1995), author of the first draft of the Universal Declaration of Human Rights, and F.R. Scott (1899–1985), famed constitutional lawyer and poet, became friends when they met as undergraduates at McGill University in 1926, and they later spent many years together as colleagues in the McGill Faculty of Law. Humphrey, two years behind Scott in law school and six years younger, was very much influenced by Scott's ideas. Humphrey returned to Montreal in 1930 after studying in France for a year. He observed the misery of the Great Depression first hand and immediately recognized the need for a social safety net. He became a socialist and a member of the League for Social Reconstruction, an organization co-founded by Scott. Humphrey practiced law in Montreal for a few years before McGill's Dean of Law, Percy Corbett (1892–1983), invited him to join the Faculty to teach Corbett's course in Roman law and eventually that in international law. At this time the only other full-time members of the faculty were Scott and (Charles) Stuart Le Mesurier (b. 1888). Humphrey accepted the position, which was held for a year whilst he studied Roman law in Paris on a fellowship from the Carnegie Endowment for World Peace.

The year 1936/37 was a dramatic one on the European stage. In Hitler's Germany the Olympic Games became a propaganda event, while thousands of German citizens – principally alleged communists, Jews and homosexuals – were being placed in concentration camps. Mussolini's Italy was gearing up for the conquest of its African empire. In Spain the civil war, a clash in extreme ideologies, was beginning in earnest. In the Soviet Union Stalin had already begun his great purges, while from abroad the exiled Trotsky vilified him. Humphrey visited Germany and Italy, and observed developments elsewhere with interest. He reported many of his observations in letters to his sister Ruth, and to his colleagues at McGill. One of Frank Scott's replies¹ is given below, followed by some contextual explanation for each paragraph.