

LAW AND REGULATORY REFORM IN QUEBEC

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In Canada, legislative power is shared between the federal government and the provinces. In Quebec, the National Assembly and the Lieutenant-Governor exercise this power. Passage of a bill involves the following stages: 1) introduction in the National Assembly; 2) adoption in principle; 3) detailed study in committee; 4) consideration of the committee's report; 5) adoption; 6) assent by the Lieutenant-Governor. As a rule, the law becomes effective either on the day the bill is assented to or on a date established by proclamation published in the *Quebec Official Gazette* (Part 2). In addition, the law very often provides for regulations by the government, a minister or a regulatory agency to complement its content. These regulations usually become effective on the day of their publication in the *Official Gazette*.

The Proliferation of Legislative Texts

An examination of legislation and regulation in Quebec reveals that governments have done more and more legislating in recent years. Taking into account bills of a public nature, private bills, regulations and municipal by-laws, the number of legislative provisions currently in force and for which "ignorance is no excuse" can easily be assessed at over half a million. This should not be surprising in view of the fact that a single law may contain hundreds of articles or sections (e.g. *Civil Code of Lower Canada*: 2,715 articles; *Code of Civil Procedure*: 1,052 articles; *Municipal Code*: 1,134 sections; *Taxation Act*: 1,227 sections). From one reform to the next the provisions multiply and the texts become more complex (e.g. the *Coroners Act*,¹ has 46 sections, and will be replaced by *An Act respecting the determination of the causes and circumstances of death*,² which contains 213 sections).

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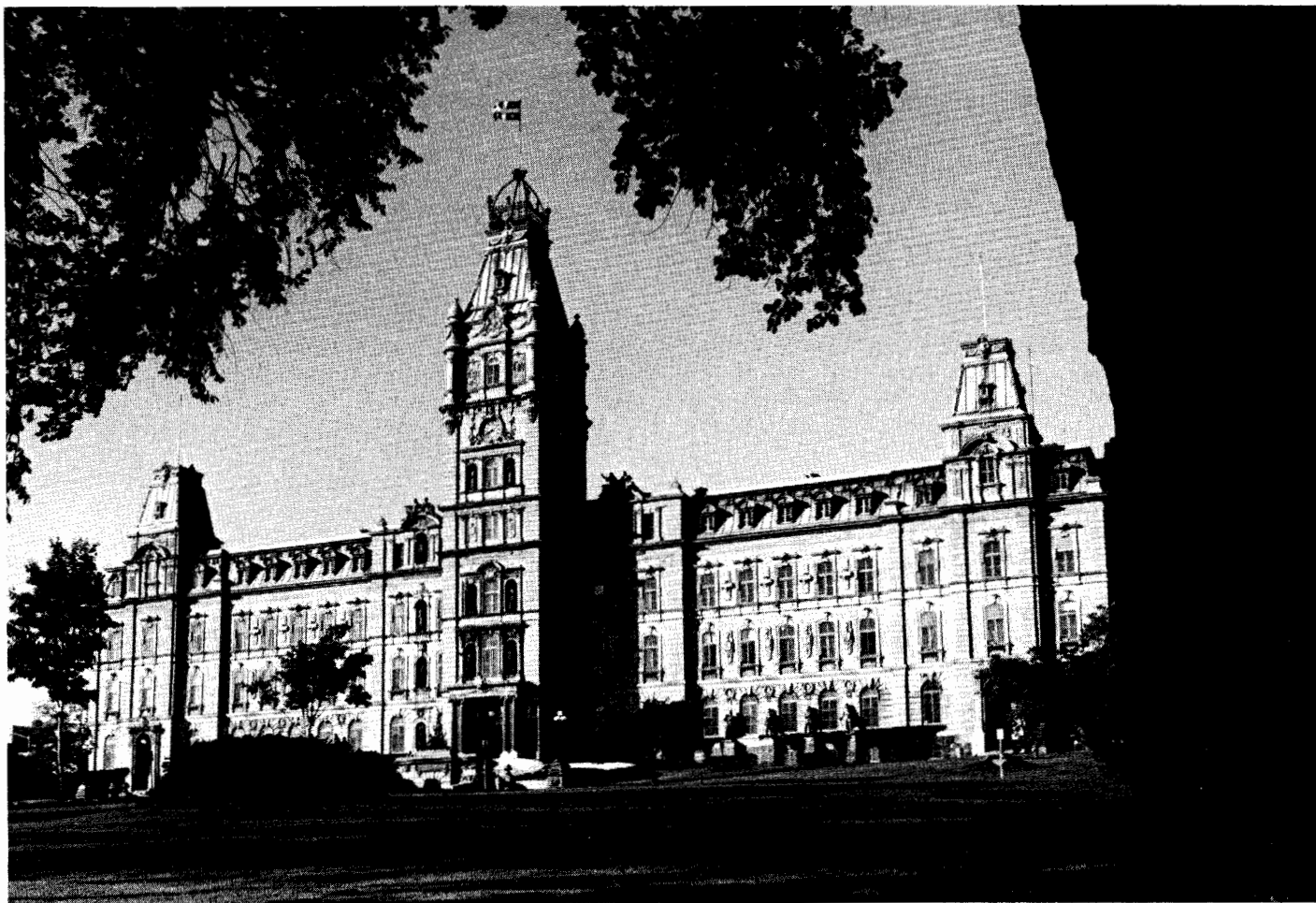
As of January 1, 1984, the French version of the *Revised Statutes of Québec* (loose-leaf edition) included 451 general laws in 16 volumes. If we look at the annual compendium of Quebec laws, it will be noted that between 1977 and 1983, the Quebec government adopted 8,996 pages of new legislative texts. A number of these texts amended existing laws. By way of example, between January 1, 1977, and July 1, 1984, the *Cities and Towns Act* was amended by 37 different laws, the *Taxation Act* by 31 laws, the *Civil Code of Lower Canada* by 36 laws, *An Act respecting the Civil Service Superannuation Plan* by 25 laws. A single amending law can add or amend tens of sections. The numbering of a constantly amended law often is no longer an indication of the number of sections it contains. For example, section 336 of the *Charter of the City of Québec* was again amended on June 12, 1984, and a 212th paragraph was added to it! Such a flood of legislation is not to be found in Ontario. A study of legislative amendments made in that province during the period 1981-1983 indicated that the *Municipal Act* was the law most frequently amended (eight times). It goes without saying, of course, that the number of amendments made to a piece of legislation is no measure of its worth.

Many legislative provisions are not only unknown but obsolete, unenforceable or unenforced. The following excerpts are taken from Quebec laws still in force, and indicate that a good number of provisions should disappear from our compendia of laws unless their retention can be justified.

An Act respecting the bread trade, R.S.Q., c. C-32 s. 5. It is prohibited to give bread for publicity purposes.

Education Act, R.S.Q., c. I-14 s. 472. Drawing and hygiene shall be taught in all schools, and agriculture in all schools in rural municipalities.

Cities and Towns Act, R.S.Q., c. C-19 s. 255. ...no person who has not had a stated residence in the ward where the polling is held for at least six months before the polling day shall come during any part of the day upon which the poll



is to remain open into such ward armed with offensive weapons of any kind, such as firearms, swords, staves, bludgeons or the like.

Municipal Code of Québec, R.S.Q., c. C-27.1 s. 822. If the nature of the work requires it, the municipal inspector may call upon each of such persons to bring or to cause to be brought a certain number of horses or oxen, with proper harness, carts or ploughs, if he has them.

Public Buildings Safety Act, R.S.Q., c. S-3 s. 21. The stage of every theatre shall be separated from the auditorium by a brick wall at least sixteen inches thick extending the whole height and breadth of the building and two feet above the roof.

Regulations fall not only within the power of the executive, but within that of the many ministries and administrative tribunals, commissions, boards, committees, offices, bureaus, corporations, and services that administer Quebec. A few statistics will give us a better understanding of the extent of regulatory provisions adopted by governments in recent years.

The number of regulations in force rose from 952 in 1972 to 1,881 (a total of 118,242 sections) by December 1981, more than double the number in Ontario. The Quebec government adopts from 800 to 900 new statutory instruments each year. Raoul P. Barbe, a former member of the *Commission de refonde des lois et des règlements du Québec*, wrote recently: "An analysis of the annual

production of statutory instruments will reveal a significant increase in the number of pages of regulations during the years 1976, 1977, 1978 and 1979."³ By examining the 5,043 pages of the *Quebec Official Gazette (Part 2)* for 1983 we note that the production rate of regulatory provisions is not about to slow down. A good many of the provisions are useless, unenforceable or state the obvious. Is it really necessary to require that "automobiles belonging to municipal police forces must have black walled tires"⁴? Do track bettors know that, in order to participate in a race, "a horse shall breathe without the help of a tube and not be completely blind"⁵? Do those who drink milk know that "all persons working in a dairy, milk depot or pasteurization plant shall wear clean clothes and always have clean hands. It is forbidden to spit, smoke or chew tobacco or take snuff in such an establishment"⁶? Is it possible for any owner not to know that "any dwelling must be equipped with a toilet"⁷? Do bathers know that it is prohibited to spit, urinate or blow one's nose in a public wading or swimming pool?⁸ Is it really necessary to prohibit the sale, as a food, of "any part of an animal the flesh of which has become putrid or emits a rancid or repellant odour"⁹?

Has the Quebec legislator reached the stage of wanting to make provision for and regulate all activities in all their manifestations? Is the primary objective of the law to establish a universe of restrictions around the ordinary citizen? Is the government capable of implementing and enforcing all of the legisla-

tion and regulations on the books? Will the adoption of a particular piece of legislation or regulation not often result in social costs that far exceed the desired benefits? These are questions that any democratic society should be asking itself.

The Consequences of Legislative Inflation

The adoption of a great number of laws and regulations by government has several consequences. First, it becomes increasingly difficult for the ordinary citizen to be aware of his or her rights and obligations. Even legal experts have trouble finding their way through the tangle of legislation. They must spend more time and money doing research and, consequently, the cost of their legal services goes up. It then becomes almost impossible for a large portion of the population, mainly the lower middle class which is ineligible for legal aid, to obtain recognition of its rights. Finally, the many restrictions enacted by the government constitute not only an infringement of property rights, but also a millstone for businesses doing battle with an increasingly ubiquitous administration.

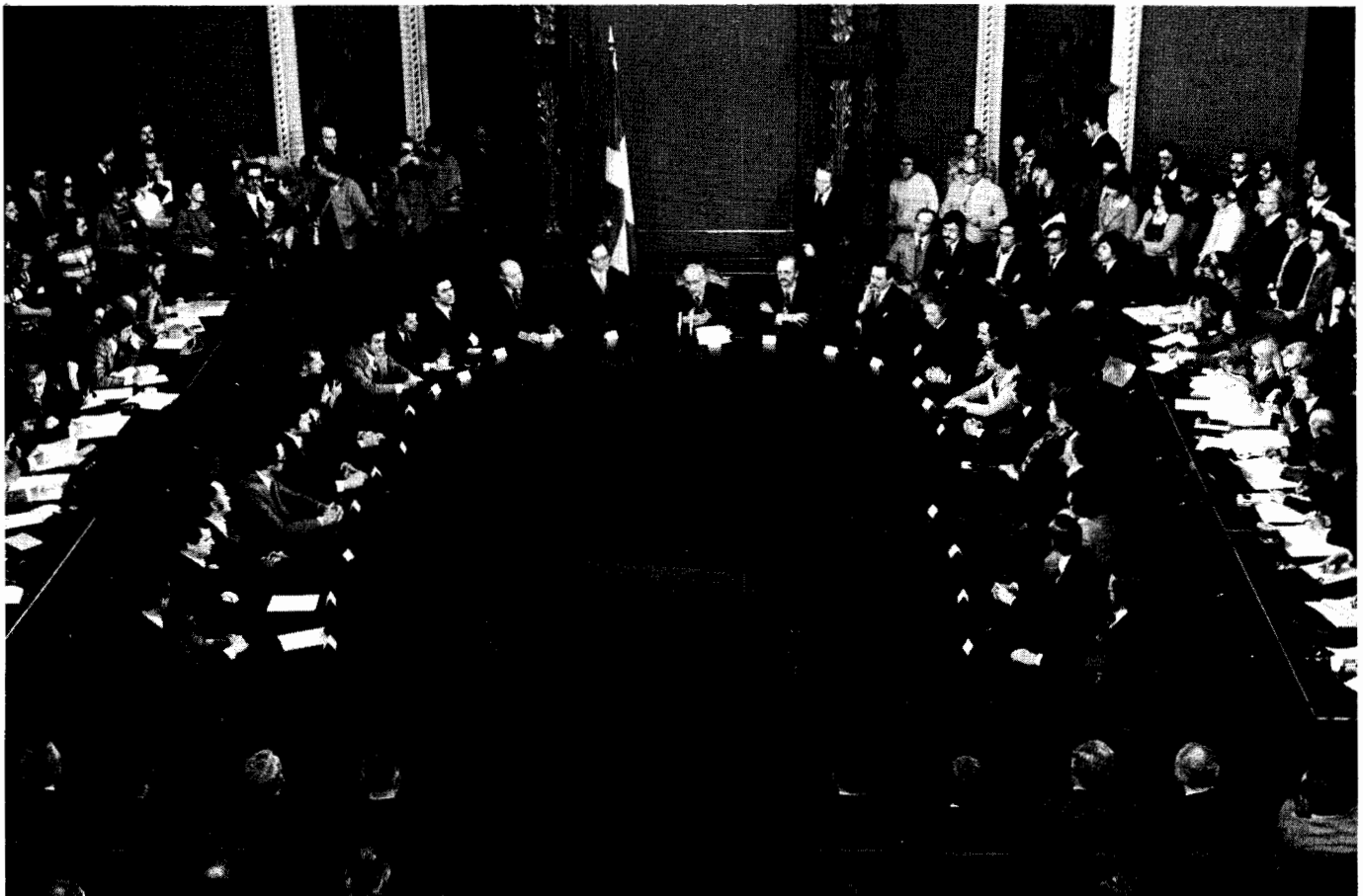
Before attempting to understand the text of a law, one must first find it, and then find out whether it has been amended and whether all of its provisions are in force. As the text of a law is not usually complete in itself, one must also find its regulations

currently adopted and published in Quebec does not facilitate and their amendments. Such a search involves consultation of several documents and may become quite lengthy, difficult and costly. In fact, the manner in which laws and regulations are access to nor awareness of them.

Let us point out, first, that the proliferation of laws and regulations is accompanied by a certain legislative inconsistency. A few examples will illustrate this. On December 22, 1978, *An Act to amend the Environment Quality Act* (S.Q. 1978, c. 64) and *An Act to again amend the Environment Quality Act* (S.Q. 1978, c. 94) were enacted. They contradictorily amended section 106 of the *Environment Quality Act*. In December 1981, the Minister of Justice sponsored *An Act to amend various legislative provisions* which, among other things, added a paragraph that already existed in section 110 of the *Environment Quality Act*. On December 19, 1981, in amending the Charter of the City of Charlesbourg, the government took the opportunity to repeal section 262 of the *Act respecting land use planning and development*. It nevertheless amended this repealed section on February 24, 1982. This error was corrected December 18, 1982, effective retroactively to December 19, 1981 (*An Act to amend various legislation respecting municipalities*, S.Q. 1982, c. 63, s. 233, 318).

When the government, despite the resources at its disposal, is unaware of the laws it enacts, it is hardly surprising that even the most well-informed legal expert can have great difficulty

The Cabinet has become the effective law-making body. (*Direction des communications, Québec*)



in finding his way through this legislative maze. One can also more easily understand how some judgments can be handed down which are based on repealed legislative provisions, as in the case *Tremblay v. Themens*¹⁰ where the Provincial Court judge handed down a decision based on a repealed regulation of the *Consumer Protection Act*!

In view of the problems described above, it is becoming more and more difficult to know with certainty the state of the law. This can only increase the risk of professional error as well as the cost of legal research by those subject to court jurisdiction. It might be mentioned in this regard that very often the titles of bills bear no relation to their content (e.g. *An Act to amend various legislative provisions, An Act to amend various fiscal legislation*). It may even happen that the same title is used twice in the same year (e.g. *An Act to amend various legislation respecting municipalities*, S.Q. 1982, c. 2 and S.Q. 1982, c. 63). The explanatory notes that accompany these bills, when not simply misleading, explain nothing. Every bill amends, replaces or very often repeals a variety of laws. Some sections are amended only to be repealed a few months later. It may even happen that a law amends itself (e.g. s. 339 of the *Securities Act*, S.Q. 1982, c. 48 replaces s. 3 of this act). It has even been said that regulations which in principle are subordinate to laws, take priority over the act in respect of which they have been adopted (e.g. s. 412 (19.1) of the *Cities and Towns Act*, R.S.Q., c. C-19). In such a context, is it any surprise that legislative provisions are adopted which are useless, improvised or redundant?

The legal expert who manages to find the up-to-date text of a law is usually not at the end of his troubles. He must still find out the date on which the text takes effect and until when. This is another source of legal insecurity. The legal expert has no choice but to go through the *Quebec Official Gazette* to find the proclamations which state when the various legislative provisions take effect. Moreover, some sections of laws or regulations become effective even before their text is available. One commentator has pointed out "that in the first eight months of 1979, the delay between the day of the coming into force and that of receipt of the published text was six weeks in the case of at least twenty-six important bills."¹¹ Finally, some legislative provisions do not come into effect because there is no proclamation or enforcing regulation and one might then question the need to pass them quickly before a parliamentary recess.

The cost of purchasing statutes and regulations has become prohibitive.¹² The Quebec legal expert wishing to obtain the French version only of the 1977 *Revised Statutes of Quebec*, the *Statutes of Quebec* from 1977 to 1983, the loose-leaf *Revised Statutes of Quebec* (updated to January 1, 1984, with a 1984 subscription), the *Revised Regulations of Quebec* (with index) and subscriptions to the *Bills* and the *Quebec Official Gazette* (Parts 1 and 2) must pay, in 1984, the sum of \$2,678. If he wants the English version also of these same texts, the amount doubles. In short, very few people can at present afford Quebec legislation and regulations.

The proliferation of laws and regulations has resulted in an increasingly heavy financial burden not only for legal experts and the average citizen faced with a court action, but also for businesses. It must not be forgotten that enactment of certain laws or regulations (particularly with regard to taxation or labour relations) translates into relatively high costs for our businesses, increases their production costs and reduces their competitiveness on North American markets. The Canadian Manufacturers Association (Quebec Division), in a brief submitted to a committee of the National Assembly looking into control of delegated legislation, said:

There is no doubt that of all the groups in Quebec society affected by these regulations, manufacturers are among those who have had to assume much of the cost, for example, with respect to occupational health and safety, the environment, labour standards, consumer protection, tax laws and even regulations for the marketing of farm products. At the risk of being repetitive, small and medium sized manufacturers have often been the most penalized, having neither the experience nor the personnel required to take on the burden of mastering and interpreting these elaborate regulations and to adapt their businesses to the new requirements....

A first step towards eliminating serious restriction of economic expansion would be, if the government believes it is still essential to continue to regulate as it is doing, to develop accessible, simplified, systematic and well-considered regulations.

Increased regulation is certainly detrimental to the manufacturers established in Quebec and prejudices their competitiveness in relation to other Canadian manufacturers. By way of example, we have only to recall the recent regulations respecting the Charter of the French Language, labour relations, income tax and some draft regulations concerning occupational health and safety.

The phenomenon is all the more evident in Quebec because of the multitude and diversity of agencies that adopt regulations. According to our association, a legal turnabout is called for. In other words, there is a basic need to restructure the administrative regulatory system based on legislation that would determine and affirm the role of Parliament.¹³

It is obvious that small and medium sized businesses are greatly affected by the weight of legislation and regulation. Also, legislative and regulatory authorities should have more concern for the economic drawbacks produced by the new standards they enact.

Finally, when it enacts standards, the government also establishes monitoring and control mechanisms. Those to be affected are asked for certain prior approvals, the submission of drawings and specifications, securities or guarantees, and the obtention of licences, permits or certificates. The paper work that accompanies these administrative requirements very often discourages even the most tenacious citizens. Legislative and regulatory inflation and the multitude of administrative agencies that reign over Quebec can therefore only lead to increased government bureaucratization with all sorts of red tape for the taxpayer.

Control and Reform Mechanisms

We continue to believe that ignorance of the law is no excuse — the law has even made knowledge an obligation — but who, today, can boast of knowing the law, given the proliferation and dispersal of legislative and regulatory provisions. The difficulty of being aware of the law in force is cause for legal insecurity. The citizen feels more overwhelmed than secure in the face of the abundant legislation. While for some, legislation means advancement, others feel they are continually pestered by the legislator or bothered by the uselessness of the law. Although we cannot each judge the usefulness of a law, the fact remains that many laws are obsolete or conceived in such a way that they cannot be implemented and often appear ridiculous. As Montesquieu and others have argued, useless laws weaken those that are necessary.

Since legislatures abolish far less than they adopt, a thorough housecleaning is called for. Mechanisms for deregulation must be established. Useless provisions that prevent us from discovering the applicable text and from fully benefiting from certain rights should be removed from our compendia of laws and regulations. A minister could perhaps be entrusted with, among other things, the task of trimming obsolete, unenforceable, unenforced or useless laws and regulations. Provision for standards of behaviour that any reasonable person will normally follow should be avoided and new techniques for the drafting of legislation should be considered, providing, for example, for a maximum duration of certain laws. The former *Act Respecting the Regulation of Rentals* was to expire May 1, 1953, but was renewed each year before being replaced in 1979 by *An Act to establish the Régie du logement*; such yearly re-examination made it possible continuously to adapt this law to the socio-economic context.

Also, the legislative process must be reassessed. Greater attention should be paid to bills and draft regulations. Legislative and regulatory activity must be better planned. Legislators must demonstrate greater self-discipline. This would probably reduce the number of those so-called "corrective" laws (acts amending various legislative provisions). Legislation should be adopted as quickly as possible to stipulate the rules governing regulations, their coming into effect and the means of controlling them.

Research and access to laws and regulations should also be made easier by improving the quality of indices, accelerating the process for the updating of laws and regulations, reducing the cost of official publications and making use of modern means of communication and data storage. Data processing can certainly play an important role in this regard. We must be wary of seeing this as the miracle solution to present legislative problems. It is, however, time to consider means of publishing laws and regulations other than those used in the last century, means that would be better suited to the lifestyle of the 20th century. Furthermore, the public must be able to learn of any new legislation and to adjust to it even before the legislation comes into effect. New legislation or regulations should not, as a rule, come into effect before a certain number of days have passed from the time it is assented to or adopted, as is the case in many American states.¹⁴ The government must be able to innovate with respect to publication in order to reach at least those most likely to be affected by the legislation.

The lack of awareness of a law or regulation is not always due to inadequate publicity, but rather to the law's abstruseness. To be known by those to whom it is directed, the law must provide for clear and precise provisions. Otherwise, one can hardly expect the ordinary citizen to understand it. Even the legal expert will benefit from a clear text written in simple terms. It was President Carter who, in 1978, issued a directive requesting that federal regulations be written in language "as simple and clear as possible". Since then, many American states have adopted what might appropriately be referred to as "a plain language laws". This new legislation is aimed at making certain contracts (leases, loans, insurance contracts) more accessible to those subject to them, by requiring that they be drafted "in a clear and coherent manner using words with common and everyday meanings".¹⁵ We find a somewhat similar provision in section 45 of the *Consumer Protection Act*, which stipulates: "a document which constitutes a guarantee must be written clearly. . .". We believe that as a rule similar provisions should apply not only to contracts but

also to legislation in general. The text of a law must be clear and understandable. This is a challenge the legislator must be able to meet.

We note also that little attention has been paid to the reform of the *Civil Code of Lower Canada*, that mainstay of Quebec legislation. This Code, which fully came into effect in 1866, has nevertheless been the subject of extensive reform following the lengthy work of the *Office de révision du Code civil*. The objective of this agency was to give Quebec a new Civil Code which would reflect the social, moral and economic realities of the last part of the twentieth century. Although the agency finished its report on the *Civil Code* in 1977, few of its proposed reforms have as yet been adopted.

Finally, serious consideration should be given to creating a Quebec Law Reform Commission which would have a mandate to study, systematically, all Quebec law and make recommendations for its improvement and modernization. ■

Notes

¹*Revised Statutes of Quebec*, c. 68.

²*Statutes of Quebec* 1983, c. 41.

³*La réglementation*, Montréal, Wilson et Lafleur/Sorej, 1983, p. 249.

⁴*R.R.Q.*, 1981, c. P-13, r. 10 art. 7.

⁵Rules respecting harness racing *R.R.Q.* 1981, c. L-6 r. 5, s. 88.

⁶*R.R.Q.*, 1981, c. P-30, r. 4, s. 36.

⁷*R.R.Q.*, 1981, c. Q-2, r. 15, s. 11.

⁸*R.R.Q.*, 1981, c. Q-2, r. 17, s. 88.

⁹*R.R.Q.*, 1981, c. Q-2, r. 4, s. 5.

¹⁰J.E. 70-224.

¹¹J. L'Heureux, "Du projet de loi no. 39, de la Loi des Douze tables, de la mise en vigueur et de la publication des lois", *Revue du Barreau* 39 (1979), pp. 961, 963.

¹²The French loose-leaf edition of the 1977 *Revised Statutes of Québec* sold for \$285 and consisted of about ten volumes. This same edition, updated to January 1, 1984, consists of sixteen volumes and costs \$990; the cost of a subscription for 1984 is \$295. The bound edition of the *Revised Statutes of Québec* (1977, 11 volumes) costs \$325, whereas the *Revised Statutes of Ontario* (1980, 11 volumes) costs \$200. The price of the 1983 annual volume of the *Statutes of Québec* was \$75 for 1,269 pages, as compared to \$18 for the compendium of Ontario laws (1,026 pages). The French version of the *Revised Regulations of Québec* (1981, 11 volumes) costs \$365, the *Revised Regulations of Ontario* (1980, 10 volumes) \$195, and the *Consolidated Regulations of Canada* (1978, 19 bilingual volumes) \$350.

¹³"Le contrôle parlementaire de la législation déléguée," *Rapport de la Commission d'étude sur le contrôle parlementaire de la législation déléguée*, Appended document, July 1983, p. 157.

¹⁴J.E. Murphy, "The Duty of the Government to Make the Law Known", *Fordham Law Review* 51 (1982), p. 255.

¹⁵B.A. Leete, "Plain Language Legislation: A Comparison of Approaches", 18 *American Business Law Journal* 18 (1980-81), p. 511.