

AMERICAN COLLEGE OF TRIAL LAWYERS
2008 ANNUAL MEETING
and Optional Post Tour

NEW CHALLENGES FOR JUDGES AND
LAWYERS

Presentation prepared by
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On behalf the Quebec judiciary and
in my own name, permit me to
extend to all the delegates the
warmest welcome in this
international city. Your
deliberations will certainly be
serious and fruitful, but don't
forget to enjoy yourself. This city
has many good things to offer,

including superb dining at a very moderate price.

This morning, I would like to say a few words about the Canadian and Quebec justice system and also about some of the challenges that are facing both lawyers and judges in the coming years.

Even though, Canada as United States is a federal state, the Canadian justice system is

different from the American system in some important ways.

In the division of powers: in Canada, criminal law is a Federal responsibility and a not provincial one.

Trade and commerce, even though a federal responsibility has been interpreted much more restrictively in Canada than in United States.

In general, the text of the Canadian constitution seems to be more centralized than the American constitution, in fact, we probably have a more decentralized federal system of government.

The separation of powers is less affirmed in Canada than it is in United States, specially as between the executive and the legislative branch. We have a parliamentary democracy similar to the British government rather than

a presidential democracy like France and United States.

But the most important difference appears in the Justice system where the jurisdictions of our courts are modeled on a unitary state rather than a federal state.

The Superior Courts, Court of Appeal in each province and territory the Supreme Court of Canada and the Superior trial court in each province is federally

appointed (by Cabinet) and has jurisdiction over both federal laws and provincial law, while the provincial courts (provincially appointed) have jurisdiction over matters of less importance both in criminal and civil matters.

But all these courts, including the federally appointed ones are created by provincial statutes, and their respective jurisdiction circumscribed by provincial legislation.

In others words, the constitution and organization of both civil and criminal courts fall under the authority of the provinces (Section 92 p. 14) while the appointment and the remuneration of the Superior Court judges is under federal responsibility. This situation is the result of a compromise of our fathers of Confederation in 1867.

But nothing is simple. The Canadian Constitution in another

section (101) gives to the Parliament of Canada the authority to create a General Court of Appeal for the country and Courts for the better administration of the Laws of Canada.

Under this power, the Parliament has created this general Court of Appeal, i.e. The Supreme Court of Canada and four courts with a specific jurisdiction i.e. the Federal Court of Appeal, the Federal Court which is court of first

instance, the Canadian Tax Court and the Court of Appeal of Court Martial.

The other aspect which has to be mentioned is the bilingual character of the Federal Courts, the courts of the province of New Brunswick and the Quebec courts. As to the other courts, the degree of bilingualism may vary from one province to another.

In Quebec, the proceedings are in French or English including the oral pleadings and the evidence adduced before the courts.

More over, in Quebec, we have a bijuridical system of law, the private law being codified in the Quebec civil Code similar to the French «Code des français» otherwise known as the Napoleonic Code. The public law including the criminal law, marriage and divorce is derived from the English common

law. So, in a way, we have the best of two worlds having access to two of the most important legal traditions of the world.

With the result that we practice and apply before the courts civil law in French and English and common law in English and in French.

The University of Moncton in New Brunswick where most of the Acadians are has published a

number of books on the common law in French.

Our court system, our civil and criminal procedures and our rules of evidence are common law inspired and not similar to the European institutions.

So we have a very hybrid system which is the result of an historical background whereby Quebec was first a French Colony from 1608 to 1760 a British colony from 1760 to

1867, and a sovereign country from 1867 to up to now.

But the world has changed since the establishment of an independent Canada, is changing and will change dramatically in the coming years.

The bilingual, bijuridical Canada is also very multicultural. Canada has attracted approximately 225 000 immigrants per year in the last 40 years and because of the

aging population and the shortage of human resources in many sectors, we will probably have to increase the level of immigration to 350 000 new immigrants per year.

Instead of adopting a «melting pot approach» from 1970 on, we have privileged the «multicultural mosaic approach» and the Canadian society, specially in the large centers has become more and more multiethnic, multilinguistic, and multireligious.

French is becoming some sort of a common language in the region of Montreal while English has the same function in Toronto. A good percentage of the population is using another language at home.

Let me mention four factual elements :

Fifty percent of the Toronto population was not born in Canada;

The figure is 20% for Montreal which is much more homogenous.

More than fifty percent of the population of Greater Vancouver is from Asian origin, mostly Chinese and Indian.

The Montreal police Department is using 54 different languages in its daily operations.

More over, close to one million Canadians are from aboriginal

ancestry, divided in two groups: the Inuit's and the Indians.

The Inuit's now have their own territory to wit Nunavut with its capital Iqualuit. The deliberations of their legislative assembly are conducted in English and Inuktituk.

The Indians are divided into 50 nations regrouped into 654 communities some of which are very poor and need much help.

The interpretation of our Canadian Charter of rights and freedoms faces unprecedented challenges in reconciling conflicting rights, individual rights versus collective rights, freedom of religion versus security of the person.

We thereby see an extension of the role of the courts and judges who now have to decide socio-economic questions involving the determination of common Canadian

values. Social cohesion and peaceful relationship within the community become questions which are raised in legal proceedings before the courts.

At the same time, we live through the globalization of the economy whereby, commercial and financial transactions know no frontiers and boundaries. The law systems which are naturally domestic and national are not

always well adapted to this new environment.

Jurisdictions of domestic courts have to be revised and a more international approach has to be adopted.

If you add to these phenomena the communication revolution whereby the flow of information is becoming instantaneous and planetwide, the law practice in

2007 is very different from the one I experienced in 1962.

There are many consequences to these new trends in the law practice and the resolutions of conflicts including some affecting the ways and the means by which courts and other institutions will be called to resolve conflicts. We don't have time this morning to review all those consequences except one which is in direct relation to your conference.

And this is the need for a much greater level of exchange and cooperation between lawyers and judges of different countries in America but on other continents, including Europe, Asia and Africa.

I think we have a message to bring to the world, a message of tolerance, flexibility, integration, accommodation, while maintaining our fundamental values to wit the rule of law, the independence of the judiciary, the impartiality of

judges, the respect of the dignity of the person and the equality of individuals before the law.

Thank you for your attention.

Merci de votre attention.