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Out of the Shadows: The Civil Law Tradition in the Department of Justice Canada, 1868–2000

Canada

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**Out of the Shadows:
The Civil Law Tradition
in the Department
of Justice Canada,
1868–2000**

by Mélanie Brunet

Minister of Justice
and Attorney General of Canada



Ministre de la Justice
et Procureure générale du Canada

The Honourable/L'honorable A. Anne McLellan

Ottawa, Canada K1A 0H8

January 2001



Canadian bijuralism is an integral part of our legal heritage. It is one of our country's many assets and one that distinguishes us on the international level. Quebec's system of civil law is helping to define not only Quebec, but also Canada.

I am extremely proud of this publication on the evolution of the civil law in the Department of Justice Canada over the past 130 years. It pays tribute to the many people, both civil law jurists and others, who played a part in this evolution. They have my admiration and respect.

In recent years, the Department has taken concrete steps to ensure recognition of Quebec's system of civil law. The creation in 1993 of the Civil Code Section, whose mandate is to harmonize federal legislation with the civil law of Quebec, was a very important milestone in this evolution. The presence within the Department of an Associate Deputy Minister responsible for civil law, who serves as our principal spokesperson in relations with Quebec's legal community, is an example of this government's commitment to Quebec's system of civil law. These initiatives attest to the ongoing commitment of the Department of Justice to respect and promote Canada's legal duality.

It is also my hope that the contribution of these men and women over the years will serve as an inspiration to all employees of the Department of Justice Canada.

A handwritten signature in black ink, reading "A. Anne McLellan".

A. Anne McLellan

Canada



We all know that the past is the foundation of the future, a popular notion that seems to take on special significance at the dawn of the new millennium and all the symbolism associated with it.

Since its creation in May 1868, the Department of Justice Canada has undergone a multitude of changes, the only constant in all this change being its core mission. As the Department was evolving, other changes, designed to ensure recognition of Canada's two legal systems, were occurring albeit at a slower pace. One concrete expression of this recognition is the place that civil law jurists have occupied, and continue to occupy, in the Department.

The pages that follow will introduce you to the men and women who have contributed to building the place that the civil law now occupies in the Department. We wanted to give a human face to this publication. That is why it focuses on individuals and their contribution to carving out, over time, a place for the civil law of Quebec in the federal Department of Justice.

As a result of the efforts of all the individuals involved either closely or remotely in this process, a reality has emerged that has now become firmly rooted in our Department – the increasingly important place of bijuralism, one of the many assets of our great country. I firmly believe, however, that we are just beginning to discover the many facets and benefits of the interaction of our two legal systems in a bilingual setting.

I hope you will enjoy reading this publication as much as I enjoyed reading the successive manuscripts prepared by Mélanie Brunet, the young historian who has worked with us on the project. I am very proud of the progress made by the Department, even though it is clear that our institution should not rest on its laurels. I know that this history of the civil law in the Department will be of interest to all colleagues. Mutual understanding comes from knowledge and an appreciation of how far we have come and just how far we have to go.

I commend this history to you.

Mario Dion
Associate Deputy Minister
Civil Law and Corporate Management

Acknowledgements

In September 1999, I was given the task of writing the history of civil law at the Department of Justice Canada. At that time, nothing had been done in this area, and I had no idea of the work involved. After many hours of research in the archives and several interviews with witnesses to this history, it became obvious to me that the civil law specialists who have worked at the Department since 1874 share a fascinating past, as the following pages show. Such a study, however modest it may be, would not have been possible without the participation and support of a number of people.

In the first place, I wish to thank the Associate Deputy Minister (Civil Law and Corporate Management), Mario Dion. His great interest in the science of history and his confidence in my abilities have contributed to the success of this project. I also thank the members of the reading committee, Suzanne Poirier, Marie-Claire Wallace and Nicole Marcotte, whose comments and advice have greatly improved the quality of the document. In addition, I wish to express my thanks to the following people: Rebecca Gemmill, Analyst – Record Retirement; Cathy Allard, Internal Communications Advisor and Editor of *Inter Pares*; Michel Vermette, Director, Civil Litigation and Real Property Law (Quebec) Section; Claude Joyal, Annie Côté and Micheline Van Erum, of the Quebec Regional Office; and the staff of the National Archives of Canada, who made it easier for me to access essential sources.

My thanks are also due to all those who so graciously consented to be interviewed. Their contributions have given this history a human face, with all its subtleties and anecdotes. In addition, their enthusiasm for making known the history of the Department's civilians confirmed to me that the memories of these individuals should be preserved in order to enrich the collective memory of their successors. In this respect, I particularly wish to thank Paul Ollivier, Paul Coderre, Alban Garon, Roger Tassé and Jean-Claude Demers, who read the third part of the study to detect any errors of interpretation that might have crept into the text.

On a more personal note, I wish to acknowledge the whole-hearted support of my parents, Rosanne Moreau and Fernand Brunet. I also wish to thank Sara Wallace, Martin Auger and Isabelle Charron for their friendship and for the interest they showed in this project. Finally, I wish to express my most profound gratitude to Yves Pelletier for his unwavering support, both moral and technical.

Mélanie Brunet

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Introduction

For more than 130 years, the Department of Justice has acted as legal advisor to the Canadian government. However, researchers interested in the administration of justice in Canada have barely scratched the surface in telling the history of the legal counsel who advised the Department, and of the legal traditions they represented. This work seeks to lift the veil from the hidden aspects of this history, so that we can begin to understand the lives of the civil law specialists who worked at the Department of Justice since its creation in 1868. Fewer in number than their common law colleagues, these lawyers and notaries who specialize in Quebec civil law share a past when determination was essential, in order to overcome obstacles and take the place they deserved. This study, primarily based on the administrative records of the Department of Justice and on interviews with those who were witnesses to this history, paints a picture of these legal counsel and their civilian tradition, showing when and how the Department became aware of Quebec's special nature as reflected in its legal system.

This history, which is divided into four sections, primarily aims to recount the events that led to the creation of the Civil Law Section and marked its development. To properly situate civil law and its practitioners within the Department of Justice, it is essential to review the origins of this legal system on Canadian soil. The first part of our study thus provides an overview of the colonial period, to highlight the circumstances that contributed to the survival of French civil law in Canada and led to the establishment of the principle of bijuralism.

The second section emphasizes the organization and activities of the Department of Justice from 1868 on, and also introduces the first civil law specialists who practised their profession in the Department. Accompanied by short

biographical notes, these few pages help to bring the ancestors of today's civilians out of the shadows. We will see that they were isolated and few in number, but that civil law matters already accounted for a considerable part of the Department's legal activities. This situation is reflected in the various steps that preceded the creation of a section devoted exclusively to this type of law.

The third part, which is in a way the core of our study, deals with the Civil Law Section established in 1952, and with its development until 1986. We first discuss Guy Favreau and the young lawyers who joined the Department while Favreau was head of the Section. Through their frequent meetings outside work, these civil law specialists managed to create a team that had an atmosphere similar to that of a family. In a largely Anglophone environment dominated by common law, these ties of friendship were a way of escaping from isolation and of making work more pleasant. This part of our study also deals with the profound changes that occurred in the Civil Law Section in the 1960s with the creation of the position of Associate Deputy Minister (Civil Law), the recommendations of the Royal Commission on Government Organization, and the opening of a regional office in Montréal. All these changes resulted in important movements of personnel. During the 1970s, the *Official Languages Act* and the subsequent report of the Commissioner of Official Languages also produced a new willingness to find a more appropriate place for civil law, and for the French language, in the Department of Justice.

Finally, the last part of our study examines the more recent events that affected civil law specialists in the Department. Since 1986, their Sector has participated actively in various initiatives designed to bring the civilians closer together and to promote bijuralism. Here we examine more closely the harmonization of federal legislation with Quebec civil law in order to highlight its significance in administrative and political terms.

On the whole, our study describes the history of an organization to which we can put a human face thanks to the words we have collected from men and women who, through their presence, influenced the development of the Department of Justice. In adding to their collective memory, this study will surely help to develop, among the civil law specialists who are now working in the federal government, a spirit of belonging and identity.

The Beginnings of Civil Law on Canadian Soil: Historical Review (1663-1867)

The promulgation of the *Civil Code of Quebec* in 1994 is one of the most significant events in the history of Quebec and Canadian civil law.*¹ This new version, primarily intended to update a code that had been in force for more than 125 years, shows how civil law has been able to adapt to the needs of Quebec society today. This new legislation has also confirmed the identity-creating function of the civil law tradition, which was introduced into New France more than three centuries previously.

The Custom of Paris (1663)

In 1627, the French government entrusted the *Compagnie des Cent-Associés* with the mission of establishing a French empire in North America. However, the efforts of the *Compagnie* did not produce the desired result, and its charter was withdrawn in 1663. King Louis XIV then took possession of New France, for he thought it necessary to look after its development himself. He introduced the Custom of Paris to New France, giving it what it needed to set up a justice system similar to that of the mother country. Thinking that order was essential to the expansion of the colony, the King established the Sovereign Council at Quebec. This body, which was similar to the parliament in a French province, acted as a court of appeal from courts of first instance, in civil and criminal matters.²

However, the political and legal landscape of New France was altered by the imperialistic designs of Great Britain and France, which brought these two powers into conflict.

* Numerical notes, which provide details about sources, will be found at the end of each chapter; alphabetical notes are used to elaborate on points in the main text and are placed at the foot of the page.

Following the Seven Years' War (1756-1763) and the Conquest, the French colony was ceded to the British by the terms of the *Treaty of Paris*. The treaty ended a period of transition (1759-1763), during which military courts continued to apply the private law in force before the Conquest.³ After that, the new masters of the country did not make any firm commitment to maintaining French law. When Vaudreuil, the last governor of New France, asked what would happen to civil law in Canada, Amherst, the commander in chief of the British forces at the time, simply replied that the French Canadian inhabitants were henceforth British subjects.⁴

The *Royal Proclamation of 1763* set out what George III, King of England, intended to do about administering his newly acquired North American colonies. The proclamation allowed the first civilian government to be established (but without an elected assembly). However, it also contained articles that disturbed the French settlers, in particular by introducing English law, which the new subjects were reluctant to accept. The *Royal Proclamation of 1764* reduced tension somewhat by allowing French law to be used if both parties were natives of New France. However, this did not prevent the French Canadian inhabitants from protesting against the changes to the system with which they were familiar. One sign of their resistance was the continuing use of notaries to handle their legal affairs. Their stubbornness, and the threat of revolt on the part of the Thirteen Colonies, led the British Parliament to respond by adopting the *Quebec Act*, which mitigated the imposition of British institutions.

The Quebec Act (1774)

The British masters, fearing a massive immigration from the American colonies and wishing to standardize the political and legal systems of their possessions, had tried to eliminate French law from the Province of Quebec. The fate of French law in Canada had not yet been settled when political upheavals broke out in the English colonies, "forcing the

imperial government to settle this issue promptly, in order to win the support of French Canadians for the struggle that was about to begin between England and its rebel colonies.”⁵ In 1774, the British authorities adopted the *Quebec Act*.

Although the *Quebec Act* did not offer a final solution to the problem, from a legal point of view, it did have the effect of restoring French private law pertaining to property and civil rights by allowing the “Canadians” to cite “the laws and customs of Canada.” In this sense, the *Quebec Act* greatly contributed to the survival of French civil law in North America, but without removing it from the sphere of influence of English common law. In fact, the Act weakened the seigneurial system by specifying that the British Crown would henceforth grant land in free and common socage; the Act also confirmed the hegemony of English criminal law.^{a, 6}

This ambiguous attitude on the part of the British authorities provoked chaos in the administration of justice. Moreover, the arrival of the Loyalists at the end of the 18th century and the repercussions of the American Revolution gave impetus to a movement in which both Francophones and Anglophones called for the establishment of a parliamentary system. This situation of instability continued until the adoption of the *Constitutional Act, 1791*, which split the territory into two separate parts, Upper Canada and Lower Canada. Even though civil law was still subject to pressure from English law, its constitutional survival as a system of private law within the colony was now assured, at least in principle.⁷

a Given this problematic coexistence of two systems of law, Evelyn Kolish, a specialist in the history of law, has argued that the *Quebec Act* did not constitute a recognition of the rights of “Canadians,” but rather embodied a long-term assimilation policy. On this reading, it can hardly be claimed that the *Quebec Act* is a “charter that liberates and protects Canadian law ...” As Ms. Kolish puts it: “Why establish a dual legal system, unless to protect the interests of the former subjects during the period of assimilation ...?” See *Nationalismes et conflits de droits : le débat du droit privé au Québec, 1760-1840* (Montréal, Éditions Hurtubise HMH Ltée, 1994), pp. 45 and 46.

The rebellions of 1837 and 1838 in Lower Canada arose from a conflict between the French majority, which wanted centralization of power in an elected assembly, and the British minority, which was determined to preserve its influence. The rebellions, fanned by economic and social tensions, led to the suspension of the *Constitutional Act* of 1791.⁸ Lord Durham, sent by the English government to assess the state of the colony, submitted his report in 1839. Durham recommended that Upper Canada and Lower Canada be united, and also commented on the existing legal system. Harshly critical of what he called the “outmoded” laws of Old France that governed the administration of justice in Canada, Durham advocated the adoption of English law to create uniformity in a legal system that he deemed to be hybrid, disparate, inconsistent and contradictory.⁹

On Lord Durham’s recommendation, the *Act of Union* was adopted in 1840 to unite the two Canadas. According to section 46 of the new Act, the law of each of the provinces remained in force unless it was amended by a law of the United Canadas. Legislators did not particularly want to make the legal system uniform, and continued to enact legislation that applied either to Canada West or to Canada East, thus perpetuating the distinction between the two provinces and preserving the civil law tradition. Nonetheless, the 25 years following the *Act of Union* were marked by “... major legal reforms ...” driven by the emergence of a new political will to modernize the institutions of public and private law.¹⁰

The Civil Code of Lower Canada (1857-1866)

Codification of the laws governing private law in Canada East was among the reforms undertaken after the *Act of Union* came into force. In 1857, George-Étienne Cartier, who was then Attorney General for Canada East, tabled codification legislation in the Parliament of the United Canadas, and the members of the Codification Commission were appointed 18 months later, in 1859.¹¹ The practical aim of the codification was "... to unify a confused mass of Old French laws, British Imperial Acts and local legislation ..." so that lawyers, notaries and magistrates could have precise knowledge of private law.¹² Laws and customs were gradually modified after the fall of the French Regime, and the Conquest made a further contribution to the legal confusion. Over the years, civil law moved away from French customary law in order to meet the needs of the French Canadian population, and it incorporated elements of common law.¹³

On August 1, 1866, seven years after the Commission had begun its work, the *Civil Code of Lower Canada* came into force, with its 2,615 sections. The new code reflected the laws that were already being applied at that time in civil and commercial matters. The new code was followed, in 1867, by the *Code of Civil Procedure*. This new enactment, which drew on many sources, helped to simplify private law, and its implementation "... was to inaugurate the entry of the future Province of Quebec into the modern era."¹⁴ However, the *Civil Code* of 1866 was more than a simple collection of laws. It also fulfilled a symbolic function in confirming that Quebec belonged to the civil law tradition.¹⁵

Quebec was thus the only province to enter the Canadian Confederation with a codified private law and a system of statutes in the civil law tradition. It thus laid the foundation for Canadian bijuralism.

Notes

1. Roderick Macdonald, "Encoding Canadian Civil Law," *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism: Collection of Studies* (Ottawa: Department of Justice Canada, 1997), p. 170.
2. Edmond Lareau, *Histoire du droit canadien depuis les origines de la colonie jusqu'à nos jours*, tome I: Domination française (Montréal: A. Périard, 1888), pp. 107 and 108; Dale Miquelon, "Compagnie des Cent-Associés," *The 1997 Canadian Encyclopedia Plus* (Toronto: McClelland & Stewart, 1996) and Jacques Mathieu, "Sovereign Council," *The 1997 Canadian Encyclopedia Plus* (Toronto: McClelland & Stewart, 1996).
3. Quebec, ministère de la Justice, "Historical Note," <<http://www.justice.gouv.qc.ca/anglais/histori-a.htm>>, April 2000.
4. Michel Morin, "Les grandes dates de l'histoire du droit québécois, 1760-1867," *Actes de la XIII^e Conférence des juristes d'État* (Cowansville, QC: Les Éditions Yvon Blais, 1998), p. 293 and Evelyn Kolish, *Nationalismes et conflits de droits : le débat du droit privé au Québec, 1760-1840* (Montréal: Éditions Hurtubise HMH Ltée, 1994), p. 29.
5. B. A. Testard de Montigny, *Histoire du droit canadien* (Montréal: Eusèbe Senécal, 1869), pp. 236-237.
6. Edmond Lareau, *Histoire du droit canadien depuis les origines de la colonie jusqu'à nos jours*, tome II : Domination anglaise (Montréal: A. Piérard, 1889), p. 145; John E. C. Brierly and Roderick A. Macdonald, *Quebec Civil Law: An Introduction to Quebec Private Law* (Toronto: Emonds Montgomery, 1993), p. 16 and Morin, "Les grandes dates de l'histoire du droit québécois," pp. 295-296.
7. Brierly and Macdonald, *Quebec Civil Law*, p. 14.

8. Kolish, *Nationalismes et conflits de droits*, p. 20.
9. Brierly and Macdonald, *Quebec Civil Law*, p. 19.
10. Quebec, ministère de la Justice, “Historical Note”; Morin, “Les grandes dates de l’histoire du droit québécois,” p. 299 and Sylvio Normand, “La codification de 1866 : contexte et impact,” in *Droit québécois et droit français : communauté, autonomie, concordance*, edited by H. Patrick Glenn (Cowansville, QC: Les Éditions Yvon Blais, 1993), p. 62.
11. Louis Beaudoin, “Les apports du Code civil du Québec,” in *Canadian Jurisprudence: The Civil Law and Common Law in Canada*, edited by Edward McWhinney (Toronto: Carswell, 1958), p. 74.
12. Michael Wilhelmson, “The Meeting Ground: Common Law and Civil Law in Canada,” *Inter Pares* No. 177 (July- August 1994), p. 10 and Pierre-Gabriel Jobin, “L’influence de la doctrine française sur le droit civil québécois : le rapprochement et l’éloignement de deux continents,” in Glenn, *Droit québécois et droit français*, p. 91.
13. Beaudoin, “Les apports du Code civil du Québec,” pp. 72 and 73; Jobin, “L’influence de la doctrine française sur le droit civil québécois,” p. 97 and Roderick A. Macdonald and F.R. Scott, “Harmonizing the Concepts and Vocabulary of Federal and Provincial Law: The Unique Situation of Quebec Civil Law,” *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism: Collection of Studies* (Ottawa: Department of Justice Canada, 1997), p. 32.
14. Michel Morin, “La perception de l’ancien droit et du nouveau droit français au Bas-Canada, 1774-1866,” in Glenn, *Droit québécois et droit français*, pp. 1 and 40.
15. *Ibid.*, p.40 and Normand, “La codification de 1866,” pp.44 and 61.

The Long Road to Recognition: The First Civilians at the Department of Justice (1867–1952)

In 1867, following the establishment of a federal system, the maintenance and development of civil law in Quebec depended on the governments of both that province and Canada. The *British North America Act* delimited the areas of competence of the two levels of government, in particular with regard to the administration of justice. Quebec thus became the only Canadian province governed by the *Civil Code* in respect of its private law. The new federation soon created a department of Justice, but the civilian tradition at first had only a limited place in it.

Birth of a Department

The Department of Justice Canada officially came into existence with the adoption of the *Department of Justice Act* by Parliament on May 22, 1868. This Act set out in five sections the responsibilities of the Department and the duties of the Minister and of the Attorney General. The duties of the Minister, of the Deputy Minister, and of the jurists under his direction, consisted of "... advising the Government on legal matters, drafting the laws to be enacted by Parliament, appearing for the Crown in court and seeing that the administration of public affairs was in accordance with the law."¹ However, there was nothing in the 1868 Act to indicate that the new Department had to take into account the coexistence of two systems of law.

This situation may be explained by the fact that in 1868, the Department of Justice had its roots in the government and public service that had been in place since the union of Upper and Lower Canada in 1840. The two provinces had parallel structures, each with an attorney general representing the Crown. Confederation eliminated this duality, but

without combining the legal experience and traditions of the two departments of government. Sir John A. Macdonald, already Prime Minister, was also the first man to hold the position of Minister of Justice, thus maintaining control over the legal affairs of the country. He kept the staff who had assisted him when he was Attorney General for Canada West, while his counterpart in Canada East, George-Étienne Cartier, and his staff formed the new Department of Militia. The 1868 Act thus made official “the informal structure already in place,”² but also had the effect of confirming the predominance of common law, since the civil law specialists were working for another department.

As soon as he assumed office, the Minister of Justice tried to centralize the legal services of the federal government. On June 11, 1868, Macdonald sent a letter to all federal departments, informing them of his role in providing legal counsel and in handling lawsuits for or against the Canadian government. Wishing to be kept informed of any current litigation cases, he asked to be provided with “the names and residences of the professional Gentlemen in whose conduct they may have been placed” and with “all necessary documents or instructions to enable [him] to take such proceedings as may be deemed advisable.”³ The Department of the Secretary of State, one of the departments that responded to Macdonald’s call, informed him that it most frequently sought the expertise of a certain G. L. Mowat, of Kingston. The Secretary of State also indicated, however, that for the less common cases concerning Quebec, James Armstrong of Sorel was retained.⁴

The Department of Justice thus had to come to terms with the existence of civil law. In fact, “... in 1867, the federal government had to employ civil law lawyers in order to harmonize laws and to determine the extent of the federal Crown’s prerogatives in the Province of Quebec.”⁵ However, it was only in the mid-1870s that the first civil law specialist joined the Department. Up to that point, staff at the

Department had consisted of only two lawyers (including the Deputy Minister) with training in common law, and a few clerks who had worked in the office of the Attorney General of Upper Canada before Confederation. The Department of Justice referred any problem requiring a thorough knowledge of the *Civil Code* to agents in Quebec.^{a, 6} During this period of definition, the new department thus reflected a continuity of individuals and ideas in which the civil law tradition was barely visible.⁷

The First Civilians

After the defeat of the Conservatives in the 1873 elections, the new Prime Minister, Alexander Mackenzie, put Antoine-Aimé Dorion in charge of the Department of Justice.^b Before the end of his short term as Minister of Justice, Dorion hired **Georges Duval** as his private secretary. In March 1874, Duval became the first civilian and the first Francophone to join the actual staff of the Department of Justice. He subsequently served as secretary to Dorion's successor, Téléphore Fournier. It should be noted that in addition to performing his duties as private secretary, Duval could act as legal counsel, since the Department had also made him an attorney for the Province of Quebec when he first arrived. However, Duval spent only a short time at the Department of Justice. In January 1876, he began his career at the

a It should be noted that the Department of Justice also retained outside legal counsel, even for cases in provinces other than Quebec, because its staff was limited. Furthermore, in spite of Macdonald's efforts to centralize the delivery of legal services, each government department continued to hire its own lawyers in order to obtain advice on a day-to-day basis.

b The aim of this history is to dispel the obscurity surrounding the first lawyers with civil law training who worked in the Department of Justice, rather than in the political sphere. Consequently, we have not studied the Ministers of Justice in depth. However, we cannot deny the presence of a number of ministers with civil law training over the years, and their influence on the Department's desire to make a place for civil law. See the list of these ministers in Appendix I.

Georges Duval

Georges-Arthur-Odilon Duval was born in Québec City in December 1843, the son of Joseph-Jacques Duval, merchant, and Adélaïde Dubuc. After studying at the Jesuit College in Montréal, from which he obtained a diploma in 1861, he began studying law with Mr. Holt and Mr. Irvine, and later with Mr. L.-B. Caron (before law schools were opened in the universities, it was possible to obtain a bachelor's degree in law after serving an apprenticeship in a law firm). Called to the bar in November 1865, Duval practiced his profession in Québec City with Caron until he was appointed to the Department of Justice in March 1874. After less than two years, he left the Department (in January 1876) to become the official reporter (and secretary to the justices) of the Supreme Court of Canada. By the time of his death on June 2, 1895, Duval had attained the rank of Chief Registrar of the Supreme Court. On a more personal note, in June 1872, he married the sister of Augustus Power, Isabella, with whom he had worked briefly at the Department of Justice.⁸

Supreme Court of Canada.^c He was first a reporter, but moved up through the ranks of the hierarchy to the top, namely the position of Chief Registrar.⁹

On December 7, 1874, **Augustus Power** joined Duval, his brother-in-law, as first-class clerk at the Department of Justice. Power, who was the second legal counsel with civil law training to become part of the Department's staff, quickly rose through the ranks to become the most senior public servant after the Deputy Minister. On January 1, 1879, he was promoted to the rank of Chief Clerk and Legal Counsel, a position he held for more than thirty years. During his career, Power handled cases of individuals who had received the death penalty, and all sorts of issues concerning Quebec and the civil law. On various occasions, he replaced the Deputy Minister of Justice, for the first time in 1885 when G. W. Burbidge had to leave to supervise the trial of Louis Riel. Power later took over from E. L. Newcombe as Deputy Minister. In 1886 and in 1902, he was part of the team that revised the *Dominion Statutes*, and he participated actively in drafting the *Criminal Code* of 1892, as we learn from his correspondence on the subject with interested parties in Quebec. In addition, Power took part in a number of royal commissions of inquiry.¹⁰

In January 1883, a third civil law specialist joined the Department of Justice, which had not had any Francophones on staff since the departure of Georges Duval. This was **Pierre Martial Côté**, a recent graduate, who started at the bottom of

c In 1875, the Supreme Court had just been created. The Conservatives had tabled draft legislation to create a supreme court in 1869, but the French-Canadian wing was opposed to it. Only two of the seven proposed justices would be French Canadian, so the five others would not be familiar with civil law. Finally, it was Téléphore Fournier who tabled a bill to create the Supreme Court in February 1875. The Francophone Conservatives continued to oppose the bill but their Liberal counterparts, who were now in power, thought it better to have a Supreme Court in which two of the six justices would be trained in French civil law, rather than a Privy Council in which no judge would be familiar with this type of law. See P. B. Waite, *Canada 1874-1896: Arduous Destiny* (Toronto: Oxford University Press, 1971) pp. 38-39.

Augustus Power

Born in Québec City on December 22, 1847, Augustus Power was the youngest son of Justice William Power, of the Superior Court of Lower Canada, and Suzanne Aubert de Gaspé, the daughter of Philippe Aubert de Gaspé, author of the book *Les Anciens Canadiens*. A Catholic of Irish ancestry, he studied at the Jesuit seminar at St. Mary's College. He then studied law at McGill University, and obtained his Bachelor of Civil Law (B.C.L.) degree in 1868. The next year, he became a partner of Bernard Devlin (the future Liberal MP in the House of Commons), and continued in private practice until he joined the Department of Justice in 1874.

Starting as a first-class clerk, Power rapidly rose through the ranks to become Chief Clerk in January 1879. He held this position until his retirement in 1911. Appointed Queen's Counsel in 1887, he declined an appointment to the Circuit Court of Quebec in 1895. For his distinguished career in the federal public service, he was made a companion of the Imperial Service Order (I.S.O.) on May 29, 1903.

After more than 35 years of loyal service to the Department of Justice, Power died tragically in September 1912 after choking in a restaurant in Vancouver, where he had been living since his retirement.¹¹

Pierre Martial Côté

Born on April 30, 1861, Pierre Martial Côté was the son of J.-O. Côté, a former clerk of the Privy Council. He graduated from Université Laval and joined the Department of Justice on January 11, 1883 as a third-class clerk. He pointed out to the Deputy Minister his experience and his ability to handle a large workload, and was promoted to various positions, including that of private secretary to the Solicitor General. He finally attained the rank of Chief of the Remission Branch in October 1913. He was made King's Counsel in 1915, and rewarded for his loyal services with the Imperial Service Order (I.S.O.) in 1917. He also had three brothers in the federal public service, including J.-A. Côté, who was Assistant Deputy Minister in the Department of the Interior. An "educated man and discreet counsellor ... always ready to serve," Côté was "one of the most eminent and esteemed citizens of the National Capital." He died suddenly on January 30, 1918, at the age of 56.¹²

the ladder as a third-class clerk. During his career, Côté held almost every position in the Department except that of Deputy Minister. In 1886, he was promoted to the position of second-class clerk. For three years, he combined these duties with the role of secretary to the Solicitor General. In 1894, Côté asked for a promotion to first-class clerk, which he received the following year. In 1907, a second Chief Clerk's position was created, to help deal with the increasingly heavy workload at the Department.^d As he rose in the Department, Côté continued to point out to his superiors the spectacular increase in his workload, the nature and importance of what he was accomplishing, and his experience and loyal services. In 1911, he attained the rank of legal counsel, and took over Power's duties relating to the review of cases involving the death penalty. In October 1913, he was made Chief of the Remission Branch, reporting to the Minister.¹⁵ This confirmed his criminal law vocation.

For nearly thirty years, P. M. Côté was the only Francophone to be part of the permanent staff at the Department of Justice, a situation demonstrating that, at the time, there was no bilingualism in the Department. In 1881, the Civil Service Commission raised this issue with the Deputy Minister, Z. A. Lash. Lash declared "... that with the exception of himself, the chief clerk (Augustus Power) and the Register keeper, there would not be a great advantage in having the clerks possess a knowledge of French, since the matters coming before the Department in that language would generally require the attention of the Deputy or chief clerk and the Register keeper." Nevertheless, Lash acknowledged that

^d Côté pointed out to the Minister, Charles Fitzpatrick, that all members of the Department's staff had been entitled to a salary increase or promotion since the Minister had taken up his position. If Fitzpatrick did not respond favourably to his request, Côté would have been the only person not to have "... benefited from his kindness and liberality." National Archive of Canada (NAC), Department of Justice (RG 13), Vol. 142, File 1906-573, "PM Côté - Dept. Justice - Application for promotion," letter from P. M. Côté to Charles Fitzpatrick, May 1906.

mastery of the French language would unquestionably be an asset for all staff.¹⁴ This statement suggests that Power possessed some understanding of French, but that bilingualism was not common.

In fact, internal correspondence within the Department was conducted almost exclusively in English, the only exception being where the parties concerned were both Francophone or residents of Quebec. For example, when Côté asked for a promotion in 1906, he sent a letter to Minister Fitzpatrick in French, but the same request was sent to the Deputy Minister, E. L. Newcombe in English.¹⁵ As far as communications outside the Department were concerned, Power was in the habit of communicating in French with the Francophone agents retained by the Department to represent it in Quebec. It seems that a certain effort was made to respond in French to those who communicated with the Department in that language. However, it would hardly be surprising that people like P. M. Côté were pressed into service to translate certain documents.

With "... the increasing size of the nation and greater activity of the Federal Government in diverse areas," the workload of the Department's legal counsel constantly increased. In 1914, the Department of Justice was deemed to be the largest law office in the Dominion.¹⁶ Since the turn of the century, a number of clerks had joined the Department's team. In June 1909, the Department hired Aimé LeBlanc, who was then 29 years of age. LeBlanc, who had a licentiate in civil law, first worked as private secretary and clerk to the Solicitor General. On April 1, 1911, he was promoted to the position of legal counsel when Power retired. However, LeBlanc did not spend much time at the Department. Barely a year later, in May 1912, he resigned and went to work for a private law firm in Montréal.¹⁷ The Department quickly replaced him by hiring **René de Salaberry**.

De Salaberry joined the Department on June 16, 1912, with the position of law clerk. In 1914, The Department took the initiative of sending a legal counsel to Québec City to

René de Salaberry

On July 2, 1870, Joseph Alexandre René de Salaberry was born in Chambly, Quebec, the son of Lieutenant-Colonel Charles de Salaberry and Joséphine Allard. He studied at the Collège de l'Assomption and Université Laval, from which he obtained a Bachelor of Arts degree in 1891. He then studied law with Doherty, Sicotte & Bernard and was called to the Quebec Bar in 1894. He worked as a lawyer in L'Assomption, Ottawa, Hull and Pontiac, then left private practice in 1912 to join the Department of Justice as a law clerk. In the same year, he was appointed King's Counsel. Faithful to the family tradition, he put his career on hold in 1914 in order to enlist in the army. In 1899-1900, de Salaberry was a captain of the 83rd Regiment in Joliette. During the First World War, he commanded the 230th Forestry Battalion. He returned to his duties at the Department of Justice in 1919, and left his position as legal counsel in 1927.¹⁸

assist a lawyer in that region, Mr. Doutre, in the latter's inquiry into certain irregularities in the office of the Department of Marine and Fisheries. De Salaberry just had time to complete this assignment before leaving for the war. When he returned from the front, he resumed his position as legal officer. However, the Department assigned him to a number of cases that did not necessarily involve civil law.¹⁹

Shortly before the Great War, another civilian joined the Department of Justice. In June 1913, **Arthur Beaudesne** became a counsel in the area of civil law. Beaudesne had used his talents as a journalist to write a very laudatory memorandum concerning Prime Minister Robert Borden. According to him, Borden was one of the greatest Canadian parliamentarians, and he described Borden as an ally of the French Canadians and one of their great hopes. A few months after this document was published, Beaudesne received a letter of acknowledgement from the Prime Minister, and subsequently an offer of employment at the Department of Justice. Because of his career in journalism, Beaudesne was well known before he joined the Department, and on a number of occasions, he received special requests from individuals who had contacts in the political world. In 1916, less than three years after his arrival, he left the Department of Justice to become Clerk Assistant of the House of Commons.²⁰

The Department hired **Joseph Adolphe Renaud** to replace Beaudesne. When he arrived at the Department on March 15, 1916, Renaud was in his fifties and already a King's Counsel. He also had vast professional experience. As a legal counsel, he was responsible for cases where Quebec law was involved, and for docket work in Quebec. This type of work was distributed by the Department on a territorial basis.²¹ In 1924, the internal staff structure of the Department was reorganized and a second Assistant Deputy Minister's position was created, which was given to Renaud. This change coincided with the appointment as Minister of Justice of

Arthur Beauchesne

Arthur Beauchesne was born on June 15, 1876, in Carleton, Bonaventure County. The son of Caroline and Pierre Clovis Beauchesne, he studied at St. Joseph's Classical College in Memramcook, New Brunswick. He received a Bachelor of Arts degree in 1895, and became private secretary to Pierre Évariste Leblanc, Speaker of the Legislative Assembly of Quebec. He subsequently performed the same duties for the Lieutenant Governor, Sir Adolphe Chapleau. In 1897, he began a career in journalism, and contributed to a number of publications including *La Minerve*, *La Presse*, *La Patrie*, *the Star*, *the Gazette*, and *Le Journal*, of which he was editor-in-chief. Not everyone agreed with his views, however. He was sued for libel and banished from the press gallery in Ottawa.

During the same period, Beauchesne began studying law. He obtained his law degree from Université Laval and was called to the Quebec Bar in January 1904. He then practiced law in Montréal until 1913, but continued to take an interest in political issues. On two occasions, he stood for election as a Conservative candidate, in the federal elections (1908) and the provincial elections (1912). However, he was defeated both times, and turned to analyzing federal politics. He wrote a memorandum praising Prime Minister

Robert Borden, and this opened the doors to the Department of Justice for him in June 1913. "... Gifted with a quick, but solid judgment," Beauchesne became King's Counsel in 1914, and laid plans for a brilliant career in the Department. However, fate was to decide otherwise.

On February 3, 1916, the Parliament Buildings burned down, and the Clerk Assistant of the House of Commons, J. B. R. Plante, perished in the fire. The Speaker of the House, Albert Sévigny, thought that Beauchesne, with his detailed knowledge of parliamentary law and of the French language, was the ideal replacement for Plante. Beauchesne took up his new duties in March 1916, and in 1922, published the first edition of his *Rules and Forms of the House of Commons of Canada*, which remained the definitive reference work on the subject until very recently. Beauchesne was promoted to the position of Clerk of the House of Commons in 1925, and was the first French Canadian to hold this post.

Even after his retirement in 1949, Beauchesne continued to be interested in politics. From 1950 to 1952, he was a constitutional advisor to the Government of Quebec. In 1953, he made a last attempt to be elected to the House of Commons in the riding of Ottawa East, but suffered a third defeat. He died in 1959. Arthur Beauchesne was convinced that, "when a French Canadian gives proof of his ability, his nationality is no obstacle to his advancement."²²

Joseph Adolphe Renaud

Joseph Adolphe Renaud was born in Quebec on September 10, 1862. He was educated in that province and became a lawyer in 1884. He was appointed Queen's Counsel in 1896, and served as honorary Lieutenant-Colonel of the 83rd Regiment from 1898 to 1904. He practiced law in the city of Joliette, where he was also the Mayor, until he joined the Department of Justice in 1916. He was a Conservative candidate in three federal elections, but without success. At the Department, he started his career as a legal officer, and in 1924, he was appointed to the second Assistant Deputy Minister's position. He died in 1932 while he was still working for the Department, one year after being appointed counsellor for Quebec.²³

Ernest Lapointe, a Francophone and civilian, and marked the beginning of a more or less continuous tradition. Following the appointment of Renaud, one of the Assistant Deputy Minister positions was reserved for a lawyer trained in the civil law, and the other for one with a common law background.²⁴

As Assistant Deputy Minister, J. A. Renaud continued to be responsible for Quebec legal issues, including the revision of the *Criminal Code* in 1927.²⁵ From the late 1920s on, his name appears regularly in civil law cases. In addition to writing opinions for the Deputy Minister, he collaborated with outside agents, to whom he sent a copy of the “Instructions to Agents.”²⁶ As of 1929, Renaud could rely on the assistance of a new recruit, **Paul Fontaine**. However, when Renaud died in 1932 at the age of 69, he was no longer Assistant Deputy Minister, but Senior Counsel for Quebec. At that time, his duties involved dealing with cases that came from Quebec or required a knowledge of civil law or the French language, and directing the employees of the Department to whom these cases were assigned.²⁷

As mentioned earlier, the Department of Justice continued to use outside agents because its permanent staff could not cope with all the work. The Department’s legal counsel thus had to collaborate with lawyers from the private sector. For cases concerning Quebec, notaries were also used, especially for particularly complex real property issues. These agents were often chosen on the basis of suggestions made by various parties, such as members of parliament, the Minister of Justice, the Solicitor General and even the Prime Minister,²⁸ as a way of rewarding lawyers and notaries for the support they had given in the previous election campaign. In 1903, A. Bourbonnais, M.P., sent Minister Fitzpatrick a letter lauding the merits of his candidate: “Mr. Gladu is competent. The assistance that he and his son have given us in the last general elections deserves consideration for this favour. Please be assured that we will be most grateful to you for anything you can do in this regard.” Mr. Gladu was in fact

Paul Fontaine

Jean Louis Paul Fontaine was born in Québec City on October 15, 1893, the son of Adalbert Fontaine, a lawyer and a professor at Université Laval, and Alexandrine Bergevin. In 1918, he obtained a licentiate in law and licentiate in philosophy from Université Laval. He was called to the Quebec Bar on January 1, 1919, and became King's Counsel in the same year. Fontaine then spent three years studying in Paris, obtaining a degree in moral and political science. When he returned to Canada in 1922, he first practiced his profession in his native city, in the firm of Lemay, Beaulieu and Chaloult. He then joined the Department of Justice in Ottawa in 1929, as junior advisory counsel. Two years later, he became the senior person responsible for civil law in the Department, and in 1935, was appointed counsel. When Charles Stein left the Department in 1949, Fontaine was appointed Assistant Deputy Minister. After 1952, he retained this position and was also made responsible for the new Civil Law Section. When he retired from the Department in April 1955, Fontaine was appointed a judge of the Citizenship Court of Montréal. He continued to preside on this court until he was forced to retire in 1958 because of his age.²⁹

hired as an agent of the Department.³⁰ On the basis of these recommendations, the Department drew up a list that remained in effect until the next change of government.³¹ The list of lawyers and notaries for the year 1899 included the name of Lomer Gouin, the future Premier of Quebec and later Minister of Justice in Ottawa.³² However, while the Department hired outside agents to deal with matters concerning Quebec, the presence of civil law specialists continued to be exceptional on its legal staff.

The Rise of the Civilians

An increasingly heavy and varied workload obliged the Department to increase its staff. Space in the offices of the East Block had become insufficient, and the Department's staff moved to the Justice Building, to the east of the present Supreme Court. It was primarily after this move in 1936 that civil law specialists began to take their place in the Department of Justice. Since 1932, Paul Fontaine had taken over from Renaud as the person primarily responsible for civil law (Civil Law Assistant). His assistant, **Roméo Gibeault**, had become part of the Department's team after responding to an advertisement of the Department, which was looking for a bilingual candidate.³³

In 1938, the Department hired **Charles Stein**, who was at first assigned to cases from the Maritimes, under the supervision of J. F. Macneill. Although Stein had a civil law background, he dealt with cases involving acquisition of property or accidents involving federal government vehicles outside Quebec's territory. These responsibilities enabled him to become familiar with the common law. Stein remained in this position for a number of years, and then began to work with the two civil law specialists who were already responsible for Quebec cases. At the time, three of the Department's ten legal counsel were civilians, but there was still no section reserved for civil law. The structure of the Department was in fact not very rigid, and its divisions were rather informal. Moreover,

Roméo Gibeault

Roméo Gibeault was born on June 15, 1895 in Saint-Jérôme, Quebec, the son of Alfred Gibeault and Marie-Louise Beaulieu. After studying law at the Université de Montréal, he served as a lieutenant in the Joliette Regiment during the First World War. He was called to the Quebec Bar in 1918, and practiced his profession in Montréal until 1932. He then accepted a position as counsel at the Department of Justice. He became King's Counsel, President of the Saint-Jean-Baptiste Society (Christ the King section) and member of the *Société des juristes de langue française d'Ottawa-Hull*. Gibeault died suddenly on May 15, 1947, at the age of 51, while he was still working at the Department. His son Lambert became a notary in Hull.³⁴

Charles Stein

(Joseph) Charles Stein, a native of Rivière-du-Loup, was born on July 6, 1912. He was a son of Adolphe Stein, a judge of the Superior Court of Quebec, and Alice Hamel. He first studied at the *Petit Séminaire de Québec*, receiving a bachelor's degree in 1931. A gifted student, he continued his studies at Université Laval, which granted him a licentiate in philosophy in 1932 and a licentiate in law in 1934. He was immediately called to the Bar, and practised as a lawyer in Québec City until 1938. At that time, the country was still feeling the effects of the Great Depression, and Stein, a young married man with a modest income, saw the possibility of working for the Department of Justice in Ottawa. He directly approached the Minister, Ernest Lapointe, a former associate of his father, and began his career in the federal public service in October 1938.

Stein began at the Department as a junior advisory counsel, and rose through to the ranks to become Assistant Deputy Minister, a position he held from February 1947 to January 1949. He was appointed King's Counsel in 1947. He served as a delegate or representative of the Department on a number of occasions, in particular at the funeral of Ernest Lapointe in 1941, at the second conference of the Quebec Bar in 1944, at the United Nations, and on task forces. In 1949, he left the Department of Justice to become Under Secretary of State and Deputy Registrar General of Canada, a position he held until September 1, 1961. He then returned to private practice for ten years in Quebec City, where he still lives. At the opening of the courts in the fall of 1999, the Quebec Bar awarded Stein a medal to honour his 65 years of membership in that professional association.³⁵

most of the legal opinions requested of the Department had nothing to do with civil law, and the Deputy Minister had the last word about assigning cases. It was thought that the quantity of cases involving civil law did not warrant creating a special section. Instead, the Department hired civilian lawyers to instruct outside agents in property acquisition and title search cases.³⁶

In 1939, shortly before the beginning of World War II, **Henriette Bourque** managed to break into this male bastion,^e thus becoming the first woman with a licentiate in law to work for the Department of Justice. While a number of people today regard her as the first female lawyer in the Department, it should be stressed that she never was given the title of “legal counsel.” Far from being the “Deputy Minister’s pet,”³⁷ Bourque performed duties similar to those of her male colleagues, but had to settle for the position of law clerk, even after her admission to the Quebec Bar.

After the beginning of the Second World War, the Department of Justice thus had four individuals who could advise the government on Quebec civil law issues. There were many litigation cases. This increase was due to the increased circulation of military vehicles (which belonged to the federal government), and also to the spectacular increase in the number and complexity of government activities. The Department’s legal staff was overworked to the point that an iron will and many overtime hours were not enough to ensure that all matters would be dealt with in a reasonable period of time.³⁸

In 1943, faced with such a mass of work, Deputy Minister F. P. Varcoe decided that a reorganization was necessary. He expressed his intentions to the employees, and asked them to comment on his suggestions. He originally hoped that the

e From 1939 to 1964, the Department of Justice hired only five women lawyers. Wendy Burnham, “The Department of Justice,” in “Millennium Celebration,” Department of Justice, December 9, 1999, p. 9.

Henriette Bourque

A native of the National Capital Region, Henriette Bourque was the oldest child in a family of seven children. Her father was a well-known surgeon at the Ottawa General Hospital. A highly gifted student, she distinguished herself at the University of Ottawa before becoming a student at the law faculty of the Université de Montréal. The only woman among 80 students, she obtained her licentiate in law with a first-class standing. She then became an assistant to the President of the Canadian Bar Association, Emery Beaulieu, but was not called to the Bar. In the 1930s, the Quebec Bar did not accept women. Bourque had to go to British Columbia, where the Bar Association recognized her civil law training.

In 1939, after working for Mr. Beaulieu for five years, Henriette Bourque applied to work at the Department of Justice, which finally hired her, though reluctantly. In her opinion, the Deputy Minister felt obliged to accept her application because of her excellent studies, her recommendations and her contacts. However, in spite of her degrees, training and experience, she was never given the title of legal counsel. In the male-dominated Department of Justice of the time, she was relegated to the category of law clerk, even though she was assigned to consultations and to drafting opinions.

Henriette Bourque was finally called to the Quebec Bar, but that did nothing to change the attitude of the people she worked with at the Department of Justice. Having received little support from a number of her colleagues, Bourque finally resigned from the Department in 1949, after spending ten years there without receiving a single promotion. In spite of these obstacles, she did not lose her enthusiasm for the law. In 1952, she returned to Canada with a doctorate in law from the University of Paris. She tried in vain to obtain stable employment, but returned to Europe when it became obvious that any authentic career was closed to her in Canada. She spent ten years in Fatima, Portugal, and then settled in Jerusalem. She eventually came back to Ottawa, where she died on January 15, 1997 at the age of 93.³⁹

work would be divided into sections, each headed by a senior legal counsel assisted by one or two other counsel. Varcoe admitted that it was impossible to avoid overlapping, and that it was preferable to set up a rotation system in order to avoid excessive specialization and to allow legal counsel to acquire a thorough knowledge of the laws in particular fields. The Deputy Minister proposed eight sections, including a section for “civil law” (in the sense of private law), which could be subdivided into common law and civil law.⁴⁰

People knew that such a situation would create a precedent, and everyone agreed that the Department should proceed gradually, in order to define the work of each section clearly and ensure a fair distribution of the work. Charles Stein suggested that the civil law subsections be more precisely defined as English Common Law and Quebec Civil Law. Stein also believed that a similar division between the English Provinces and Territories and Quebec was appropriate for the section known as “Lands, Deeds, Bonds, etc.”⁴¹ The Department also relied upon the opinions of Roméo Gibeault with respect to Quebec’s particular characteristics, because of the experience Gibeault had acquired since his arrival in 1932.⁴²

Some changes were made in 1946, but it seems that it was easier to talk about the plan than to implement it.⁴³ Nonetheless, according to the Department’s administrative records, three legal counsel were henceforth responsible for civil law matters. Fontaine handled docket work in the district of Québec City, Gibeault performed the same duties for the district of Montréal, and Stein was responsible for litigation in Quebec to which the federal government was a party.⁴⁴ Professional positions were also reorganized after two legal counsel left the Department. The Minister, Louis St-Laurent, and Deputy Minister Varcoe took the necessary steps to restore the second position of Assistant Deputy Minister, which had been eliminated in 1932 after the death of

J. A. Renaud.⁴⁵ In February 1947, the position was reestablished, and Stein became Assistant Deputy Minister until he joined the Department of the Secretary of State in 1949.

At that time, the Department continued to be a very Anglophone environment, and internal correspondence with the Deputy Minister was conducted exclusively in English. Communications in French were limited to two or three Francophone colleagues, who did not necessarily have the opportunity to deal with one another on a regular basis. Some people adapted to this environment, while others experienced difficulties.⁴⁶ Among those who had problems was Roméo Gibeault, who “found that time dragged” and he “barely survived,” feeling himself “submerged by an Anglophone wave.”^{f, 47} The reorganization of the Department had done nothing to improve the linguistic situation.

In the early 1950s, it was recognized that the Department had made the right decision in acquiring a structure, but some adjustments were necessary because certain issues concerned more than one section. Deputy Minister Varcoe proposed a new division, which now included a section entirely devoted to Quebec civil law, and it was suggested that Paul Fontaine be the senior legal counsel for that section.⁴⁸

After more than 80 years of existence, the Department of Justice was beginning to be aware of the civil law and its practitioners, but it was still the case that the climate in the Department was more favourable when the Minister of Justice was a native of Quebec.⁴⁹ Since 1868, the Department had never made the specific characteristics of Quebec’s legal system a major concern. The postwar period was, however, more favourable, and thus prepared the way for a true recognition of bijuralism (and of bilingualism).

f According to the recollections of Gibeault’s son, as told to Jacques Roy. Mr. Roy was a partner of Lambert Gibeault in the 1960s. Both men were then notaries in Hull.

Notes

1. *Department of Justice* (Ottawa: Information Canada, 1972), p. iii.
2. Department of Justice, *Annual Report 1982-83* (Ottawa: Minister of Supply and Services Canada, 1984), p. 6; Wendy Burnham, "The Department of Justice," in "Millennium Celebration," Department of Justice, December 9, 1999, p. 7.
3. Department of Justice, *Annual Report 1982-1983*, p. 6; National Archives of Canada (NAC), Department of Justice (RG 13), Vol. 2135, File 13/1868, "Legislation – An Act Respecting the Dept. of Justice. The Minister of Justice Is Charged with Advising any Dept. upon all Matters of Law," copy of the letter from John A. Macdonald, June 11, 1868, p. 2.
4. NAC, RG 13, Vol. 2135, File 13/1868, "Legislation – An Act Respecting the Dept. of Justice. The Minister of Justice Is Charged with Advising any Dept. upon all Matters of Law," letter from the Under Secretary of State, July 9, 1868.
5. Quebec Regional Office (QRO), Claude Joyal, "Projet : La place du Bureau régional de Montréal au sein du ministère de la Justice du Canada," 1995, p. 2.
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7. Jonathan Scott Swainger, "Governing the Law: The Canadian Department of Justice in the Early Confederation Era," Ph.D. dissertation (University of Western Ontario, 1992), pp. 109-110.

8. NAC, RG 13, Vol. 1861, File 757/1874, "Justice Dept. – Organization – Re-organization of this dept. confirmed by Order in Council," draft of a letter from A. A. Dorion, March 19, 1874, p. 2; NAC, RG 13, Vol. 1382, "Recommendations/Appointments 1868-87," December 18, 1874; *The Canadian Biographical Dictionary and Portrait Gallery of Eminent and Self-Made Men, Ontario Volume* (Toronto: American Biographical Publishing Company, 1880), pp. 543-544; NAC, RG 13, Vol. 69, File 1888-206, "Geo Duval – Asking that new Commission be issued to him as Reporter of Supreme Court," memorandum of G. Duval to the Minister of Justice, March 8, 1888; NAC, RG 13, Vol. 98, File 1895-567, "R. Cassels, QC – Supreme Court – Gratuity to widow of late George Duval of Supreme Court of Canada," letter from Robert Cassels to E. L. Newcombe, June 5, 1895; Pierre-Georges Roy, *Les avocats de la région de Québec* (Lévis: no publisher, 1936), p. 156; Desmond H. Brown, ed., *The Birth of a Criminal Code: The Evolution of Canada's Justice System* (Toronto: University of Toronto Press, 1995), p. 21.
9. NAC, RG 13, Vol. 1861, File 757/1874, "Justice Dept. – Organization – Re-organization of this dept. confirmed by Order in Council," draft of a letter from A. A. Dorion, March 19, 1874, p. 2; NAC, RG 13, Vol. 1382, "Recommendations/Appointments 1868-87," December 18, 1874; *The Canadian Biographical Dictionary*, pp. 543-544; NAC, RG 13, Vol. 69, File 1888-206, "Geo Duval – Asking that new Commission be issued to him as Reporter of Supreme Court," memorandum from G. Duval to the Minister of Justice, March 8, 1888; NAC, RG 13, Vol. 98, File 1895-567, "R. Cassels, QC – Supreme Court – Gratuity to widow of late George Duval of Supreme Court of Canada," letter from Robert Cassels to E. L. Newcombe, June 5, 1895; Brown, *The Birth of a Criminal Code*, p. 21.
10. Henry James Morgan, ed., *The Canadian Men and Women of the Time: A Hand-book of Canadian Biography* (Toronto: William Briggs, 1898), p. 129; Henry James Morgan, ed., *The Canadian Men and Women of the Time: A Hand-book of Canadian Biography of*

- Living Characters* (2nd ed.) (Toronto: William Briggs, 1912), p. 914; NAC, RG 13, Vol. 172, File 1912-750, "Minister of Justice – Superannuation of Augustus Power, K.C. – 1 May 1912"; "Mr. A. Power Dead: Former Well Known Ottawan Dies in Vancouver," *The Citizen*, 70th year, No 84 (September 12, 1912), p. 11; Pierre-Georges Roy, *Les juges de la province de Québec* (Québec City: Rédempti Paradis, 1933), p. 449; Roy, *Les avocats de la région de Québec*, p. 363; Brown, *The Birth of a Criminal Code*, pp. 14-15.
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the Homewood Sanatorium, to E. L. Newcombe, May 3, 1913; NAC, RG 13, Vol. 225, File 1918-1639, "Justice – Salary of Capt. de Salaberry while on active service 1914," "Know all men by these presents," August 22, 1914; letter from the Deputy Minister of Militia and Defence to the Deputy Minister of Justice, July 15, 1918; NAC, RG 13, Vol. 208, File 1917-99, "Finance – For refund of advance made to Lt. Col. R. de Salaberry," copy of a letter from the secretary of the Minister of Justice to the secretary of the Department of Marine and Fisheries, May 4, 1914; letter from R. de Salaberry to E. L. Newcombe, February 3, 1917; NAC, RG 13, Vol. 2181, File 767/1924, "Functional and Organization Chart of Legal Officers, Department of Justice at Ottawa," August 23, 1923.

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47. Interview with Jacques Roy (December 14, 1999), Cassette No. 2, Side A.
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Gaining a Place at the Department of Justice: The Birth of the Civil Law Section and Its Development (1952–1986)

The Civil Law Section quietly came into being on October 1, 1952, for its creation was part of a larger restructuring project proposed by the Deputy Minister, F. P. Varcoe. This new structure, which was more functional than the previous organization, distributed the Department's twenty or so lawyers into six sections, including a section for civil law.^a The Civil Law Section “[was] essentially concerned with providing legal advice to the Minister of Justice, federal departments and agencies, and litigation cases before the ... courts,” for all cases that concerned Quebec but did not have any criminal connotation.¹ The Section thus had a fairly broad mandate, and it was now up to its members to make sure that the Section had a proper place within the Department of Justice.

Difficult Beginnings

The Civil Law Section experienced difficult beginnings, when it still only had two members. These were Paul Fontaine, senior legal counsel, and Jean Desrochers, who had joined the Department in December 1947 to replace Roméo Gibeault, who had died six months earlier. Most cases were then entrusted to private sector agents, a practice that continued even after the arrival of Paul Ollivier, in February, 1953. Most of the work consisted of handling automobile accidents involving vehicles owned by the federal government. Since the Department still did not have a tax division, the Civil Law Section was also responsible for tax cases concerning the Province of Quebec (until the creation of a separate section in 1961).²

a The five other sections were Civil Litigation, Criminal, Advisory, Legislation, and Combines.

In 1954, the small team of three legal counsel was again reduced to two when Desrochers left the Department to emigrate to California.³ No lawyer was hired to replace him. With such a small staff, the Civil Law Section, which was run by Fontaine, could only play a limited role.⁴ In April 1955, Fontaine retired from the Department to accept an appointment as judge of the new Citizenship Court in Montréal. After his departure, the Civil Law Section began a new period of development under **Guy Favreau**.

The Start of a New Era

On May 16, 1955, Guy Favreau replaced Paul Fontaine, taking over the duties of Assistant Deputy Minister (Civil Law). Favreau, already a Justice Building regular as a member of the Restrictive Trade Practices Commission since 1952, was a genuine source of inspiration for those who had the good fortune to work with him in the Civil Law Section. Under the leadership of this “great jurist,”⁵ the Section was finally able to distinguish itself within the Department of Justice, where common law and the English language largely dominated. Favreau favoured recruiting young Francophone lawyers^b with a civil law background to take over cases which, up to that point, had been entrusted to private sector agents.

As soon as he assumed his duties in the Civil Law Section, Favreau started looking for young lawyers under 27 years of age who had obtained excellent academic results.⁶ These new arrivals were to form the core group of civil law specialists that would enable the Section to develop, and would later lead to the rise of civilian legal counsel in the Department of Justice and throughout the federal public service. In 1955,

^b The hiring of young lawyers was a phenomenon that occurred throughout the Department of Justice. In 1961, it was estimated that the average age of the Department's lawyers was 35, and that approximately 90 percent of them had been admitted to the Bar since 1951. *Report of the Royal Commission on Government Organization*, Volume 2: Supporting Services for Government (Ottawa: Queen's Printer 1962), p. 405.

Guy Favreau

Guy Favreau was born on May 20, 1917, in Montréal, the elder son of Léopold Favreau, an animator and an editor for a weekly newspaper, and Béatrice Gagnon. After completing studies at the Collège André-Grasset, Guy Favreau obtained a bachelor of arts degree and a licentiate in law from the Université de Montréal. Called to the Bar in 1940, Favreau first worked in partnership with Georges F. Reid (1942–1946), and then with Gustave Adam (1946–1952). A well-regarded lawyer in the Montréal legal community, Favreau served on a number of commissions and special committees before arriving in Ottawa in 1952, where he became a member of the Restrictive Trade Practices Commission.

Guy Favreau was appointed Queen's Counsel in 1954, and then became Assistant Deputy Minister of Justice in 1955, after the departure of Paul Fontaine. In addition to his duties at the Department, this champion of Francophones helped to create the Faculty of Civil Law at the University of Ottawa, where he subsequently taught. In 1960, he left his position as Assistant Deputy Minister to return to private practice in Montréal, but by that time, he had left his mark on a generation of young civil law specialists.

However, Favreau was soon back in Ottawa. Seriously courted by the Liberals, he jumped into federal politics, and was elected in the riding of

Montréal-Papineau (1963–1967). Lester B. Pearson appointed him to his Cabinet, first as Minister of Citizenship and Immigration, then as Minister of Justice and Attorney General of Canada (February 3, 1964 – June 29, 1965). Favreau continued the work begun by the former Minister of Justice, E. D. Fulton (who had begged him to remain at the Department in 1960 “for the good of the country”) in developing a formula for amending the Canadian Constitution, known as the Fulton-Favreau formula.

However, what particularly attracted the attention of the media was Favreau’s position in the case of Lucien Rivard, a drug trafficker imprisoned in Montréal, whom the United States wished to extradite. Rivard managed to escape from prison, but was recaptured four months later. During this time, accusations of bribery associated with this escape plunged the Liberal government into hot water (the private secretary of the Minister of Citizenship and Immigration, Raymond Denis, had allegedly attempted to pay off the lawyer for the American government, who laid a complaint.) Thinking that the complaint would be difficult to prove in court, Favreau let the matter drop, without consulting legal counsel in his own department. In the opinion of Mr. Justice Dorion, who headed the commission set up to inquire into this matter, the Minister of Justice, in acting alone, showed lack of judgement. The inquiry commission did not

question Favreau's honesty or integrity, but it openly criticized his naiveté, and the press went so far as to accuse him of incompetence.

At that point, Favreau was Minister of Justice and Attorney General of Canada, Leader of the Government in the House of Commons, and leader of the Quebec Liberals (it was indeed said that such a workload might have affected his judgement, pushing him to make a hasty decision). After the report of the Dorion Commission was published, however, he tendered his resignation. While people were clamouring for his head, he was appointed President of the Privy Council by Prime Minister Pearson, who did not want to lose him completely. To all intents and purposes, however, his political career was finished. He was appointed as a judge of the Superior Court of Quebec on April 17, 1967, and died a few months later, on July 11, 1967.⁷

Alban Garon responded to a competition notice posted in the law faculty of Université Laval. Garon did not have specific career plans, but did want to practice law in Ottawa and learn English at the same time. The young graduate obtained an interview with Guy Favreau and Walter Regan (of the Public Service Commission). He had difficulty answering questions asked in English, but Favreau and Regan reassured him, telling him that he would certainly be able to learn English and that the work in the Civil Law Section was often in French. Garon joined the Department of Justice in July 1955 as legal counsel.⁸

In May of the following year, Gérald Beaudoin joined the civil law team after working in a private Montréal law firm with Paul Gérin-Lajoie. Beaudoin was interested in a career in the public service, and went to Ottawa after Gérin-Lajoie talked to him about his great friend, Guy Favreau, who was looking for young lawyers. The Department of Justice seemed to be an ideal environment for Beaudoin, who had a particular interest in political questions. In addition to serving as legal counsel in the Civil Law Section, Beaudoin played the same role for three days a week at the Department of Mines (where he was the only Francophone) as a “delegate” of the Section.⁹

In 1957, Roger Tassé joined the small civil law group after a one-year assignment to the Combines Section, which was directed by T. D. Macdonald. Tassé’s experience at Combines had enabled him to improve his command of English, but he felt that his work did not allow him to use the knowledge he had acquired in his law studies at the Université de Montréal. He was about to leave the Department when Favreau held a competition to find a lawyer for the Civil Law Section. Tassé and Gaspard Côté both applied, although only one position was available. They met each other in the library of the Supreme Court of Canada, where they had gone to answer the questions of the Assistant Deputy Minister in writing. Finally, Favreau decided to hire both lawyers. However, Gaspard Côté began his career in the Criminal Section, thus becoming the

first Francophone with a civilian background to work in an area other than civil law. For his part, Tassé joined Garon and Beaudoin in the Civil Law Section, forming a group nicknamed “The Three Musketeers” because of their close ties of friendship.¹⁰ The other member of the team was Paul Ollivier, who had been made director of the Section on May 1, 1957.¹¹

The Civil Law Section experienced staff increases in December 1958, when Raymond Roger joined the team, and in February 1960, when his colleague at McGill University, Rolland Boudreau, followed his example. A few months earlier, Boudreau had seen an advertisement in *La Presse* describing attractive careers in Ottawa for young law graduates. He knew of the Department only by name, but he was looking for a challenge and applied for a vacant position in civil law. He was told to report to the library of the Bar Association at the Montréal Court House, in order to meet Guy Favreau and the representatives of the civil service. Favreau, who was an “excellent salesman,” managed to convince Boudreau to think seriously about the job he was offered, although Boudreau’s fiancée was in Montréal and he did not feel particularly attracted by Ottawa. The young lawyer said that he did not have the time to answer the questions asked on the examination right away. For the Assistant Deputy Minister, however, this was not a problem. Favreau gave Boudreau the questions so that he could answer them in the evening, and told him where to find the answers. After some hesitation, Boudreau finished the examination paper, and sent it to the Department the next day.¹²

More than three months had passed when Boudreau happened to meet Roger Tassé at the Superior Court. Tassé told him that he had obtained the position: “So it seems you are coming to Ottawa to work with us?” A few days later, Boudreau did receive a letter from the Department of Justice (in English) confirming this news. Boudreau went to Ottawa on February 8, 1960, in the middle of a snowstorm, to replace Alban Garon who had left the Department of Justice six months earlier to

become head of legal services at the Department of Public Works.^c When Boudreau arrived at the Department, he found two piles of cases awaiting him. Some of the files were five months behind schedule. At the time, the Section had been reduced to four members, since Gérald Beaudoin had recently been transferred to the Advisory Section.¹³

Initially, the main task of these lawyers was to coordinate the work of outside agents (whom this Section continued to hire on the basis of its established list, because of the large number of cases it had to deal with). In time, however, they became more involved in dealing directly with cases, appearing before the Superior Court of Quebec, the Exchequer Court (now the Federal Court), and the Supreme Court of Canada.^d Their activities at the Department of Justice gave them the opportunity, at the beginning of their careers, to deal with very interesting and complex cases, to which they would not have had access if they had practised their profession in the private sector.¹⁴

The Civil Law Section was still in its infancy, but under the leadership of a “prominent civilian,”¹⁵ its future was very

c According to Garon, Deputy Minister Jackett and Favreau decided on this transfer. He recalls that his English was far from perfect at the time, and that the Deputy Minister of Public Works, General Young, gave him a cold reception. When Garon arrived to take up his new duties, Young told him that he was opposed to the appointment because of Garon's training in civil law, but that he would judge his work on its merits. When Garon left this department in 1965, relations between the two men were much friendlier, and when he retired in 1964, Young wrote a very laudatory letter about him. Interview with Alban Garon (January 18, 2000), Cassette No. 9, Side 1.

d The permanent members of the Section increasingly pleaded their own cases in court, rather than turning them over to outside agents. In September 1961, there were approximately 327 cases before the courts of Quebec, the Exchequer Court and the Supreme Court of Canada, of which 269 were being pleaded by legal counsel from the Civil Law Section and 58 by outside lawyers. National Archives of Canada (NAC), Royal Commission on Government Organisation (RG 33/46), Vol. 318, File No. 83, “Department of Justice – Civil Law (Quebec),” copy of a letter from D. S. Maxwell to G.W.T. Reed, September 4, 1961.

promising.^e Guy Favreau, who was well regarded in the Quebec legal community, promoted the Section at the Federal Lawyers Club in Ottawa, and mixed easily with Anglophones. A good friend of Deputy Minister Wilbur Jackett, Favreau made his point of view known to senior officials of the Department, and thus obtained for the Civil Law Section the resources it needed for its development.¹⁶ However, the relative calm of the previous five years was followed by a more eventful period, which was of decisive importance for the Section.

The Upheavals of the 1960s

The upheavals of the 1960s profoundly affected the Department of Justice, including the Civil Law Section. The first blow to the Section was Guy Favreau's departure in July 1960. The Assistant Deputy Minister had received an offer he could not refuse from a large law firm, and as someone who loved the practice of law, he wanted to return to private legal work in Montréal.¹⁷ However, those who had regular dealings with him believe that he left the Department because he was unable to have the position he wanted, namely Deputy Minister of Justice and Deputy Attorney General of Canada. Some people think that, in spite of his great abilities and reputation, Favreau was denied the highest legal position in the land because of his training in civil law.^f At the

e Indeed, Deputy Minister Varcoe, in his year-end assessment, considered the reorganization of the Civil Law Section under Favreau as one of the major achievements of the Department in 1956. Department of Justice (DJ), Administrative Records, File 225-3, Volume 1, *General Administration, Organization – General, Department of Justice*, memorandum from F. P. Varcoe to Minister Garson, December 27, 1956.

f It may be possible that Guy Favreau's civil law training was detrimental to him. For his part, however, Paul Ollivier insists that he did not personally experience any such prejudice in his direction during his 29 years at the Department of Justice. His civil law training did not prevent Ollivier from moving up through the ranks to the position of Associate Deputy Minister (Civil Law). Conversation with Paul Ollivier (March 28, 2000), Hull.

Department of Justice at the time, it was assumed that a civil law specialist would be unable to deal with legal issues arising in the common law provinces. In addition, it was asked, how would he be able to supervise the work of lawyers with common law training?¹⁸ It seemed to be forgotten that, more than 75 years previously, Augustus Power, also a civilian by training, had acted as Deputy Minister on several occasions, and that the Department of Justice had not been any the worse for it.⁸ In spite of this historical precedent, another fifteen years were to pass before a person with a civil law background would be appointed Deputy Minister.

However, a few months before Favreau's departure, the Department made an effort to recognize the existence of civil law by finding a place for it in the upper ranks of its staff. On March 9, 1960, section 3 of the *Department of Justice Act* was amended to specify the number of Associate Deputy Ministers.^h In the House of Commons, the Minister of Justice, Edmund Davie Fulton, explained that a constant increase in the amount of work and the growing complexity of the cases warranted the appointment of two Associate Deputy Ministers. The idea of creating two such positions had emerged several years earlier, when the Liberals were in power. In the spring of 1957, Prime Minister Louis St-Laurent was supposed to ask Parliament to approve the creation of

g In fact, Favreau's training was only a pretext, since the Deputy Minister does not give legal opinions on his own. He is surrounded by a team of people who advise him on fields with which he is less familiar. A Deputy Minister, even if he has common-law training, cannot know everything. Furthermore, at this time, even though the Deputy Minister signed nearly all the opinions issued by the Department of Justice, these opinions were often written by legal counsel. The Deputy Minister then examined them, and could make changes before signing them. Interview with Roger Tassé (December 16, 1999), Cassette No. 3, Side A; conversation with Alban Garon (April 3, 2000), Ottawa.

h Associate Deputy Ministers are chosen by the Cabinet and are entitled to certain privileges, while Assistant Deputy Ministers (and Assistant Deputy Attorneys General) are public servants appointed by the Public Service Commission. Interviews with Anne-Marie Trahan (January 4, 2000), Cassette No. 3, Side B, and with Alban Garon (January 18, 2000), Cassette No. 9, Side 2.

these positions, but his party was defeated in the elections. This delayed the tabling of this legislative amendment. Deputy Minister Varcoe, who was about to be replaced by W. R. Jackett, had then suggested that E. A. Driedger and Favreau be appointed to these positions, and it was expected that Favreau would become familiar with all aspects of the Department, so that he could act as Deputy Minister if Jackett had to be absent.ⁱ ¹⁹ Three years later, the House adopted, without opposition, the bill tabled by the Diefenbaker government.

However, there was nothing in the amendment to indicate that one of the positions of Associate Deputy Minister had to be given to a civil law specialist responsible for civil law and for federal law issues in Quebec. Rather, the appointment of the first Associate Deputy Minister (Civil Law) marked the beginning of a tradition that still exists. Nonetheless, a number of people affirm that it was from that moment on that the Department officially recognized the presence of civilian lawyers within its structure, and thereby acknowledged Canadian bijuralism.²⁰ Furthermore, from the moment that the idea had been advanced in 1957, the plan was to appoint the two Assistant Deputy Ministers in place. By 1960, however, it was already too late: Favreau had made his decision to leave the Department.²¹ He handed in his resignation, and the Minister had to appoint another candidate to the position of Associate Deputy Minister (Civil Law).

i Someone went even so far as to suggest that the Department should appoint a second full Deputy Minister with a civilian background, who would be responsible for civil law issues. Varcoe quickly rejected the idea, explaining that the work of these two individuals would be unequal, because of the lesser number of cases requiring the intervention of a civil law specialist. He also found it inconceivable that a Deputy Minister with civilian training could supervise common law lawyers, and vice versa. Finally, he thought that it would be too complicated to have the legal counsel in the same section reporting to different authorities, depending on their training. See Department of Justice (DJ), Administrative Records, File 225-3, Volume 1, *General Administration, Organization – General, Department of Justice*, memorandum of F. P. Varcoe to the Minister of Justice, March 22, 1957, pp. 1-2.

On November 9, 1960, **Rodrigue Bédard**, a municipal judge in Hull and a professor at the University of Ottawa, took up his duties as the first Associate Deputy Minister (Civil Law).²² Bédard had trouble asserting his authority, because he was unfamiliar with the workings of the Department, and with the procedures and culture of the environment he had just entered. In addition, some of the people with whom he was working saw his appointment by the Conservatives as the outcome of a political manoeuvre, and this did not ease Bédard's relations with the managers in place. However, as a distinguished jurist with a strong sense of duty, he did his best to continue the work of his predecessor.²³

In Bédard's time, recruiting was initially done through the Civil Service Commission, which published notices of competitions (in law faculties, with the Quebec Bar and in the newspapers), and received applications. The Associate Deputy Minister then went to Montréal or Québec City to meet the candidates, accompanied by a representative of the Commission. Sometimes, these candidates were asked to take a written examination, and had to answer some questions in English. They thus had to be bilingual in principle, but they did not have to have a perfect mastery of English. It was expected that in time and with greater experience, they would inevitably acquire a good knowledge of English.²⁴

New faces then appeared in the Civil Law Section. Some of the new arrivals had already been working for the Department of Justice. The first newcomer was Gaspard Côté in 1962, who had been working in the Criminal Section since 1957. He quickly became a close and trusted collaborator of his new director, Paul Ollivier. During his time in the Criminal Section, Côté participated, as lawyer for the Department of Justice, in the work of the Brossard Commission of Inquiry into the Coffin case and in the work of the Dorion Commission on the Rivard case (which resulted in the resignation of Favreau as Minister of Justice in 1965).²⁵

Rodrigue Bédard

Joseph Georges Rodrigue Bédard was born in Hull, Quebec, on June 9, 1907. He studied at the University of Ottawa, where he obtained a bachelor of arts degree and a licentiate in philosophy in 1927. He obtained his licentiate in law from the Université de Montréal in 1933, and was called to the Quebec Bar in July of the same year. He then practised his profession in Hull, where he was also Recorder, then a municipal judge (1938–1960). In addition to practising law, Bédard was very active in teaching. He served as academic dean at the University of Ottawa law school (1954–1960), and as professor of civil procedure from 1953 to 1970. A Queen's Counsel since 1945, he joined the Department of Justice as Associate Deputy Minister in November 1960. Ten years later, he left this position to become a judge of the Superior Court of Quebec. Mr. Justice Bédard died in Montréal on March 10, 1978.²⁶

When Côté asked to be transferred to the Civil Law Section, Maurice Charbonneau (now with the National Parole Board) soon followed the man who had been his mentor in the Criminal Section for the previous three years. Guy Favreau had recruited Charbonneau in 1960, during a train trip between Québec City and Toronto. Noticing the law book he was reading, Favreau asked him if he would be interested in a career at the Department of Justice, in Ottawa. After thinking about this offer, Charbonneau agreed to take an examination “which did not commit him to anything” at the Court House in Québec City. Two months later, he received a call from Favreau’s secretary, who told him that the Assistant Deputy Minister wanted to meet him. He was then offered a position on the criminal law team.²⁷

In October 1963, Paul Coderre joined the Department of Justice, after pleading a case in which he had opposed Paul Ollivier. The two men were both natives of Ottawa. Coderre was practising law in Chicoutimi when Ollivier asked him if he wanted to return to the national capital. Coderre started his career at the Department of Health, but a few months later, he was called upon to replace Rolland Boudreau at Justice Headquarters.²⁸ Boudreau had left the Department after three months as head of Minister Lionel Chevrier’s office to accept a position at the head office of Canadian National, in Montréal. He continued to work for this company until his retirement in September 1993 as Vice-President of Legal Affairs.²⁹

In 1965, the Department of Justice hired its first notary on a permanent basis. Up to that point, most matters involving real estate law had been entrusted to outside notaries. The Civil Law Section could count on the services of Merry Del Val (“Val”) Richard, a clerk who had acquired a vast experience in handling property titles through his fifteen years in the business (he was nicknamed “Mr. Notary”). However, Richard did not have a degree in notarial studies. Assisted by Annette Laflèche, Richard was responsible for

contacting the notaries retained by the Department, for examining notarial deeds and for submitting them to the director of the Section for approval. A twenty-year employee of the Department (he had originally been the secretary of Roméo Gibeault), Richard had been involved in show business in the 1920s. A tap dancer, violinist, singer and actor, he had played in Broadway theatres, and enjoyed recounting his adventures to his colleagues.³⁰

Since 1961, Paul Ollivier had wanted a notary to be added to the permanent staff of the Civil Law Section, as legal counsel.³¹ In 1965, a young notary by the name of Jacques Roy saw one of the Department's advertisements for a notary, but he had little interest in this position until he met Gaspard Côté at the monthly dinner of the Jaycees in Hull. The next day, Roy contacted Rodrigue Bédard, the Associate Deputy Minister, who was also a family friend. Bédard told him that the competition was over, but that he would make an exception for him. The interview took place a few days later, and Roy began working for the Department on April 26, 1965.³²

During his first morning on the job, Roy was introduced to the Deputy Minister, E. A. Driedger, by the director of the Section. This was a rare gesture. It was explained to Driedger that, like other notaries from Quebec, Roy had taken the same courses as lawyers did, but had a somewhat different vocation. However, one crucial question remained unanswered: What salary was to be given to this rare bird? Roy's presence was creating a precedent. To resolve this problem the Department relied upon the salary scale in effect, which was divided into two categories of lawyers, namely, barristers and solicitors. Solicitors earned less. By definition, a notary was closer to the category of solicitors, but an exception was made to place Roy in the group of barristers. Roy thus received a higher salary from the beginning. He inherited a very large office, which he decorated with a rug he found in the basement of the Department. According to custom, only directors were

entitled to a rug. However, Roy, who was in a category of his own, was allowed to depart from tradition in this way.³³

Roy worked with Richard until the latter retired a few months later, in his late sixties. Because so much land had been expropriated for the construction of Mirabel Airport, Roy was obliged to handle some 3,000 files by himself, not counting the other real estate transactions that the Section had to deal with. Since Roy was the only notary, the Department continued to hire outside agents, because the workload was simply too great.³⁴ However, as a result of Roy's arrival, senior management in the Department of Justice (and later, in the other departments) came to better understand and appreciate the work of notaries. As a result, notaries were treated as legal counsel, just like lawyers, not as "the plumbers of the profession."³⁵

The Civil Law Section experienced other staff changes in the second half of the 1960s. Roger Tassé, looking for new challenges, left the Section in 1965 to become Superintendent of Bankruptcy.³⁶ In 1967, Jean-Paul Fortin joined the group of civilians to replace Tassé, after four years in the Quebec public service. He even occupied the office that had formally belonged to Tassé, whom he had already met at the Université de Montréal.³⁷ Also in 1967, Paul Ollivier was appointed Assistant Deputy Attorney General (Civil Law), while continuing to perform the duties of director of the Section. However, Paul Coderre took over as director in 1969.³⁸ In the same year, Gaspard Côté left Ottawa to work for the Montréal Regional Office, a "close relative" of the Civil Law Section.

At that time, lawyers of the Section pleaded cases on a regular basis. However, Bédard assigned cases and requests for opinions according to the availability of legal counsel. There were still few civil law specialists in the Department, and if they were familiar with other types of law (constitutional, criminal, tax, etc.), they were also at the disposal of the Associate Deputy Minister with training in common law. In

addition, the Civil Law Section was sometimes given responsibility for cases concerning Francophones outside Quebec, since the civilians were often the only people in the Department with a good command of French.³⁹ This was indeed the distinction which gave the civilian group its cohesion, but which also made it feel isolated from the rest of the Department and from the public service in general. In fact, these lawyers formed **a separate family group**. Like their common law colleagues, however, the members of this group were affected by the recommendations of the Royal Commission on Government Organization (also known as the Glassco Commission).

A separate family group

In the first place, these lawyers were bound by ties forged by their common civil law training and by the various cases to which they devoted many overtime hours.⁴⁰ The workload justified such dedication, but it was also tempting for new legal counsel, whose families did not live in the region, to spend evenings and Saturdays at the office. Time was precious, as this passage shows: “When somebody left, there was no real reception, even if the individual was a Deputy Minister. Everybody gathered at 2 p.m. in the big conference room on the third floor, in Ottawa. An Anglophone spoke a few words of praise, and somebody else might add something. That was it. The Deputy Minister looked at the time, saying ‘we still have a day’s work to do,’ and everybody returned to their offices. We had all lost three quarters of an hour.”⁴¹ These men thus spent much time together, but consulted one another only occasionally, since few cases required the simultaneous participation of two members of the Section.

It was thus outside the workplace that they could cultivate friendships that sometimes started in the office,

sometimes went back to their law student days. When he was Assistant Deputy Minister, Guy Favreau was in the habit of inviting young Francophone lawyers (including those working in sections other than Civil Law) to lunch at a restaurant every Friday, to foster cohesion and harmony. These meetings, in Hull or at the *Cercle universitaire*, were used by Favreau as an opportunity to introduce young lawyers to such prominent figures as Justice Fauteux of the Supreme Court, and Charles Stein, who was then Under Secretary of State.⁴² Favreau's successor, Rodrigue Bédard, continued this tradition with the second generation of civil law specialists.⁴³ As the first members left the Section, the new arrivals were integrated into the team. However, the two groups remained in contact, in spite of the different careers they were pursuing, through these regular meetings.

Some of these men saw each other even more frequently, almost every noon hour at the bus station restaurant, "where they settled the constitution of Canada." Ollivier, Beaudoin, Tassé, Charbonneau, Coderre, Garon, Landry and Pierre Carignan (who was with the Restrictive Trade Practices Commission) often became involved in animated discussions, which earned them the nickname of "the loud Frenchmen."⁴⁴ They also met at the reception given at Christmas time by the Civil Law Section, and they occasionally saw one another in the company of their wives. Several of these men lived in the same neighbourhood and were active in their parish. Friends in both the workplace and outside work, they formed a family team, and this enabled them to confront together the obstacles they ran into because of their training and language.⁴⁵

These ties of friendship were particularly meaningful in an environment that was clearly dominated by the common law and by the English language. In 1955, bilingualism was practically non-existent, and the few lawyers with civil law training were concentrated in the Civil Law Section. When he arrived

at the Department five years later, Maurice Charbonneau realized that “there were almost no Francophones outside the Civil Law Division.” This situation was quite similar to that of the public service as a whole in the 1960s.⁴⁶ For the few Francophones who were not members of the Section, the Friday lunches were a real opportunity for reunions.⁴⁷

However, while most of the civilians felt they were fortunate to be able to work together in their own section, some felt isolated from the Department of Justice as a whole. The situation had undoubtedly improved since the time of Roméo Gibeault, but the limited scope of the Civil Law Section could still be perceived as an obstacle by those who wanted to broaden their horizons. For them, the section was like a ghetto in which nearly all the Francophone resources of the Department of Justice were concentrated. In the other departments, the handful of scattered, isolated civil law specialists were often called upon to provide services as bilinguals, in spite of their competence in law.⁴⁸ While people were calling upon them for their linguistic knowledge, these lawyers were unable to participate fully in the legal challenges of the Department.⁴⁹

At Headquarters, members of the Civil Law Section rarely communicated with other sections, but this did not prevent civilians and “common lawyers” from seeing one another occasionally outside the office. In this group, all the work was done in French, but its members had ample opportunity to practice English, the mandatory language for communications with the Deputy Minister and with departments that requested legal opinions.⁵⁰ Bilingualism was mostly a Francophone affair, even though a few English-speaking senior public servants tried to “stumble through a little French.”⁵¹ For the civil law specialists attached to legal departments, the isolation was even greater, since all communications, whether oral or written, had to be conducted in English.

In this context, the spirit of good fellowship that developed (and still exists) among Francophones, regardless of the section to which they belonged, made it possible to break through the civilians' isolation. The creation of a Civil Law Section also had the effect of bringing them together and allowing them to work in French. They felt pride at the idea of having their own division, and when the Department proposed combining the Civil Law Section with the Civil Litigation Section (its common law counterpart), they resisted this form of encroachment, because they wanted to preserve the autonomy and identity of their team.⁵² They had to defend their linguistic rights and justify their presence, but this was a necessary step while waiting for mentalities to change and for the climate to become more favourable.⁵³

These lawyers, who worked in the Civil Law Section under Favreau and Bédard, formed the core of individuals who enabled civilians to take the place they deserved at the Department of Justice. They were a source of inspiration for those who joined the Department after Bédard left in November 1970.⁵⁴

The Glassco Commission and Its Repercussions

The Glassco Commission, set up in September 1960, was given terms of reference "... to inquire into and report upon the organization and methods of operation of the departments and agencies of the government of Canada and to recommend the changes therein which [it considered] would best promote the efficiency, economy and improved service in the dispatch of public business."⁵⁵ The Commission's inquiry dealt with various problems that were common to all departments, and it was from this perspective that legal services became the subject of a more in-depth study. When they had completed their work, the three members of the Commission made recommendations that considerably changed the

direction of the Department of Justice, and hence that of its civilian lawyers.

In spite of efforts at centralization that dated back to the birth of the Department of Justice in 1868, it became obvious, nearly a century later, that “a significant amount of legal work was being done for federal departments without direct involvement or participation of the Department of Justice.”⁵⁶ The various departments and agencies of the government had gradually set up their own legal services. This situation had already been denounced by Ernest Lapointe in 1935, when he was Minister of Justice. According to the *Department of Justice Act*, the Department was responsible for all the legal activities of the government, but other departments had taken the liberty of hiring their own lawyers.^j⁵⁷ In the early 1960s, it was estimated that more than 85 percent of the government’s lawyers (including legal counsel in the other departments and outside agents) did not come under the responsibility of the Department of Justice.⁵⁸

The Glassco Commission examined this issue, and proposed that all legal services (with a few exceptions) be grouped together under the direction of the Department of Justice, in order to eliminate the many disadvantages of a decentralized practice.⁵⁹ The Department quickly responded, and in 1965, it appointed Alban Garon to the position of Director of Departmental Services (at the same time being responsible for tax cases in Quebec).⁶⁰ Garon’s role was to see that this first recommendation was implemented. A long process of negotiation with the departments then began.

j It seems, however, that for cases where civil law advice was required, the departments were already calling upon the Department of Justice. This meant they did not have to hire their own civilian, a solution hardly warranted by the workload. National Archives of Canada (NAC), Royal Commission on Government Organization (RG 33/46), Vol. 308, File No. 3, “Advisory Committee,” memorandums from various departments explaining the legal services they employed, 1961.

Over a period of several years, Garon met with the Deputy Ministers and tried to persuade them of the benefits that their departments would obtain if they had lawyers reporting to Justice. The Director of Departmental Services also had to propose candidates, and he used this position to give equal opportunity to civil law specialists and Francophones. Garon's changes sometimes met with resistance on the part of the Deputy Ministers, who had to accept the imposition of a new organization. The presence of legal counsel from the Department of Justice interfered with the cultural autonomy that had been developing since the time when departments had first started hiring their own lawyers.⁶¹ This was an enormous task for Garon, and in 1970, Jean-Paul Fortin left the Civil Law Section and was assigned to Garon as an assistant.⁶²

In addition, at least two legal counsel left the Civil Law Section to become heads of departmental legal services. Maurice Charbonneau headed up the legal services at Customs and Excise from 1968 to 1971. He then moved to Indian and Northern Affairs, where he noted that his predecessor had never hired any Francophones, but that a civil law specialist had been "imposed" upon him just before his departure in 1971. Charbonneau tried to reverse this trend, or at least to establish a better balance between the two groups, by recruiting Francophone civilians. In 1973, Charbonneau was replaced by Jacques Roy, who became the first notary to head up a team of common law lawyers.⁶³

Regarding the impact of integration on the number of legal counsel, it is estimated that between 1966 (the year in which the *Government Organization Act* came into force) and 1970, nearly 200 federal government lawyers became employees of the Department of Justice.⁶⁴ In order to ensure proper management of all these legal counsel, the members of senior management who sat on the Department's executive committee started to take charge of supervising the legal services in four or five departments.⁶⁵ The Department thus

returned to its roots, and "... the revamped Department more closely reflected the organization mandated by the *Department of Justice Act*."⁶⁶

Apart from the question of delivering legal services to the departments, the Glassco Commission examined the process of legislative drafting and translation of texts of law. The Commission discovered that laws were first drafted in English by Anglophone lawyers, and were then sent to the translation services. The translators, who had not participated in the preliminary discussions, did not understand the real purpose of the laws, and could only provide a French version that was often cumbersome. Furthermore, a translator interviewed by the Commission noted that it was not uncommon for the English version of a piece of legislation to linger for months in the offices of a department, after which the translation had to be completed in great haste so that the two versions of a bill could be ready at the same time for a second reading.⁶⁷

Following the suggestions of their advisors, including those of the Associate Deputy Minister (Civil Law), the three members of the Commission proposed that a Francophone lawyer with civil law training take part in the drafting process at an earlier stage. By participating in the discussions with the individuals responsible for the original version, the Francophone lawyer could detect certain subtleties and particular effects that the draft legislation in question might have on the Quebec population governed by the *Civil Code*.⁶⁸ The concept of bijuralism in federal laws is thus not new, but it seems that the Glassco Commission was more open to this idea than the Department of Justice at the time.

In response to this recommendation, the Deputy Minister, E. A. Driedger, also believed that it was preferable to add a translator with civil law training to the legislative drafting team before the English-language version of a piece of legislation was completed. However, he was skeptical about the possible impact of a particular piece of draft legislation on

the citizens of Quebec. Driedger believed that the new laws adopted by Parliament came under neither civil law nor common law, but rather under federal law, which in his view embraced the two systems. He added that if certain cases involving property or civil rights required special treatment, the Legislative Section could always consult members of the competent legal staff, namely those in the Civil Law Section.⁶⁹ To ensure that translators were less pressed for time, the Department of Justice committee responsible for examining the Commission's report suggested that civilian jurists be assigned exclusively to draft legislation put forward by the government, so that a more adequate French-language version could be drafted.⁷⁰

The Glassco Commission also recommended that the Department of Justice seriously consider opening regional offices, in order to "facilitate the ... conduct of litigation and prosecutions ... in centres across Canada where the volume of work justifies such action."⁷¹ None of the members of the Department's senior management were surprised by this proposal, for they knew that this measure was necessary so that the federal departments and agencies with offices elsewhere in the country could be better served. This decentralization allowed these clients to obtain the advice of specialists, and reduced the use of lawyers in private firms. In 1957, the Deputy Minister, W. R. Jackett, had advised the Minister, E. D. Fulton, of this possibility. The establishment of regional offices could only be done with an adequately trained and sufficient staff.⁷² For some time, the Criminal Section had been trying to recruit a member of the Quebec Bar in order to free up Louis-Philippe Landry, so that he could deal with criminal cases in Montréal.⁷³ Deputy Minister Driedger agreed with this principle, but according to him, management of these offices could not be entrusted to just anyone. Experienced lawyers were needed to supervise activities, and in Ottawa, staff was already limited.⁷⁴ In spite of these difficulties, the Department opened a small office in

Montréal in 1965. This was the first of a group of nine regional offices.^k

The Montréal Regional Office

The Montréal Office started off in a very modest way. In 1965, it had only one employee, a resident lawyer with the Department of Justice who was responsible for pleading criminal cases. Louis-Philippe Landry had been in Montréal since 1963, when the Attorney General of Quebec, Georges-Émile Lapalme, had appointed permanent provincial prosecutors to replace private sector agents. Landry had left the Department of Justice in Ottawa to enter the Quebec public service and to have the opportunity to work regularly in court.⁷⁵

Landry soon realized that it would be useful to have a federal office in Montréal to deal with criminal matters, and he proposed to the Department of Justice that such an office be created. The Minister of Justice of the day, Guy Favreau, and T. D. Macdonald, the Assistant Deputy Minister (Criminal Law), supported this initiative, and they were delighted to have Landry come back to work for the Department. They had both known him since his arrival in the Combines Section in 1959. Landry was later transferred to the Criminal Law Section in 1961, and then replaced Gaspard Côté when Côté moved to the Civil Law Section in 1963.^l Landry returned to

k Other regional offices were added later: Toronto and Yellowknife in 1966, Vancouver in 1967, Winnipeg in 1969, Whitehorse and Halifax in 1970, Edmonton in 1972 and Saskatoon in 1974.

l Landry tells the story that he found, in a drawer, a pay cheque Côté had forgotten to cash. This habit stayed with Côté when he later moved to Montréal. As the Honourable Mr. Justice Réjean F. Paul, J.C.S., recounts: "... Gaspard had little concern for material things. One day, in 1977, he came to see me and told me that his bank manager has just called to say that his current account was overdrawn by eleven dollars. He did not understand how this account could be overdrawn. I knew Gaspard's proverbial distraction over earthly matters, that he simply deposited his pay cheques in his desk drawer. I went with him to his office, and told him to open the left drawer of his desk. With great surprise, he found that three pay cheques had been deposited, not in the bank but in the drawer!" Correspondence with Réjean Paul, letter of February 17, 2000, p. 1.

the federal public service, and became senior legal counsel at the Montréal Office in July 1965.

It soon became obvious that a single criminal law specialist could not handle the work. In addition, civil law and tax law soon made their appearance in the office. After providing a legal opinion to the National Film Board, Louis-Philippe Landry became, as it were, the Board's counsel, but on an unofficial basis. Instead of communicating with Ottawa, the NFB henceforth employed the services of the Montréal Office, and the same thing happened in other departments. The arrival of Gaspard Côté in 1967 also had an impact on the type of cases handled in Montréal, and on the growth of the office. Côté originally hoped to do tax law, even if he was not particularly familiar with it ("he did not even know how to use a calculator," according to Landry). Côté brought with him files from the Civil Law Section in order to complete them, but Paul Ollivier continued to send him more complex cases (resulting in long telephone conversations between Ottawa and Montréal).^m As a result, Côté had little time to devote to tax law. Finally, with the integration of all legal services, the office received lawyers from the Department of Revenue, the Department of Veterans Affairs and the Unemployment Insurance Commission, which were already in Montréal. In 1967, there were enough staff to set up an office officially, and Louis-Philippe Landry became the Director.⁷⁶

Under the direction of Landry, the Montréal Office acquired a most enviable reputation. Judges appreciated the thorough knowledge of federal law that its lawyers possessed. This enabled the office to make a choice place for itself within

^m These conversations were often interspersed with "uh-huhs," and Côté's colleagues in Montréal took malicious delight in imitating them. According to Mr. Justice Paul: "The conversation could last an hour or two. It was broken by long silences, while they both thought about the legal problem in hand. As a result, one would often say to the other: 'Paul, are you still there?' or 'Gaspard, are you still there?'" Correspondence with Réjean Paul, letter of February 17, 2000, p. 2; interview with Louis-Philippe Landry (January 28, 2000) Cassette No. 18, Side 2.

the Quebec legal community. Since the office still had a small staff, Landry could allow himself to work both as manager and barrister. By accompanying young lawyers before the courts, the director could himself teach them the rudiments of the profession.ⁿ In addition, in order to foster closer relationships among the employees, he was in the habit of inviting them to his home for a party, or a barbecue after a softball game. These occasions gave the young lawyers an opportunity to meet their elders and, for those who might have lost interest, a chance to renew their ties with their colleagues. These gatherings provided an opportunity to cement the relationship between staff and management, and thus to develop a team spirit.⁷⁷

This team had grown since the official opening of the Montréal Office. In 1971, Annie Côté joined the office as a trainee. At that time, the staff still consisted primarily of criminal lawyers, with a handful of lawyers responsible for civil cases.⁷⁸ Landry had recruited Côté, a student who really wanted to do criminal law. At the time, however, there were hardly any women in this field, which was really a male domain. The Director of the Office in fact had told her “not to rush things” in that area. Annie Côté worked instead with Gaspard Côté, whose workload continually increased. Côté, who was in a sense the godfather of all the lawyers who went through the Montréal Office,^o had such a passion for the legal profession that Annie Côté began to take a liking to civil law and to question her desire to go into the criminal law field.⁷⁹

n Today, with more than 300 employees, the Director of the Montréal Office has had to abandon his role of court lawyer to devote himself almost exclusively to management. Francine Courtemanche, “Jacques Letellier, lawyer and director,” *Inter Pares* No. 149 (July/August 1991), p. 3; interview with Jacques Letellier (February 1, 2000), Cassette No. 20, Side 1.

o In 1992, the members of the Civil Affairs Section of the Montréal Office set up the GASPARD system (*Génie Automatisé et Stratégie Permettant une Amélioration de la Recherche en Droit*, an automated system to improve legal research), so called to pay homage to Gaspard Côté. Côté had retired in 1990, but remained very active in the legal community until his death on January 15, 1999, at the age of 67. Interview with Claude Joyal (January 10, 2000), Cassette No. 6, Side 1; Quebec Regional Office (QRO), “Direction des affaires civiles : revue historique.”

Annie Côté continued to be the only woman lawyer in the Montréal Office until 1974, when Suzanne Marcoux-Paquette was hired. Because of her special status, she sometimes found herself in somewhat comical situations. When she was still an articling student, John Turner, the Minister of Justice at the time, paid a visit to the office. After meeting just about everyone, he pointed out to the director that there were no women. People rushed off to find Côté, who had just returned from the law courts, in order to introduce her to the Minister. Before he left, Turner added that he hoped that on his next visit, the office would finally have a woman lawyer. Côté was hired as a member of the permanent staff in 1972.⁸⁰ In this male-dominated environment, Côté and Marcoux-Paquette were undoubtedly pioneers. Through their efforts, the Department of Justice came to appreciate "... the contribution of ... women to the day-to-day management of a law office." Furthermore, as a successor of Landry would later say: "... thanks to them, we were able to become aware of certain realities which, up to that point, we had not been able to grasp as lawyers."⁸¹

Seven years after the arrival of Louis-Philippe Landry as the Department of Justice's resident counsel, the Montréal Office became, in a way, a smaller version of Headquarters, even though it reported (and still reports) to the Associate Deputy Minister (Civil Law) in Ottawa, and was unique in making daily use of French as the language of work. There were still no strict divisions within the office, but the presence of specialists in criminal, civil or tax litigation clearly showed that the office was already meeting the needs of a varied clientele. At the time, the Office had sixteen lawyers, who moved into the National Bank of Canada building in Place d'Armes.⁸²

Civil law had thus found a place for itself without any real planning (according to Landry, it has thus, in a sense, followed the common law pattern). Just as a private sector law firm would have done, the Montréal Office developed a

clientele consisting of government departments which sent new cases directly to this business centre, rather than sending them to Ottawa.⁸³ The Civil Law Section perhaps felt that the Montréal Office was taking the wind out of its sails, growing at a sustained rate that the Section could not equal.⁸⁴ Louis-Philippe Landry indeed acquired the reputation of being an empire builder.

The Director of the Montréal Office was said to have had Napoleonic ambitions, to want to control all legal activities in Quebec. “King Philippe” also insisted on personally hiring the lawyers who were to work for him, instead of having candidates chosen by Ottawa.⁸⁵ He was familiar with the local scene, and believed that he knew what the office needed. He also had the habit of going to the records room every evening to review the cases that had been dealt with and to see how they had been handled. The next day, he would ask why the cases had been resolved in one way, rather than some other, and did not hesitate to express his disagreement on occasion, adding that the case law would surely be in jeopardy if things continued along the same lines.⁸⁶ Within a short time, people no longer spoke of an office of the Department of Justice, but rather of Landry’s Office. As early as 1968, John Turner explained to the members of the House of Commons that his department had “established in Montréal an almost independent Office.”⁸⁷ It is obvious, then, that Landry was deeply involved in his project. A strong advocate of the Montréal Office, he was able to establish a solid base for further development.

A number of individuals could also testify to Landry’s perseverance in making more practical demands. Faced with bureaucratic constraints, he successfully defended his point of view. When the office requested that an intercom system be added to the existing telephone network, Bell installed touch-tone telephones. The Department loudly protested, saying that these modern sets cost more money. After investigating the matter, Landry discovered that it was rather the addition

of the intercom system to the conventional telephone network that was more expensive. He therefore sent a long memorandum to the Department to explain that his office was ready to give up the intercom in order to keep the button phones. Landry was then nicknamed “Phil, the touch-tone guy.” During his term as Director, he also requested that the Department of Justice pay for the shirts with bands that lawyers wore under their robes. Up to that time, Landry himself had paid for the shirts out of the money in his petty cash, since the Department claimed that these items fell into the category of “personal wearing apparel,” and were therefore personal expenses. Landry, who was dissatisfied with this answer, explained that when the shirts had been used, they were sent to the cleaners and then returned to the same pile, and that the lawyers did not necessarily take the same shirt every time. The Department accepted Landry’s argument, and undertook to pay for the shirts used in the Montréal Office.⁸⁸

Because of his efforts, Landry was given the “Bonaparte Award for bravery and ingenuity in the face of bureaucracy,” in the form of a picture of Napoleon with Landry’s head. This award was given to him in the presence of the Deputy Minister, D. S. Thorson, and of the Minister, Ron Basford. When he left in 1975 to return to Ottawa as Assistant Deputy Attorney General (Criminal Law), Landry had unquestionably left his mark on the Montréal Office. A judge of the Superior Court of Quebec from 1979 on, he was an inspiration for his successors, including his cousin Réjean Paul.⁸⁹

With Landry’s encouragement, Réjean Paul had joined the Montréal Office in 1967. When he arrived, the office had a mere five persons on staff, including Quebec’s current *Ministre de la Sécurité publique*, Serge Ménard. Paul initially wanted to do civil law, but the office needed a criminal lawyer. Landry reassured him, saying that this new career direction would only be temporary. However, this brief exposure to criminal law proved to be a determining factor, since Paul continued in this direction. He left the Office from January to

December 1975, to head up the Quebec Organized Crime Commission, and returned at the end of the year to succeed Landry.⁹⁰ Under Paul's direction, the Office continued to expand, so that by 1978, it had some thirty lawyers and its first notary (hired in 1976). The services it offered greatly resembled those provided in Ottawa, including advice on immigration matters, "due to the presence in Montréal of the relevant government clientele."⁹¹

In 1980, Réjean Paul left his position as Director of the Montréal Office to take up a judicial appointment in the Superior Court of Quebec. Jean-Claude Demers was chosen to replace him. Demers had originally been recruited by Jean-Paul Fortin in Montréal, in 1972. At the time, the Department of Justice was looking for a legal counsel with a civil law background for the Department of Supply and Services in Ottawa. The meeting with the Director of Legal Services at Supply and Services was a real culture shock for Demers. A unilingual Francophone, he suddenly found himself in a completely Anglophone environment, "without the least shadow of incipient bilingualism." During the interview, not a single question was put to him in French. He was assigned to a case in which all the documents were written in English. Demers found his situation intolerable, and accepted a new position as special assistant to the Minister, Jean-Pierre Goyer.⁹²

At the Department of Justice, this kind of relationship was not well regarded, and the Associate Deputy Minister (Civil Law), Paul Ollivier, who succeeded Rodrigue Bédard in December 1970, asked Demers whether he wanted to do law or politics. Demers laid down conditions for his return to the Department, namely that he be assigned to a position that would enable him to work in the area of labour law, which he had studied at the University of Ottawa. In 1974, Demers did return to the Department of Justice as legal counsel for the Treasury Board. In 1976, he left Ottawa for the Montréal Office, and became a litigator in the Civil Affairs Section. When he heard about the appointment of Réjean Paul to the

Superior Court, Demers applied for the position of Director. He spoke about it to Ollivier, who at first thought that he was too young, but finally “gave him his blessing.” Having made a good impression on Ollivier and Alban Garon, who were members of the selection committee, Demers became Director of the Montréal Office in 1981. He was the first director not to be a specialist in criminal law.⁹³

In 1984, the Montréal Office moved again, to the Guy Favreau Complex. At that time, it had about fifty lawyers on staff. After nearly fifteen years of continual growth, the Civil Affairs Section had surpassed the other sections in numbers, with twenty-one lawyers and one notary (compared to thirteen lawyers in the criminal section and fourteen in the tax section). Gaspard Côté had been the first head of the Civil Affairs Section. Initially, there had been few human and financial resources to manage, and Gaspard Côté’s managerial responsibilities were not yet heavy enough to prevent him from practising law himself. However, the number of employees gradually increased. In 1976, Jacques Ouellet took over from Côté as Director of the Civil Affairs Section. In 1983, Annie Côté succeeded him, becoming the first woman to hold a managerial position in the Montréal Office.⁹⁴

This rapid survey of the first twenty years of the Montréal Office clearly shows that it benefited from incorporating the legal services and experience of lawyers who had already worked in Ottawa. We also see that the Office achieved its growth somewhat by the back door, and followed an unanticipated path of development, so that it became a microcosm of the Department of Justice itself.⁹⁵ Such an expansion of staff and services did create some tensions between Ottawa and Montréal. Among steps taken to reduce these tensions, the two parties established in 1983 a division of work designed to reduce overlapping. Federal departments and agencies had got into the habit of sending cases originating in Quebec to the Montréal Office, although the Civil Law Section in Ottawa had been created to deal with these

cases.⁹⁶ The Civil Law Section was unable to maintain the same growth rate as the Montréal Office, and the issue of sharing cases between the two groups of civil law specialists regularly arose thereafter.

Meanwhile, Back in Ottawa ...

During the 1970s, the Department of Justice (and the public service in general) began to be more open to the presence of Francophones and their language. This new attitude coincided with the adoption of the *Official Languages Act* in 1969. This development was more beneficial to the civil law specialists than to anyone else, since in most cases, French was their mother tongue.^p In addition to becoming aware of the use of French in the workplace, the Department of Justice looked into the issue of legislative drafting. Moreover, as the Glassco Commission had noted, the specific nature of the Quebec legal system had to be taken into account.

One of the first attempts to include the particular features of civil law occurred in the late 1960s, when the *Expropriation Act* was revised. People were beginning to become aware that the French version of laws had to be something more than a literal translation of the English version. The term “legal counsel” had initially been translated by the French word *avocat* and, at the suggestion of Jacques Roy, this term was replaced by *conseiller juridique* in order to include notaries.⁹⁷

At the beginning of the 1970s, the Minister of Justice acknowledged in a speech that laws were still drafted in

p It would, however, be wrong to think that only Francophones worked in the Civil Law Section. Though few in number, Anglophone civilians did work at the Department of Justice (and in the Civil Law Section), especially from the 1970s on. With the rise of the separatist movement in Quebec, some Anglophones came to feel, rightly or wrongly, that there was no future for them in Quebec. Not much is known about them but, by their presence, they undoubtedly contributed to the dissemination of civil law at the Department and in the federal public service as a whole. Interview with Paul Ollivier (January 26, 2000), Cassette No. 17, Side 1; interview with Maurice Charbonneau (January 7, 2000), Cassette No. 5, Side B.

English and subsequently translated into French. It was hoped, however, that as bilingualism made progress in the public service, the Department would finally be able to reverse this process. In the meantime, some improvement in the French-language versions of legislation was noted, as translators made an effort to avoid literal translation and to concern themselves more with the underlying idea.⁹⁸ On the subject of the presence of Francophones among his employees, the Minister of Justice was highly optimistic. He stated that more than 30 percent of the Department's staff (including eighty-two lawyers and notaries, or 29 percent of legal counsel) were Francophones. In reality, however, this proportion covered both Headquarters and the Montréal Office. In addition, the speech emphasized that it would be wrong to think that most Francophones worked in the Montréal Office or in the Civil Law Section, since those who were attached to these two entities represented only 23 percent of all Francophones in the Department. Most Francophone employees worked in other sections, or were members of departmental legal services. He concluded that the use of French in the Department of Justice was not limited to the Civil Law Section and to the Montréal Office.⁹⁹

In 1976, however, a special study by the Commissioner of Official Languages painted a somewhat more sombre picture than the image presented by the Minister. In his report, the Commissioner denounced a linguistic situation that had changed little since the beginnings of the Civil Law Section in the 1950s. The Commissioner acknowledged that there had been some improvement in bilingualism since 1969, but added, "... although senior officials were clearly open-minded on the subject, the question of status of the two official languages was far from being a priority concern of the Department."¹⁰⁰ Francophones still had to shoulder the burden of bilingualism, and French-language versions of laws still did not enjoy fair treatment.

Researchers estimated that 30 percent of agents at Headquarters (fifty-four out of one hundred eighty) were Francophones, while in the departmental legal services, this percentage dropped to 21.6 percent (thirty-three out of one hundred fifty-three).¹⁰¹ It was also noted that Francophones were rarely promoted to the higher ranks, and that they were scattered (except in the Civil Law Section). As a result, the English language was given a higher status and the chances of advancement reduced for Francophones.¹⁰² On this last point, the investigator suspected that the civil law training of most Francophones was perhaps a factor. The persons interviewed explained that "... the recruitment of Francophone lawyers, who were usually trained in Civil Law, was often limited by ... predominance [of Common Law] in Canada." Moreover, none of those interviewed thought that there should have been more Francophones with a civilian background in sections other than the Civil Law Section. In the case of Anglophone civilians, however, their training did not seem to be an obstacle, because out of one hundred nineteen legal counsel with civil law training employed by the Department of Justice, twenty were Anglophones (and not all of them were members of the Civil Law Section).¹⁰³

As far as communications with the outside world were concerned, "the Department of Justice seemed to be adhering to the general unwritten principle of communicating with the province of Quebec in French and with the other provinces in English." For example, the report states that the "Instructions to Agents of the Minister of Justice and Attorney General of Canada" were usually sent in French to agents in Quebec, and in English to those in the other provinces, unless the sender happened to know the language of the person to whom the instruction was addressed.¹⁰⁴ In the case of legal opinions, whether oral or written, they were most frequently produced in English because the departments in Ottawa and the regions (except Quebec) and senior officials at Justice were for the most part unilingual in

English. These were the "... impediments preventing Civil Law staff from exercising their linguistic rights."¹⁰⁵

Finally, in the report on his inquiry, the Commissioner of Official Languages criticized the Department for its unequal treatment of French and English in the field of drafting legislation. It was noted that the French version of laws often left something to be desired and that, while the French translation conferred an equal legal status to the documents, it did not constitute fair treatment. In addition, the Commissioner declared that it was necessary to go beyond mere translation to take into account the specific natures of the two systems of laws: "The French versions are ... deeply influenced by the Anglo-Saxon approach, whereas, by virtue of their actual and symbolic importance, laws should accurately reflect the spirit and intrinsic qualities of both official languages and of both legal systems."¹⁰⁶ It was recommended that the Department of Justice take the necessary measures to correct this situation.

The Department quickly set up a committee to examine this issue. The committee wrote its own report, proposing the concept of parallel drafting (or codrafting), which was put in place in the late 1970s. This was a relatively simple system, but unique in the world. With this system, the task of drafting a bill was entrusted to two jurists, one Francophone and one Anglophone, in accordance with an initial plan. They then developed their own separate versions of the bill, consulting each other during the process and remaining in touch with the representatives of the departments concerned. This way of proceeding respects the spirit of the French language and results in two versions of better quality through reciprocal enrichment and of equal value from the legal and linguistic points of view.^{q, 107}

q Ten years after the introduction of codrafting, the Department conducted a series of consultations with judges, members of the Bar, linguist specialising in legal language, and revisers of draft legislation. Their reactions were very positive, for they had noted a distinct improvement in the quality of French-language versions of laws.

It must, however, be pointed out that the working group that recommended codrafting had originally done so for linguistic reasons. It was believed that this method would undoubtedly ensure greater respect for both systems of law; however, bijuralism was not the main concern. The door was open to that principle, but concrete results were not yet achieved. The French version continued to be more reflective of civil law, while the English version was exclusively tied to the common law. The committee had not understood the full scope of its task, and had not grasped the fact that respect for the two systems of law required more than simply expressing oneself correctly in French.¹⁰⁸

For the Civil Law Section, the decade of the 1970s was also a time of reorganization. As a result of the decentralization and integration recommended by the Glassco Commission, more responsibilities were given to the Associate Deputy Minister (Civil Law), including that of supervising the activities of the Montréal Office. In order to lighten his load, a reorganization took place and an Assistant Deputy Attorney General (Civil Law) was appointed, who would be responsible for overall supervision of the Civil Law Section. This position remained vacant after Paul Ollivier replaced Rodrigue Bédard as Associate Deputy Minister (Civil Law) in 1970. In 1974, Alban Garon was appointed Assistant Deputy Attorney General (Civil Law), a position that he held while keeping an eye on tax challenges.¹⁰⁹

On March 4, 1974, a second notary joined the Department of Justice. Jean-Claude Marcotte replaced Jacques Roy, who became director of legal services at the Department of Indian and Northern Affairs.¹¹⁰ Marcotte arrived from Québec City, where he had been working in the provincial public service, without having to have an interview or show any mastery of the English language, and he was assigned to a

unilingual Francophone position.^r Since Roy had left his job six months earlier, Marcotte had to rely upon the explanations of Annette Laflèche (the former assistant of Val Richard), who informed him about internal practices. Many cases and files started to pile up. In 1975, Michel Vermette joined the Civil Law Section to help out Marcotte.¹¹¹

In 1977, Roger Tassé returned to the Department of Justice after spending five years working as Deputy Solicitor General. He had received a call from the Clerk of the Privy Council, who asked him if he was interested in becoming Deputy Minister of Justice. Tassé accepted the offer without hesitation. He thus became the first Francophone and civilian Deputy Minister, holding a position that had eluded Guy Favreau fifteen years earlier.¹¹² If there had been a myth concerning the inability of lawyers with a civilian training to direct common law lawyers, Tassé managed to dispel it. One of the concerns of the new Deputy Minister was to foster the complete integration of civilians within the Department, and he was a particularly strong supporter of codrafting. It was also during Tassé's tenure that the *Constitution Act, 1982* was adopted and the *Criminal Code* thoroughly revised. The Department of Justice was becoming more sensitive to the differences between the two systems of law, and sponsored an exchange program which enabled students of common law and civil law to acquire a better understanding of the other legal system and to appreciate it more fully.¹¹³

During Roger Tassé's term as Deputy Minister of Justice, the Montréal Office continued to expand. It was so successful

r On a more anecdotal note, when Marcotte assumed his new duties the staff of the Department had settled temporarily in the West Memorial Building, while waiting for renovations of the Justice Building to be completed. The new employee was given a huge office, with a floor area of 30 feet by 40 feet, which nobody wanted because it led out to an interior courtyard. In spite of the size of his office, Marcotte was forced to stay in the corner where the telephone was located, because the telephone cord was only five feet long. Interview with Jean-Claude Marcotte (February 2, 2000), Cassette No. 21, Side 1.

that in the early 1980s, the possibility of opening a regional office in Québec City was seriously considered, to serve the Department of Indian and Northern Affairs and the Royal Canadian Mounted Police, both of which had offices there.^s Clients in Québec City had been asking for such a regional office since 1973 because they wanted to be able to obtain *ad hoc* legal advice without having to contact or travel to Montréal or Ottawa. There were complaints that the agents hired to represent the federal government did not always have the necessary skills, and this added to the workload of the Department's staff lawyers, who had to go to Québec City. Moreover, the establishment of such an office would have facilitated exchanges between the federal Department of Justice and its provincial counterpart. However, such a plan would have required the reassignment of human and financial resources, which were already limited, and would have reduced the field of action of the Civil Law Section in Ottawa. After further study, the idea was rejected.¹¹⁴

The abandonment of the plan to open a regional office in Québec City did not end the uncertainty over the role of the Civil Law Section in Ottawa, but the Section did take advantage of this decision to get its second wind. Its existence was no longer questioned: "Given the importance and broad application of ... the Civil Law system, it is necessary to have separate sections in Justice Headquarters, each specializing in one of these areas, to provide the backup expertise and functional direction required by legal services in client departments or by regional offices."¹¹⁵ In 1983, the name of the Civil Law Section in Ottawa was changed to Civil Litigation and Real Property Law (Quebec) Section. However, the duties of the group of civil law specialists remained the same, and the new name was simply intended to reflect more accurately the types of cases they dealt with.¹¹⁶ Alban Garon,

s In fact, since the 1970s, the Legal Services Unit at the Department of Indian and Northern Affairs has had two notaries working in Québec City.

who was appointed Associate Deputy Minister (Civil Law) in September 1982 when Paul Ollivier retired,^t also redistributed cases between Montréal and Ottawa. In 1983, after an agreement had been reached with Paul Coderre and Jean-Claude Demers, respectively Director of the Civil Law Section and Director of the Montréal Office, cases were assigned on the basis of territory and field of law. Generally speaking, the Montréal Office was made responsible for litigation matters involving the federal government in Quebec territory in the judicial district of the Court of Appeal of Montréal, while the Section dealt with cases for the rest of Quebec. As far as notarial work was concerned, the Section assumed responsibility for real estate cases located anywhere in Quebec except the seven registration divisions in the region of Montréal. The real estate cases in those divisions were the responsibility of the regional office.¹¹⁷

Finally, in 1981, the Department of Justice took one more step forward towards a genuine awareness of the duality of Canada's legal system, by participating in the National Program for the Integration of Both Official Languages in the Administration of Justice (POLA). This program, of which Garon was the first chairman, called upon the resources of the Secretary of State, lawyers in Ontario, Manitoba and New Brunswick, the Canadian Bar Association and the University of Ottawa, the Université de Moncton, and McGill University.

t Ollivier's departure was a frightening development for the director of the Montréal Office, Jean-Claude Demers. Ollivier was Demers's immediate superior, and Demers had great respect for him. When Demers learned that Ollivier was retiring, he was seriously affected. Afterwards, there was a misunderstanding over Ollivier's successor. Several names were circulating in the community, including that of an individual Demers had met while doing his master's degree. Demers was opposed to this candidate, and did not conceal the fact. However, it was believed that Demers was talking about Alban Garon, and Demers felt at the time that this was going to be very bad for his relationship with his new boss. However, the two men are good friends today, as is shown by the joint interview they granted us in connection with this research. Interview with Jean-Claude Demers (January 18, 2000), Cassette No. 11, Side 1.

Working together, these partners developed “a ... standardized French common law terminology ...” and produced working tools for legal practitioners (glossaries, vocabularies, etc.).¹¹⁸ This development should be emphasized, even if it primarily addressed groups with common-law interests. The creation of POLAJ laid the foundations for the development of harmonization and bijuralism, two principles that were ardently defended by Garon’s successor, Anne-Marie Trahan.

Notes

1. "Civil Law Offers Unique Opportunity for Lawyers Trained in Quebec Law," *Inter Pares* No. 25 (November 1978), p. 1.
2. Department of Justice (DJ), Administrative Files, File 225-3, Volume 1, *General Administration, Organization – General, Department of Justice*, memorandum from D. S. Maxwell to E. A. Driedger, May 9, 1961; copy of a letter from E. D. Fulton to G. G. E. Steel, May 18, 1961.
3. Telephone interview with Charles Stein (January 15, 2000), Cassette No. 8, Side 2.
4. Interview with Alban Garon (January 18, 2000), Cassette No. 10, Side 1; interview with Paul Ollivier (January 26, 2000), Cassette No. 17, Side 1.
5. Interview with Paul Ollivier (January 26, 2000), Cassette No. 16, Side 1.
6. Interview with Rolland Boudreau (February 8, 2000), Cassette No. 24, Side 1; National Archives of Canada (NAC), Royal Commission on Government Organization (RG 33/46), Vol. 317, File No. 80, "Dept. of Justice – Legal Services and Procedures," "Department of Justice," report of a meeting with D. S. Maxwell, June 30, 1961, pp. 1-2.
7. *The Canadian Who's Who 1964-66*, Vol. X (Toronto: Trans-Canada Press, 1966), p. 332; *Who's Who in Canada 1966-68* (Toronto: International Press Limited, 1964), p. 1560; Ignace-J. Deslauriers, *La Cour supérieure du Québec et ses juges 1849-1^{er} janvier 1980* (Québec City: no publisher, 1980), p. 186; Richard W. Pound, *Chief Justice W. R. Jaccett: By the Law of the Land* (Montréal & Kingston: McGill-Queen's University Press, 1999), p. 338, Note 6; John English, "Favreau, Guy," *The 1997 Canadian Encyclopedia Plus* (Toronto: McClelland & Stewart,

- 1996); interview with Gérald Beaudoin (January 14, 2000), Cassette No. 7, Side 2; Quebec Regional Office (QRO), file of newspaper clippings concerning the Rivard case.
8. “M^e Alban Garon, 30 ans de droit civil à Ottawa,” *Barreau 86* (May 1986), p. 4; interview with Alban Garon (January 18, 2000), Cassette No. 9, Side 1; curriculum vitae, Alban Garon, January 2000.
 9. Interview with Gérald Beaudoin (January 14, 2000), Cassette No. 7, Side 1.
 10. Interview with Roger Tassé (December 16, 1999), Cassette No. 2, Side B; interview with Gérald Beaudoin (January 14, 2000), Cassette No. 7, Side 1.
 11. DJ, Administrative Records, File 225-3, Volume 1, *General Administration, Organization – General, Department of Justice*, copy of a memorandum from Deputy Minister W. R. Jackett to the legal staff (164723), undated; memorandum from the Deputy Minister Driedger to Minister Fulton, June 12, 1961.
 12. Interview with Rolland Boudreau (February 8, 2000), Cassette No. 24, Side 1.
 13. Interview with Rolland Boudreau (February 8, 2000), Cassette No. 24, Sides 1 and 2.
 14. Interview with Roger Tassé (December 16, 1999), Cassette No. 2, Side B; interview with Alban Garon (January 18, 2000), Cassette No. 10, Side 1; interview with Paul Ollivier (January 26, 2000), Cassette No. 16, Side 1; interview with Rolland Boudreau (February 8, 2000), Cassette No. 24, Side 2.
 15. Interview with Jacques Roy (December 14, 1999), Cassette No. 1, Side B; interview with Roger Tassé (December 16, 1999), Cassette No. 3, Side A.
 16. Interview with Rolland Boudreau (February 8, 2000), Cassette No. 25, Side 1.

17. QRO, file of newspaper clippings concerning the Rivard case, Roger Nadeau, "Confidences de Guy Favreau au Petit Journal : 'Mardi, j'étais prêt à quitter la politique,'" *Le Petit Journal* (week of July 4, 1965), p. 5; "Politics," *Time*, Vol. 86, No. 2 (July 9, 1965), pp. 13, 14 and 15.
18. Interview with Roger Tassé (December 16, 1999), Cassette No. 2, Side B; Pound, *Chief Justice W. R. Jockett*, pp. 145 and 321, Note 1.
19. DJ, Administrative Records, File 225-3, Volume 1, *General Administration, Organization – General, Department of Justice*, memorandum from F. P. Varcoe to the Minister, March 22, 1957, p. 1; memorandum from W. R. Jockett to the Minister of Justice, July 2, 1957, p. 4; Canada, *House of Commons Debates*, 3rd Session, 24th Parliament, Vol. I, February 17, 1960, pp. 1159-1161.
20. QRO, Claude Joyal, "Projet : La place du Bureau régional de Montréal au sein du ministère de la Justice du Canada," 1995, pp. 2-3; QRO, "Projet : Notes sur l'histoire du Secteur du droit civil," RAA, December 9, 1993, p 1; QRO, Jacques Letellier and René LeBlanc, "Réorganisation des services juridiques dispensés par le ministère de la Justice au Québec," April 15, 1997, p. 2.
21. DJ, Administrative Records, File 225-3, Volume 1, *General Administration, Organization – General, Department of Justice*, memorandum of W. R. Jockett to the Minister of Justice, July 2, 1957, p. 4; QRO, file of newspaper clippings on the Rivard case, Roger Nadeau, "Confidences de Guy Favreau au Petit Journal : 'Mardi, j'étais prêt à quitter la politique,'" *Le Petit Journal* (week of July 4, 1965), p. 5.
22. DJ, Administrative Records, File 225-3, Volume 1, *General Administration, Organization – General, Department of Justice*, memorandum of Deputy Minister Driedger to Minister Fulton, November 9, 1960, p. 2.

23. Interview with Maurice Charbonneau (January 7, 2000), Cassette No. 5, Side A; interview with Rolland Boudreau (February 8, 2000), Cassette No. 25, Side 1.
24. NAC, RG 33/46, Vol. 318, File No. 83, "Department of Justice – Civil Law (Quebec)," "Department of Justice: Civil Law Section," report of an interview with P. M. Ollivier, July 12, 1961, p. 3; *Report of the Royal Commission on Government Organization, Volume 2: Supporting Services for Government* (Ottawa: Queen's Printer, 1962), p. 421.
25. QRO, "Curriculum Vitae de M^e Gaspard Côté, c.r."
26. Deslauriers, *La Cour supérieure du Québec et ses juges*, p. 159; NAC, Public Service Commission (RG 32), Vol. 790, File 134650-853, "Employment of Mr. Rodrigue Bédard, Q.C., Legal Branch," "Rodrigue Bédard, Q.C." and memorandum from Rodrigue Bédard to M. O'Donnell, September 22, 1964.
27. Denis Paquet, "Man of action in a three-piece suit," *Inter Pares* No. 106 (May 1987), p. 1; interview with Maurice Charbonneau (January 7, 2000), Cassette No. 5, Side A.
28. Interview with Paul Coderre (February 9, 2000), Cassette No. 25, Side 2.
29. Interview with Rolland Boudreau (February 8, 2000), Cassette No. 24, Side 2, and Cassette 25, Side 1.
30. "M^e Roméo Gibeault a été inhumé à Saint-Jérôme, Qué.," *Le Droit*, 35th year, No. 116 (May 20, 1947), p. 2; interview with Jacques Roy (December 14, 1999), Cassette No. 1, Side B; interview with Rolland Boudreau (February 8, 2000), Cassette No. 25, Side 1; interview with Paul Coderre (February 9, 2000), Cassette No. 25, Side 2, and Cassette No. 26, Side 1.
31. NAC, RG 33/46, Vol. 318, File No. 83, "Department of Justice – Civil Law (Quebec)," "Department of Justice: Civil Law Section," report of a telephone conversation with P. M. Ollivier, July 28, 1961, p. 1.

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34. *Ibid.*
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52. Interview with Paul Ollivier (January 26, 2000), Cassette No. 17, Side 1.

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Paving the Way for Genuine Bijuralism: Harmonization and Recognition of the Place of Civil Law at the Department of Justice (1986 to the Present)

In the second half of the 1980s, a kind of break in tradition occurred for both the civil law specialists and senior management in the Department of Justice. For the first time since the days of W. S. Edwards (1924-1941), the position of Deputy Minister was given to an individual who had not had to climb up through the ranks of the departmental hierarchy. When Roger Tassé left the federal public service to enter private practice in 1985, he was replaced by Frank Iacobucci, a lawyer trained in the common law and a native of British Columbia. However, the new Deputy Minister proved to be very open to the presence of civilians. He, in fact, appreciated the opportunity that his new job gave him to handle cases involving civil law, but he made no claims to be a specialist on the subject.¹ When Alban Garon (now Chief Justice of the Tax Court of Canada) retired from the public service in 1986, Iacobucci had to find a new Associate Deputy Minister (Civil Law),^a and he chose Anne-Marie Trahan.

Trahan, who had been working at the Canadian Transport Commission since 1981, agreed to come to the Department of Justice in Ottawa as Associate Deputy Minister. She became

a When the federal statutes were revised in 1985, linguists specializing in legal language thought that the French title “*sous-ministre associé*” was a literal translation of “Associate Deputy Minister.” Since one of the aims of the revision was to correct translation errors and improve the French-language version of the statutes, the opportunity was taken to replace the French term by “*sous-ministre délégué*.” Department of Justice (DJ), Organizations – National Headquarters, File 227-24, Volume 1, *Civil Law Section – Section droit civil*, notes for a lecture given by Alban Garon at the annual meeting of New Brunswick French-language legal practitioners, concerning the current state of the administration of justice in the two official languages (Université de Moncton), October 20, 1984, p. 1; interview with Anne-Marie Trahan (January 4, 2000), Cassette No. 3, Side B.

one of the few women to hold such a high position in the public service. Like Iacobucci, she had not pursued her career in the team she was preparing to direct. Her predecessors, Paul Ollivier and Alban Garon, had been involved in the development of the Civil Law Section from its beginnings, and even though she knew little about it, Trahan continued their work. Drawing on the bijural achievements of the Department, she was determined to defend the position of civilians. She had no intention of letting her civil law colleagues be regarded as second-string legal counsel. During her term at the Department of Justice, Trahan made senior officials aware of the need to recognize the specific character of the Quebec legal system and to treat it on an equal footing.²

The new Associate Deputy Minister also had to forge closer ties between the Department, the Quebec Bar and the *Chambre des notaires du Québec*. At the ceremony marking the opening of the courts in 1986, the Minister of Justice, Ray Hnatyshyn, expressed the wish that these two professional associations would be “consulted on the policies and programmes of the federal Department of Justice.”³ Since many members of the Quebec Bar (Hull Section) worked in the Department of Justice in Ottawa, Trahan tried to bring these parties together, to encourage contact at the departmental level, and to ensure that the activities of the Department would more closely reflect the concerns of Quebec society. She also found ways of inspiring the civilians and other Francophone employees with an *esprit de corps* and a feeling of belonging, by inviting them all to celebrate Saint-Jean-Baptiste Day with the Civil Law Section and creating various opportunities for them to get together.⁴ This cohesion proved useful when the time came to defend the group of Ottawa civil law specialists from pressures to centralize civil affairs in the Montréal Office.

Distribution of Cases Between Ottawa and Montréal

Anne-Marie Trahan was convinced that a federal presence in Montréal was necessary, in order to show Quebec's lawyers and notaries that the Department of Justice in Ottawa was also their department.⁵ The original aim of setting up the Montréal Office in 1961 had been to bring the federal Department of Justice closer to its provincial counterpart, but as political conditions changed, it also acquired the implicit mandate of making the orientations of the federal government known.⁶ Even today, the Montréal Office is not perhaps as well known to the general public as the Department of Revenue, for example, but in legal and university circles, it helps to spread federal government influence, in addition to being a concrete expression of bijuralism.⁷ The importance that the Montréal Office had acquired in comparison with the Civil Litigation and Real Property Law (Quebec) Section in Ottawa had the effect of creating a certain rivalry between the two groups of civil law specialists. Trahan had barely started working at the Department when she had to defend the usefulness of having the Civil Law Section at Headquarters. The arrival of new managers, including Jacques Letellier who succeeded Jean-Claude Demers as Director of the Montréal Office, had only intensified the debate over the distribution of cases, especially since the Civil Affairs Section continued to develop more rapidly in Montréal than in Ottawa.^b

This unequal growth forced the new Associate Deputy Minister to examine the redistribution of cases, and to reflect upon the future of the civil law administrated by the

b In 1986, the Civil Affairs Section of the Montréal Office had twenty-four lawyers and one notary, and handled approximately 6,000 to 7,000 cases per year. It was, as the Quebec Bar Association put it, "a real beehive." Two years later, the Civil Litigation and Real Property Law (Quebec) Section had eight lawyers and three notaries. "Une véritable ruche : le bureau de Montréal du ministère de la Justice du Canada," *Barreau 86* (May 1986), p. 1; Department of Justice, *Annual Report 1987-1988* (Ottawa: Minister of Supply and Services Canada, 1988), pp. 43 and 44; Department of Justice, *Annual Report 1988-1989* (Ottawa: Minister of Supply and Services Canada, 1990), p. 14.

Department in Ottawa. Above all, Trahan did not want Montréal to absorb all the activities associated with cases involving the civil law in Quebec. According to her, the *Department of Justice Act* had, since 1960, recognized the duality of the Canadian legal system, although in an implicit form. To deprive Headquarters of a section devoted to civil law would be to eliminate the national aspect of this system. On a more practical note, Trahan found that most federal departments and agencies had their headquarters in Ottawa, and that it was in their interest to have easy access to civil law specialists, especially for cases that were likely to end in litigation. The agreement created between Demers, Coderre and Garon in April 1983 seemed to work well, but Trahan recognized that adjustments were necessary to ensure a clean division, while remaining flexible enough to respond to individual cases.⁸

Paul Coderre, who had been director of the Civil Law Section since 1969, had been using similar arguments. In 1990, when he was about to retire, he expressed his opinion about the need to have a section devoted exclusively to civil law cases coming from Quebec. In the first place, "... because of Quebec's demographic and economic importance, legal affairs have usually been very intense in that province," and Quebec cases accounted for a considerable part of the activities of the Department of Justice from the beginning. Furthermore, the Department's civil law specialists, being in Ottawa, were closer to the senior officials of other departments, and could more easily consult with specialists in federal law. The opening of a regional office in Montréal had helped to increase the size of the family of civil law specialists, but there was unavoidably some overlapping in their areas of competence. Redistribution of cases was thus necessary. However, Coderre pointed out that this reduplication did not justify the systematic transfer of civil law cases to Montréal (especially if clients did not ask for it), and that such a

manœuvre “[would lead to] the disappearance of almost all staff from the Section in Ottawa.”⁹

This continued to be a pending issue until 1997, after the Montréal Office (known as the Quebec Regional Office or QRO since the restructuring of regional offices in 1995) hired a record number of legal counsel, in order to respond to an increasing demand for services in the immigration field. Representatives of the QRO understood the Department’s desire to maintain a civilian presence in the national capital, but nonetheless affirmed that “... maintaining a civil law section in Ottawa ... [was] a departure from the rationalization of services seen in other provinces.”¹⁰ They, therefore, proposed that the Civil Law Sector be reorganized. This would give Montréal its own cases, so that the Civil Litigation and Real Property Law (Quebec) Section would not become a mere branch office of the QRO. This proposal was adopted. However, a second suggestion was rejected, namely that the entire Quebec territory be assigned to the regional office, leaving a new Ottawa office to deal with cases originating in the national capital region.¹¹ It was, however, clear at Headquarters that the two groups of civil law specialists should be maintained, and that what was required was a new sharing of tasks involving everyone’s collaboration.¹² Any plan involving a threat to the existence of a civil law section in Ottawa would have been a departure from the department’s undertaking to promote bijuralism, which it had assumed since the beginning of the plan to harmonize federal statutes.¹³

Harmonizing Federal Laws: From Administration to Politics

Ever since jurisdictions had been divided between the federal government and the provinces in 1867, “civil law seemed to be an ‘anomaly’ ...” because Quebec was the only province not governed by common law. As Canada moved into the 20th century, the avowed aim of the Supreme Court of Canada was to make private law uniform throughout the country, in order to eliminate this disparity. In fact, this policy

was reflected in the frequent rejection of civil law solutions in favour of common law solutions. At the time, harmonizing federal legislation meant subjecting Quebec private law to the private law of the rest of Canada.¹⁴ The situation has never ceased to evolve, as is illustrated by the introduction of codrafting in the late 1970s. However, the codrafting method, which was proposed by the Department's task force in response to the study of the Commissioner of Official Languages, had one significant defect. It was later determined that the unequal treatment of civil law would continue until the Anglophones of Quebec had access to an English-language version of the federal statutes drafted on the basis of civil law, and until a French-language version taking the common law into account was available to the Francophone communities in the other provinces.¹⁵ Consequently, more than ten years after the National Program for the Integration of Both Official Languages in the Administration of Justice (POLAJ) was created, its role was broadened to ensure that the four major interest groups^c had access to the statutes of Canada in the language of their choice.¹⁶

The announcement that a new *Civil Code of Quebec* had been adopted gave the Department of Justice an opportunity to take real steps along the road to genuine legislative bilingualism. In June 1989, Anne-Marie Trahan had already recognized that it was essential to begin studying "the impact of the new code on the activities of the federal government," since this work would take a considerable amount of time.¹⁷ The plan to harmonize federal legislation with Quebec civil law had a practical aim: to renew vocabulary and thus obtain a compatible, uniform language that would facilitate application of these laws to Quebec by reducing the problems of interpretation by the courts.¹⁸ However, this initiative also had political importance at a time of crisis in national unity.

c These four major interest groups comprised the entire population of Canada, which could only be fairly served if both common law and civil law were exercised in both French and English.

After the failures of Meech Lake (1987) and Charlottetown (1992), the Department of Justice was prepared to do, at the administrative level, what the men and women in politics seemed incapable of doing, namely to recognize officially the distinct nature of Quebec's society.¹⁹

Throughout this process, Anne-Marie Trahan was able to count on the support of the new Deputy Minister of Justice, John Tait. Tait had been appointed to this position in 1988, when Iacobucci left the Department to become Chief Justice of the Federal Court. He was the second person with a civil law background to hold this position. He had trained at the Department, more specifically in the Legal Planning and Research Section and in the Civil Law Section. In 1983, he came back to the Department as Assistant Deputy Minister (Public Law), and then became Deputy Solicitor General in 1986.²⁰ Perfectly bilingual and aware of how the civil law and its practitioners were treated, he well understood the subtleties and implications of this harmonization plan.²¹ According to Anne-Marie Trahan, it was easier for Tait, as an Anglophone, to argue for relevance of this plan with those who saw it as neither useful nor significant. As she put it: "(H)ad it not been for his influence and his persuasion, the policy on bijuralism which I put forward would not be in place."²²

In 1993, to support the Department in its adaptation efforts, the Civil Code Section^d was created in response to the

d The Civil Code Section, like the Civil Litigation and Real Property Law (Quebec) Section, comes under the responsibility of the Civil Law Sector. The Civil Law Sector has existed since 1988, when civil law was separated from public law. Under Anne-Marie Trahan, legislative services were subsequently incorporated into the Civil Law Sector, and with the appointment of Mario Dion, the Sector was amalgamated with Corporate Management. It is interesting to note that since the time of Alban Garon, Associate Deputy Ministers (Civil Law) have always been responsible for an additional area unrelated to civil law, according to their individual competencies. This practice perpetuates the idea that the responsibilities associated with civil law cases are not great enough in themselves, to justify full-time employment. However, this confluence of circumstances helped to make civil law and its practitioners more visible by associating them with fields that also concerned common law, and were thus more in evidence at the Department of Justice.

recommendation of a task force set up to examine the impact of the new Quebec enactment. The task force, consisting of eleven legal counsel, was given responsibility “to identify the fields of civil law of interest to the federal government,” and to analyze the legislative amendments that were required.²³ The scope of the harmonization project quickly expanded as significant shortcomings were revealed: “Federal legislation has tended to make civil law ... an orphan.”²⁴ In addition, after the *Civil Code of Quebec* came into force on January 1, 1994, the Quebec Bar and the *Chambre des notaires* offered courses to their members. However, the Civil Law Section went somewhat farther in providing the Department’s civil law specialists with additional training sessions adapted to federal law issues, while inviting common law lawyers to join them and thus to become familiar with civil law.²⁵

It was primarily after 1994, when Anne-Marie Trahan became a justice of the Superior Court of Quebec, that the harmonization project took on a much more political character. Trahan had emphasized the advantages of Canadian bijuralism in a context of globalization of trade, since “80 percent of the world’s countries are governed by a legislation derived from either common law or civil law”²⁶ (an argument that was later adopted by the Minister of Justice). However, harmonization had not yet attracted the attention of ministers and members of Parliament. After Mario Dion became Associate Deputy Minister, the revision of federal statutes became “the reflection of a very definite political will.”²⁷ In late 1995, the House of Commons and the Senate undertook to respect the civil law tradition by adopting motions recognizing Quebec as a distinct society, in part because of its particular legal system.²⁸ While the Canadian federation was being challenged, the harmonization project had assumed a political aspect that could help to reassure Canadians as a whole.

In November 1997, when the phase of public consultations on harmonization began, the Minister of Justice, Anne

McLellan, described the project as “a tangible expression of our respect for Canada’s dual legal heritage,” and as a commitment by the federal government to renew and modernize the Canadian federation. Minister McLellan also emphasized the peaceful coexistence of the two systems, to show that the federal system could also undergo such changes.²⁹ The minister employed similar language after tabling the first harmonization bill in the House of Commons on June 12, 1998. She stressed that Canada was setting a precedent in attempting “to harmonize the terminology and concepts of two legal systems.” According to her, in addition to giving civil law the place it deserved in federal legislative enactments, this initiative made it possible to “see how much the unique character of Quebec society, expressed in this case by its great tradition of civil law, is fundamental to Canada’s well-being.”³⁰

Apart from its political aspect, however, harmonization enabled the Department of Justice to reconsider its concept of bijuralism. This principle had existed well before the bill was tabled—the Civil Law Section and the presence of civil law specialists in other sections were tangible proof of this³¹—but the two legal traditions had not always been treated on an equal basis. Harmonization would correct the legislative aspect of this problem, while civilians continued to obtain positions in the upper ranks of the public service (in July 1998, Morris Rosenberg became the third full Deputy Minister with a civil law background), and to increase their visibility in various ways.

Increasing the Visibility of Civil Law and Its Practitioners

In addition to laying the foundation for the harmonization project, Anne-Marie Trahan wanted to ensure that the specific character of the Quebec legal system was recognized at a more symbolic level, by making notaries eligible for the title of Queen’s Counsel. In the common law tradition, this distinction had originally been given only to barristers,

lawyers who pleaded cases in court. In time, solicitors, lawyers whose practice primarily concerned contracts and matters not involving litigation,³² were also entitled to this honour. Notaries, however, remained excluded. When she arrived at the department in 1986, Anne-Marie Trahan had argued the case for the notaries with the Ministers of Justice of the day (first Ray Hnatyshyn, then Douglas Lewis and Kim Campbell), but as lawyers with a common law background, they remained unreceptive to the idea.³³

By 1991, the Department had a new Minister, Pierre Blais. He had been trained in the civil law, and understood the importance of the question. Trahan had also sought the support of Prime Minister Brian Mulroney and, in 1993, the Cabinet handed down a favourable decision, broadening the criteria of eligibility.^e The Associate Deputy Minister suggested a candidate: Jacques Taschereau, who was then President of the *Chambre des notaires du Québec*. In April 1993, at the conference of this professional association, Minister Blais conferred the title of Queen's Counsel on Taschereau, who was the first notary to receive this honour. Today, Trahan acknowledges that this event did not "change the face of the world," but that it still represented a step forward in achieving equality for all legal practitioners in Canada, in addition to respecting the specific nature of the legal profession in Quebec.^{f, 34}

Within the Department of Justice, the hiring of a first permanent notary in 1965 had helped to spread the influence of civil law by offering a more complete picture of the legal profession in Quebec.³⁵ Thirty years later, however, the

e Trahan believes that the approach of the federal election may have contributed to speeding up the process, but she acknowledges that political will was also a factor. Interview with Anne-Marie Trahan (January 4, 2000), Cassette No. 4, Side B.

f To this day, Taschereau remains the only notary to have the title of Queen's Counsel. The eligibility criteria have been under revision since the Liberals came to power in 1993, and no legal practitioner has merited this distinction.

notaries working at the Department of Justice still represented only a tiny minority (1.4 percent) of the Department's 1,400 legal counsel. In 1998, there were nineteen notaries, but this figure did not reflect the precarious nature of their penetration of the Department, since a number of those positions were temporary. Nonetheless, the establishment of a training program with the help of the *Chambre des notaires du Québec* has enabled some graduates in notarial studies to join the Department of Justice in Ottawa.³⁶

In February 1998, the Civil Law Section organized a symposium on the notarial profession in the federal government, so that notaries could meet one another and exchange viewpoints on their activities.³⁷ This symposium, organized by Michel Vermette, had originally been an initiative of Mario Dion, who had returned to the job of Associate Deputy Minister in the summer of 1997. At that time, Dion got in touch with the president of the *Chambre des notaires* and its representative in Hull, and learned that the federal public service employed forty-five notaries. Since the *Chambre des notaires* was celebrating its 150th anniversary, Dion thought that it was timely to bring together these legal specialists, who rarely had an opportunity to meet.³⁸ Some thirty notaries accepted the invitation, thus ensuring the success of this first meeting, which was intended to “enhance the pride of civilians presently working for the federal government.”³⁹

Since 1986, civil law lawyers and notaries have also been able to rely upon the *Association des civilistes*, an association of civil law specialists which enables them to meet regularly. This association, which aims to “attach value to and recognize civil law and bijuralism in the federal government environment,” primarily consists of legal counsel working in the public service. However, the association also includes private-sector lawyers and notaries, university people and judges. During the first year of its existence, the head of the association was a former member of the Civil Law Section, Raymond Roger. The group allows civil law specialists in the national

capital region, who are often “lost in a sea of common law,” to get together to discuss issues that directly concern them. These meetings are among the rare occasions where notaries and lawyers can share views on their common experience within the public service.⁴⁰

With similar goals in mind, the Civil Law Sector started publishing the *Civilians’ Forum* in July 1999. This electronic newsletter is designed to “enhance the pride of civilians and promote the excellence of their work,” and also to enable them to draw closer together.⁴¹ It should, however, be noted that these rallying efforts are not new. As early as 1955, when Guy Favreau headed up a tiny civil law section in the Department of Justice, legal counsel with a civil law background created opportunities to meet one another, to break through their isolation and to promote their expertise. However, publications and associations could only come into being through the participation of an increasing number of members who, like their predecessors, found ways of “enhancing [their] special identity and sense of belonging.”⁴²

Notes

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2. Interview with Anne-Marie Trahan (January 4, 2000), Cassette No. 3, Side B.
3. Denis Paquet, “Quebec Bar Representatives visit Justice,” *Inter Pares* No. III (November 1987), p. 5.
4. Interview with Anne-Marie Trahan (January 4, 2000), Cassette No. 4, Side A.
5. *Ibid.*
6. Department of Justice (DJ), File 230-2, Vol. 1, *General Administration, Organization – Regional Offices, Montréal, Aide-mémoire – visit of the Minister to the Montréal Regional Office*, May 14, 1987, p. 1; interview with Claude Joyal (January 10, 2000), Cassette No. 6, Side 2; interview with Annie Côté (January 18, 2000), Cassette No. 12, Side 2.
7. Interview with Jacques Letellier (February 1, 2000), Cassette No. 20, Side 2.
8. DJ, Organizations – Headquarters/Organisations – National Headquarter, File 227-24, Volume 1, *Civil Law Section – Section droit civil*, memorandum from Anne-Marie Trahan to Frank Iacobucci, July 10, 1986, pp. 1-4.
9. DJ, Organizations – Headquarters, File 227-24, Volume 2, *Section de droit civil/Civil Law Section*, memorandum from Paul Coderre to Anne-Marie Trahan, July 13, 1990, pp. 1, 2 and 3.
10. DJ, File 230-2, Vol. 1, *General Administration, Organization – Regional Offices, Montréal*, letter from the spokespersons of the Civil Affairs Section of the QRO to George Thomson and Jacques Letellier, January 24, 1997, p. 2.

11. *Ibid.*, pp. 2-3.
12. Quebec Regional Office (QRO), Jacques Letellier and René LeBlanc, "Réorganisation des services juridiques dispensés par le ministère de la Justice au Québec," April 15, 1997, p. 2.
13. Interview with Anne-Marie Trahan (January 4, 2000), Cassette No. 4, Side A.
14. Pierre-Gabriel Jobin, "L'influence de la doctrine française sur le droit civil québécois : le rapprochement et l'éloignement de deux continents" in *Droit québécois et droit français : communauté, autonomie, concordance*, edited by H. Patrick Glenn (Cowansville, QC: Les Éditions Yvon Blais, 1993), pp. 99-100.
15. André Morel, "L'harmonisation de la législation fédérale avec le Code civil du Québec – Pourquoi? Comment?," *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism: Collection of Studies* (Ottawa: Department of Justice, 1997), pp. 14-15.
16. Department of Justice, *Annual Report 1988-1989* (Ottawa: Minister of Supply and Services Canada, 1990), pp. 15-16; Canada, Department of Justice, "Notes for a speech by Mrs. Eleni Bakopanos, Parliamentary Secretary of the Minister of Justice and Attorney General Canada and Member of Parliament for Ahuntsic, at the National Symposium on Official Languages, Ottawa, (Ontario), September 18, 1998," <<http://canada.justice.gc.ca/en/News/sp/1998/backop.htm>>, April 2000; interview with Anne-Marie Trahan (January 4, 2000), Cassette No. 3, Side B.
17. DJ, Organizations – Headquarters, File 227-24, Volume 1, *Civil Law Section – Section droit civil*, memorandum from Anne-Marie Trahan to John Tait, June 15, 1989, pp. 1 and 3.
18. "Message from the Minister," in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism: Respecting the Coexistence of Canada's Two Legal Traditions*

- (Ottawa: Department of Justice, 1999), p. 1; Canada, Department of Justice, "Backgrounder: Harmonization of Federal Laws with Quebec Civil Law," <<http://canada.justice.gc.ca/en/news/nr/1998/bacg.htm>>, April 2000.
19. Interview with Anne-Marie Trahan (January 4, 2000), Cassette No. 4, Side A.
 20. "In memory of John Tait 1945-1999," *Inter Pares* No. 205 (Fall 1999), p. 23.
 21. Interview with Anne-Marie Trahan (January 4, 2000), Cassette No. 4, Side B.
 22. Interview with Anne-Marie Trahan (January 4, 2000), Cassette No. 4, Side A; Anne-Marie Trahan, "Tribute to John Tait," *Civilians' Forum*, Vol. 1, No. 2 (October 1999), <http://172.16.1.16/corpmgmt_e/AssocDM/Civilistes2.htm>, April 2000.
 23. Interview with Anne-Marie Trahan (January 4, 2000), Cassette No. 4, Side A; "The Civil Law Section and Legislative Services Expands," *Inter Pares* No. 167 (July-August 1993), p. 11; QRO, "Projet : Notes sur l'histoire du Secteur du droit civil," RAA December 9, 1993, p. 6.
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 25. Anne-Marie Trahan, "The New Civil Code of Quebec," *Inter Pares* No. 148 (June 1991), p. 6.
 26. "Deputy Minister's Corner," *Inter Pares* No. 177 (July/August 1994), p. 3; Canada, Department of Justice, "Notes for an address by the Honourable Anne McLellan, Minister of Justice and Attorney General of Canada, at ceremonies marking the

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27. DJ, File 297459-4, Volume 1, *Chambre des notaires du Québec – Colloque Chambre des notaires – Notaires à l’emploi du gouvernement canadien*, draft of the welcoming remarks of Mario Dion, p. 2.
28. Morel, “L’harmonisation de la législation fédérale avec le Code civil du Québec – Pourquoi? Comment?,” p. 28.
29. Canada, Department of Justice, “Minister of Justice announces harmonization of federal legislation with Quebec Civil Law,” <<http://canada.justice.gc.ca/en//news/nr/1997/harmon.html>>, April 2000; Canada, Department of Justice, “Notes for a speech by the Honourable Anne McLellan, Minister of Justice, Attorney General of Canada and Member of Parliament for Edmonton West, at a conference on the harmonization of Federal legislation with Quebec Civil Law and Canadian bijuralism Montréal, Quebec, November 24, 1997,” <<http://canada.justice.gc.ca/en/News/sp/1997/bijur.html>>, April 2000; “Message from the Minister,” in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism*, p. 1.
30. Canada, Department of Justice, “The Minister of Justice tables the first bill to harmonize federal legislation with Quebec Civil Law,” <<http://canada.justice.gc.ca/en/news/nr/1998/comme.html>>, April 2000.
31. Interview with Jacques Roy (December 14, 1999), Cassette No. 1, Side B.

32. DJ, File 297459-4, Volume 1, *Chambre des notaires du Québec – Colloque Chambre des notaires – Notaires à l’emploi du gouvernement canadien*, paper by Michel Vermette, “Le notariat au ministère de la Justice,” February 12, 1998, p. 6.
33. Interview with Anne-Marie Trahan (January 4, 2000), Cassette No. 4, Side B.
34. *Ibid.*; DJ, File 297459-4, Volume 1, *Chambre des notaires du Québec – Colloque Chambre des notaires – Notaires à l’emploi du gouvernement canadien*, paper by Michel Vermette, “Le notariat au ministère de la Justice,” February 12, 1998, p. 6.
35. Interview with Jacques Roy (December 14, 1999), Cassette No. 1, Side B.
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37. DJ, File 297459-4, Volume 1, *Chambre des notaires du Québec – Colloque Chambre des notaires – Notaires à l’emploi du gouvernement canadien*, letter to guests, December 3, 1997, p. 1.
38. DJ, File 297459-4, Volume 1, *Chambre des notaires du Québec – Colloque Chambre des notaires – Notaires à l’emploi du gouvernement canadien*, draft of the welcoming remarks of Mario Dion, p. 1.
39. DJ, File 297459-4, Volume 1, *Chambre des notaires du Québec – Colloque Chambre des notaires – Notaires à l’emploi du gouvernement canadien*, memorandum to Michel Vermette from Mario Dion, February 19, 1998.
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gouvernement canadien, letter from Marcia Pinet, President of the Association, to Denis Marsolais, president of the *Chambre des notaires*, January 12, 1998, p. 1.

41. Marie-France Séguin, "A word from the editor," *Civilians' Forum*, Vol. 1, No. 1 (July 1999), <http://172.16.1.16/corpmgmt_f/AssocDM/Civilistes1.htm>, April 2000.
42. Mario Dion, "Message from the Associate Deputy Minister," *Civilians' Forum*, Vol. 1, No. 1 (July 1999), <http://172.16.1.16/corpmgmt_f/AssocDM/Civilistes1.htm>, April 2000.

Conclusion

Since the introduction of the Custom of Paris in New France more than three centuries ago, civil law has survived a number of more or less open attempts to eliminate it. Following the conquest of the French colony by Great Britain, there were no signs to indicate that Quebec civil law would develop and flourish and would now occupy a place within the Department of Justice Canada. However, the *Quebec Act* and the *Civil Code of Lower Canada* confirmed the presence of the civil law tradition in North America and the coexistence of two legal systems. With the division of jurisdictions between the federal government and the provinces in 1867, the foundations of bijuralism were in place, even though the Government of Canada was not, at the time, officially committed to this principle.

In this context, the civil law tradition could only find a limited place within the Department of Justice. In fact, the 1868 statute that made it possible to establish the Department of Justice had nothing to say about this legal duality. With Confederation, moreover, legal staff were divided between the two attorneys general, and the Department of Justice wound up with a staff consisting entirely of lawyers with common law training. Until the arrival of Georges Duval in 1874, the civil law aspect of the Department's work was limited to temporarily hiring lawyers and notaries from the private sector, to deal with issues arising in Quebec. Duval's presence opened the door to other legal practitioners with training in civil law, but for a long time, they were an exception in a department that was still trying to define its role. The first civilians in the Department were jacks of all trades, and their responsibilities went far beyond civil law matters – a situation that still applies to the Associate Deputy Minister (Civil Law). Some of these civilians, in addition to being responsible for a variety of cases, performed the duties of

secretary and legal counsel. At that time, work was distributed on the basis of territory rather than type of law.

In 1924, the place of civil law in senior management was recognized for the first time, by the creation of a second Assistant Deputy Minister's position. This position was given to a civil law specialist responsible for cases covered by Quebec law. A spectacular increase in the Department's workload after the First World War contributed to the rise of civilians, at a time when the Department as a whole was expanding rapidly. In 1940, three of the Department's ten legal counsel had civil law training. A growth in the Department's activities, driven by the government's increased participation in ever more complex activities, forced the Department to structure the delivery of its services. In 1946, an initial organization of the Department was put in place, and this step eventually led to the creation of a Civil Law Section in 1952.

The Civil Law Section, which was the concrete manifestation of bijuralism, really began to develop under the direction of Guy Favreau. He favoured recruiting young civil law specialists, who formed a small family team. In addition to seeing each other at work, these men were able to develop ties of friendship through their regular meetings in restaurants, the proximity of the places they lived and the sharing of activities within their parish. This cohesion could have been severely shaken by the upheavals of the 1960s, but the group of civilians was able to take advantage of these changes.

In 1960, the Department of Justice officially recognized civil law and its practitioners by creating the position of Associate Deputy Minister (Civil Law). This position was first given to Rodrigue Bédard, who tried to continue Favreau's work. A few years later, the Glassco Commission proposed that all legal services be grouped together under the direction of the Department of Justice, and that the delivery of these services be decentralized through the establishment of regional offices. The Civil Law Section felt the effects of these

recommendations, as some of its members left Headquarters to head up legal services in other government departments or to join the new office in Montréal, which opened in 1965. The Montréal Office, originally set up to deal primarily with criminal cases, experienced rapid growth and was soon dealing with civil and tax matters. While this growth helped to contribute to the extension of the federal government's influence in Quebec, it also created a certain rivalry between the two groups of civilians. Ottawa and Montréal were both dealing with the same kinds of cases, and a distribution of work became necessary. This process required that the role of the Civil Law Section be redefined.

It was clear, however, that civil law and its representatives still had a place in Ottawa, if only to show that the Department of Justice was at the service of all Canadian citizens. The Department, determined to promote bijuralism, proposed that federal legislation be harmonized with civil law. This project was originally intended as a way of recognizing the specific character of Quebec's legal system and of facilitating the interpretation of laws by the courts, at a time when Quebec was getting ready to adopt a new *Civil Code*. However, the erosion of national unity soon transposed this initiative to a political context, where it was presented as a sign of Canadian federalism's ability to adapt and evolve. For the Department of Justice, however, harmonization is primarily the expression of a desire to take the particular nature of Quebec law into account and to offer its practitioners the place they deserve within the organization of the Department. Combined with other means that the civil law specialists had advocated to increase their visibility in the federal public service, this project drew upon the bijural tradition that had quietly developed in the Department since the arrival of the first specialist in civil law.

This history of civil law has also enabled us to trace the development of bilingualism at the Department of Justice, both in the workplace and in the area of legislation. When the

Department was first set up, it had very few civil law specialists or Francophones. A command of the French language was certainly an asset, but the Department felt that the number of cases submitted in French did not justify a more extensive practice of bilingualism. In 1970 as in 1880, correspondence from Quebec was, however, usually answered in French, and people in the Department turned to the few bilingual legal counsel for their linguistic skills as much as for their knowledge of civil law. Within the Department, communications between senior management and the sections were conducted almost exclusively in English until the 1970s, when this practice changed following the adoption of the *Official Languages Act* (1969).

We can see, then, that changes had occurred more rapidly in the area of legal duality than in the linguistic field. However, the creation of a Civil Law Section gave most Francophone legal counsel in the Department an opportunity to come together at a particular moment in their careers, and to work in French. Following the tabling of the special study of the Commissioner of Official Languages in 1976, Francophone employees found it easier to assert their rights, and the Department made bilingualism one of its priorities. This change of attitude was felt in the legislative field, among others, through the introduction of codrafting, which made it possible to respect the spirit of the French language and to take the particular features of the Quebec legal system into account.

On the whole, it may seem that for a long time, the Department of Justice was slow to respect Canada's legal and linguistic diversity. However, this recognition, like the law itself, "... is the slow, but progressive work of civilization, which provides its consistency and its development."¹ In the course of time, and with the change of mentalities, civil law has ceased to be regarded as an inferior aspect of the Canadian tradition, and people now seek to promote bijuralism, and the economic, social, and political advantages that the coexistence of two legal systems can procure.

Notes

1. Edmond Lareau, *Histoire du droit canadien depuis les origines de la colonie jusqu'à nos jours*, tome I : Domination française (Montréal: A. Périard, 1888), p. 21.

Appendix 1

Ministers of Justice Trained in Civil Law

Sir Antoine-Aimé Dorion	November 7, 1873 – May 31, 1874
Télesphore Fournier	July 8, 1874 – May 18, 1875
Rodolphe Laflamme	June 8, 1877 – October 16, 1878
Charles Fitzpatrick	February 11, 1902 – June 3, 1906
Charles Joseph Doherty	October 10, 1911 – September 21, 1921
Sir Lomer Gouin	December 29, 1921 – January 30, 1924
Ernest Lapointe	January 30, 1924 – June 28, 1926 September 25, 1926 – August 6, 1930 October 23, 1935 – November 26, 1941
Esiöff Léon Patenaude	July 13, 1926 – September 25, 1926
Louis Stephen St-Laurent	December 10, 1941 – December 10, 1946 July 1, 1948 – November 15, 1948
Lionel Chevrier (called to Quebec Bar in 1957)	April 22, 1963 – February 3, 1964
Guy Favreau	February 3, 1964 – June 29, 1965
Lucien Cardin	July 7, 1965 – April 3, 1967
Pierre Elliott Trudeau	April 3, 1967 – July 6, 1968
John Napier Turner (called to Quebec Bar in 1954)	July 6, 1968 – January 28, 1972
Marc Lalonde	November 24, 1978 – June 4, 1979
Senator Jacques Flynn	June 4, 1979 – March 3, 1980
Jean Chrétien	March 3, 1980 – September 10, 1982
Donald J. Johnston	June 30, 1984 – September 17, 1984
Pierre Blais	January 4, 1991 – November 4, 1993

Sources: Appendix IV in Yvonne Milosevic and John Hodges, *The Criminal Law Branch: Yesterday and Today* (Ottawa: Department of Justice, 1997), pp. 141-142; Department of Justice (DJ), Administrative Records, File 225-3, Vol. 1, "General Administration, Organization – General, Department of Justice", "Ministers of Justice and Attorneys General"; "Millennium Celebration", Department of Justice, December 9, 1999, p. 10.

Appendix 2

Chronological Highlights

Years	Events
1868	Birth of the Department of Justice.
1874	Arrival of the first civilian and Francophone at the Department of Justice.
1924	A second Assistant Deputy Minister's position is created for a civilian.
1936	The Department moves to the Justice Building.
1939	The first woman lawyer comes to work for the Department of Justice.
1946	The Department acquires its first functional structure.
1952	Birth of the Civil Law Section.
1955	Guy Favreau arrives as Assistant Deputy Minister (Civil Law).
1960	Amendment of the <i>Department of Justice Act</i> to provide for the appointment of two Associate Deputy Ministers.
1960	Rodrigue Bédard becomes the first Associate Deputy Minister (Civil Law).
1962-1963	The report of the <i>Royal Commission on Government Organization</i> (Glassco Commission) is tabled. It recommends that legal services be integrated under the direction of the Department of Justice, and that decentralization be achieved through the creation of regional offices.
1965	The Department of Justice hires its first notary on a permanent basis.
1965	The Montréal Office is opened.
1969	The <i>Official Languages Act</i> is adopted.
1970	Paul Ollivier is appointed to the position of Associate Deputy Minister (Civil Law).
1976	The special report of the Commissioner of Official Languages is tabled.
1977	Appointment of the first civilian and Francophone Deputy Minister (Roger Tassé).

1978	The method of codrafting (or parallel drafting) is put in place.
1981	Establishment of the National Program for the Integration of Both Official Languages in the Administration of Justice (POLAJ).
1982	Alban Garon is appointed as Associate Deputy Minister (Civil Law).
1983	First agreement on the distribution of work between Montréal and Ottawa.
1986	The Civil Law Section becomes the Civil Litigation and Real Property Law (Quebec) Section.
1986	Anne-Marie Trahan is appointed as Associate Deputy Minister (Civil Law).
1988	Appointment of a second Deputy Minister with civil law training (John C. Tait).
1993	Creation of the Civil Code Section, to support the Department's efforts to harmonize federal legislation with Quebec civil law.
1993	Notaries become eligible for the title of Queen's Counsel.
1994	Mario Dion is appointed as Associate Deputy Minister (Civil Law).
1995	The Montréal Office becomes the Quebec Regional Office (QRO).
1998	Introduction of the first harmonization bill.
1998	Appointment of a third civilian Deputy Minister (Morris Rosenberg).

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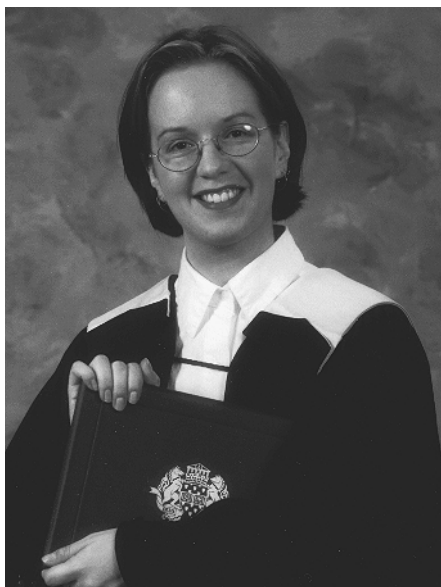
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