Nuisance: A Proprietary Delict

I) Introduction

1. *Definition of terms*

Ownership, the most absolute of the real rights, includes the right of enjoying the property which is the object of the right in the most absolute manner, provided that no use be made of the property "which is prohibited by law or by regulation".[1] The only other limitations on this absolute right which are expressly imposed by the Code are the natural [2] and legal servitudes.[3] There is yet another limitation, though, which has been steadfastly imposed by the jurisprudence in Quebec; its roots are to be found in the general principles which underlie art. 406 C.C. and legal servitude, but its breach is uniformly sanctioned by an action taken under art. 1053.[4] That limitation, expressed by the Latin maxim *sic utere tuo ut alienum non laedas* and known in the old French law as the *obligations du voisinage*,[5] is to be found in the sources used by the Codifiers in drafting art. 406.

---

[1] Art. 406 C.C. The French article, 544 C.N., is identical: "La propriété est le droit de jouir et de disposer des choses de la manière la plus absolue, pourvu qu'on n'en fasse pas un usage prohibé par les lois ou les règlements."

[2] Art. 501 *et seq.* C.C.

[3] Art. 506 *et seq.* C.C.

[4] Similarly, in France, the action is taken under articles 1382 C.N., 1383 C.N.:
(1382 C.N.)
Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé, à la réparer.
(1383 C.N.)
Chacun est responsable du dommage qu'il a causé non seulement par son fait, mais encore par sa négligence ou par son imprudence.

[5] Art. 1057 C.C. lists certain obligations which result from the operation of the law solely. These include "certain obligations of owners of adjoining properties", but the reference is to the servitudes at 501 *et seq.* and 508 *et seq.* C.C., not to the broad area of the *obligations du voisinage*. Similarly, in France, art. 1370 C.N. in speaking of "les engagements formés involontairement, tels que ceux entre propriétaires voisins", is said to refer to the servitudes at 640 *et seq.* and 651 *et seq.* C.N. See Henri Capitant, *Des obligations de voisinage et spécialement de l'obligation qui pèse sur le propriétaire de ne causer aucun dommage au voisin*, 1900 Rev. crit. légis. et juris. 156, 228 at p. 236; H. Lalou, *Traité pratique de la responsabilité civile*, 5e éd., (Paris, 1955), no. 942, p. 575; G. Ripert, *De l'Exercice du droit de propriété*, (Paris, 1902), p. 262. Cf. the suggestion of J. Carbonnier, *Droit civil*, 3e éd., t. 2, (Paris, 1962), no. 57, p. 188. The study of the aggravation of servitudes, although intimately related to vicinal relationships, is vast in itself and will not be treated in this paper.

> Ce droit de propriété, considéré par rapport à ses effets, doit se définir le droit de disposer à son gré d'une chose, sans donner néanmoins atteinte au droit d'autrui, ni aux lois.[6]
>
> Quoique le domaine de propriété donne au propriétaire le pouvoir de faire ce que bon lui semble dans son héritage, il ne peut cependant y faire ce que les obligations du voisinage ne permettent pas d'y faire au préjudice des voisins.[7]

The broad area of *obligations du voisinage* can be broken down still further into the areas of abuse of rights, with which this paper does not purport to deal, and what has come at common law to be known as nuisance,[8] the subject-matter of these pages. While both abuse of rights and nuisance are concerned with the damage caused by an obnoxious act which interferes with the beneficial interest of a proprietor in his land, there is a fundamental difference between the two. Abuse of rights applies *stricto sensu* to the exercise of a right which, having all the appearances of a perfectly normal and licit act, is illicit solely because it is exercised with the intention of causing harm to a neighbour.[9]

---

[6] Pothier, *Traité du droit de domaine de propriété*, in *Oeuvres de Pothier*, 2e éd., par M. Bugnet, t. 9, (Paris, 1861), no. 4, p. 103.

[7] Pothier, *Introduction générale aux coutumes*, *ibid.*, t. 1, no. 101, p. 35.

[8] Even at common law, where nuisance is a specific tort, the word itself has become "bedevilled with... much obscurity, and confusion". J. Fleming, *The Law of Torts*, 3rd ed., (Sydney, 1965), p. 364. In Quebec, nuisance is not even a term of art, much less a nominate tort or delict, and the word is used, frankly, for lack of a better term in either French or English to describe a recurrent legal situation whose parameters will be discussed below. In fact, the term "nuisance" has been used with regularity in judgments rendered in Quebec in both the English and French languages and it will not be strange to the student of the civil law of this province. On the other hand, the word would probably be unknown to the student of French law who would recognize the legal problem as "les inconvénients anormaux de voisinage".

[9] L. Baudouin, *Le Droit civil de la Province de Québec*, (Montréal, 1953), pp. 1278 *et seq.*; A. Amiaud, in the *Congrès International de l'Association Henri Capitant*, (Montréal, 1939), pp. 777-786, at p. 780; Aubry et Rau, *Cours de droit civil français*, 3e éd., t. 2, (Paris, 1863), no. 194, p. 178, n. 19; Baudry-Lacantinerie et Chauveau, *Traité théorique et pratique de droit civil*, 3e éd., t. 6, (Paris, 1905), no. 222, p. 169; Planiol et Ripert, *Traité pratique de droit civil français*, 3e éd., par M. Picard, t. 3, (Paris, 1926), no. 458, pp. 434-435; P. Bettremieux, *Essai historique et critique sur le fondement de la responsabilité civile en droit français*, (Lille, 1921), no. 23, pp. 38-39; P. Leyat, *La Responsabilité dans les rapports de voisinage*, (Paris, 1936), pp. 64, 112 *et seq.* It may be that, in 1968, it is no longer necessary that malicious intent exist for the existence of an abuse of rights; "antisocial use of right" may suffice, but an appraisal of this refinement in the doctrine of abuse of rights is beyond the concerns of this paper.

Nuisance, on the other hand, results from the continued [10] exercise by a proprietor of his right of ownership in such a way that he compromises the equivalent right of his neighbour to enjoy his own property, irrespective of the motive which prompted the author of the interference to so exercise his right.[11] It consists in the continuing invasion [12] of the neighbouring property, the air space above it or the depths beneath [13] by the ejection of dust, smoke, deleterious gases, steam, noxious or offensive vapours, fetid odours, noise or vibrations.

2. *Some technical remarks*

This area of the law appears to have lain dormant in Quebec since 1940 in the sense that, to this writer's knowledge, there has been but one reported case since that date,[14] whereas in France, on the other hand, the number of reported cases appears to be steadily

---

[10] Carbonnier, *op. cit.*, t. 2, no. 57, p. 190.

[11] Baudouin, *op. cit.*, p. 1285. Some French authors succinctly describe the difference between abuse of rights and nuisance by using the terms "acte abusif" and "acte excessif": Carbonnier, *op. cit.*, t. 2, no. 57, p. 188; L. Josserand, *Cours de droit civil positif français*, 3e éd., t. 1, (Paris, 1938), no. 1498, p. 826; H. Lalou, *op. cit.*, no. 962, p. 581; A. Colin et H. Capitant, *Cours élémentaire de droit civil français*, 11e éd., par L. J. de La Morandière, t. 1, (Paris, 1947), no. 1025, p. 826. H. et L. Mazeaud et A. Tunc simply distinguish between the exercise of the right of property "avec ou sans intention de nuire": *Traité théorique et pratique de la responsabilité civile délictuelle et contractuelle*, 6e éd., t. 1, (Paris, 1965), no. 562, p. 651.

[12] W. de M. Marler, *The Law of Real Property*, Toronto 1932, no. 159, p. 70; Aubry et Rau, *op. cit.*, t. 2, no. 194, p. 195; Baudry-Lacantinerie et Chauveau, *op. cit.*, t. 6, no. 219, p. 166; Demolombe, *Cours de Code Napoléon*, t. 12, (Paris, 1876), no. 658, p. 153; Domat, *Les Lois civiles*, liv. 1, tit. XII, sec. II, no. 8, p. 333; Fournel, *Traité du voisinage*, 4e éd., t. 2, (Paris, 1834), p. 336; Larombière, *Des Obligations*, t. 5, (Paris, 1857), pp. 693-694; Toullier, *Le Droit civil français*, 2e éd., t. 3, (Paris, 1824), no. 334, p. 211; Zachariae, *Cours de droit civil français*, t. 2, (Strasbourg, 1839), no. 243, p. 57. This rule finds its origin in the Digest of Justinian, D. 8, 5., *In suo enim alii hactenus facere licet, quatenus nihil in alienum immittat, fumi autem, sicut aquae, esse immissionem.* See also *Drysdale* v. *Dugas*, (1897), 26 S.C.R. 20 at p. 27, per Taschereau, J.; *Humphries* v. *Cousins*, (1877), 2 C.P.D. 239 at p. 243, per Benman, J.; *Chandler Electric Company* v. *Fuller*, (1893), 21 S.C.R. 337 at p. 339, per Patterson, J.; *Anglade* v. *Dumont*, Req., 13 mars 1827, Dev. 1827.1.547.

[13] Art. 414 C.C.; Wurtele, J., in *Drysdale* v. *Dugas*, (1897), 6 B.R. 278 at p. 282; Robidoux, J., in *McCabe* v. *Lafontaine*, (1921), 59 C.S. 250 at p. 252.

[14] *City of Montreal* v. *Arco Stone Ltd.*, [1962] R.L. 181 (C. Mun.) (Davidson, J.), a decision of the Municipal Court of Montreal under the City noise by-law, no. 1448.

increasing.[15] In addition to the jurisprudence, a great deal of doctrinal attention has been paid to these legal problems in France, while the jurists in Quebec have paid them scant notice. It is hoped, therefore, that this paper may serve some purpose in collecting and analyzing the abundant case material before 1940, particularly since there is every reason to expect that litigation in this area will increase because of the present focusing of attention on the problems of air and water pollution.

The reasons for the lack of reported cases in Quebec since 1940 are not clear, but perhaps some of the following may be suggested. First, the passage of municipal "nuisance" by-laws has probably shunted a great number of potential damage suits into inferior courts as infractions of by-laws at an early stage.[16] Second, more highly sophisticated urban planning has undoubtedly resulted in zoning which keeps residential and potentially offensive industrial areas at some distance from each other. Third, some small role is probably being played by the increasing level of technology and ventilation systems for both factories and homes which, if they do not cut down the pollution factor in the air, at least keep it from invading homes in particularly obnoxious form. Fourth, there may be some psychological aversion to such actions which results from the increased expense of litigation and the long delays in the courts.

A few preliminary observations must be made respecting the applicability of French and common law authorities in this area of the law in Quebec.[17] It almost goes without saying that decisions from either of these jurisdictions are not in any way binding on Quebec courts and may only be cited as *rationes scriptae* and then only when it has first been ascertained that the principles upon which the particular subject matter is based are the same.[18] The

---

[15] See, for example, the cases cited in Mazeaud et Tunc, *op. cit.*, t. 1, nos. 597-599, pp. 688-694.

[16] A. Mathieu, *Le Bruit: réglementation municipale et conventions*, (1945), 5 R. du B. 27. See, e.g., *City of Montreal* v. *Arco Stone*, [1962] R.L. 131 (C. Mun.).

[17] Generally, see P. B. Mignault, *Le Code civil de la Province de Québec et son interprétation*, (1935-36), 1 U. of T.L.J. 104 at pp. 114-134; F. P. Walton, *The Scope and Interpretation of the Civil Code of Lower Canada*, (Montreal, 1907), pp. 80 *et seq.*

[18] As to the relevance of French authorities, see *Herse* v. *Dufaux*, (1872), L.R. 4 P.C. 468 at p. 489, C.R. [6] A.C. 226 at p. 260, per Sir James Colville; *McArthur* v. *Dominion Cartridge Co.*, [1905] A.C. 72 at p. 77, C.R. [13] A.C. 374 at p. 381, per Lord Macnaghten; *Maclaren* v. *A.-G. Quebec*, [1914] A.C. 258 at p. 279, per Lord Moulton. As to the relevance of English decisions, see *Desrosiers* v. *The King*, (1920), 60 S.C.R. 105 and *Curley* v. *Latreille*, (1920), 60 S.C.R. 131 at p. 133, per Anglin, J.

Quebec and French law being based upon the same principles of delict and civil responsibility, French authorities are *ex hypothesi* relevant to those areas in the law of nuisance which are based on those principles. Where the two systems have arrived at the same point *via* different avenues of approach, as in the case of the defence relating to the industrial character of the neighbourhood, both will be discussed separately. Where the law is the same, authorities from both jurisdictions will be cited on the same point *uno flatu*. Where the law differs, as in the case of the defence relating to prior statutory authorization, the French authorities will be neither mentioned nor discussed.

While generally the principles of tortious liability at common law differ from the principles of civil responsibility in Quebec, in the specific instance both legal systems base their action in nuisance on the Latin maxim *sic utere tuo ut alienum non laedas.*[19] Thus the common law principles have been stated by the Supreme Court of Canada to be "hardly distinguishable"[20] from those of Quebec in the law of nuisance and the courts have held that "French and English authorities may be quoted, indifferently."[21] It must, however, be mentioned that there is no paucity of Quebec jurisprudence and, wherever possible, these should be the ruling cases for the practitioner; however, where there appears to be no case to cover a particular point, there should be no reason not to refer to the common law. On that basis this writer has relied most heavily on the cases decided in this Province, referring the reader to common law decisions where they may serve as additional authority and on occasion as more apt or articulate statements of the law.

II) Positive characteristics

1. *The measure of reasonable inconvenience*

Although a nuisance may result only from what may be called the exteriorization [22] of one's right of proprietary enjoyment, it is

---

[19] *Canadian Pacific Railway Co.* v. *Roy*, [1902] A.C. 220, (1902), 12 B.R. 543, C.R. [12] A.C. 374. See also Hon. Charles Fitzpatrick, *The Case of Roy and The Canadian Pacific Railway Co.*, (1902), 8 R.L. n.s. 346.

[20] *Canada Paper Company* v. *Brown*, (1922), 63 S.C.R. 243 at p. 247, per Idington, J.

[21] *Robins* v. *The Dominion Coal Co.*, (1899), 16 C.S. 195 at p. 199, per Davidson, J. See also *Crawford* v. *Protestant Hospital for the Insane*, (1889), M.L.R. 5 C.S. 70 at p. 73, per Jette, J.; *St. Charles* v. *Doutre*, (1874), 18 L.C.J. 253 (B.R.) at p. 257, per Ramsay, J.; *Drysdale* v. *Dugas*, (1897), 26 S.C.R. 20 at p. 23, per Sir Henry Strong, C.J.

only logical that in a modern society not every exteriorization will be an actionable nuisance.[23] The rights of vicinage are reciprocal and, to avoid the multiplicity of actions which the law abhors, certain inconveniences must be borne by neighbours.[24] It is for the court to determine whether, in a given case, the inconveniences of which the plaintiff complains are reasonable or extraordinary.

> Il faut distinguer, en effet, entre les inconvénients ordinaires et, pour ainsi dire, inévitables du voisinage, et auxquelles on doit s'attendre et se résigner dans les associations au sein desquelles nous vivons, et les inconvénients extraordinaires et imprévus, qui sont tels que le dommage qui résulte, excède évidemment, comme l'a très-bien dit la Cour de cassation,[25] la mesure des obligations ordinaires du voisinage.[26]

If, having regard to the criteria which will be discussed below, they are reasonable, they must be borne. If the line of reasonableness is crossed or the "mesure des obligations ordinaires" exceeded, this fact will be significant in determining whether the defendant has been rendered liable in damages to the plaintiff.[27] Sir W. Erle, C.J., of the English Court of Queen's Bench, articulated this principle a century ago:[28]

> The cause of action, if any, lies in the excess of damage beyond what is considered reasonable... This cause of action is immersed in undefined uncertainty; there is no standard by which to measure degrees of annoyance, or to estimate the effect of circumstances; each neighbour is a source of some annoyance; proximity necessitates mutual forbearance; the degree of forbearance to be required is measured by the sensibility to feelings of delicacy of the tribunal which has to decide the case, and cannot be foreseen until that decision is given.

2. *The necessity of damage*

Before the courts will even consider the criteria by which they determine whether the measure of reasonableness has been exceeded,

---

[22] The term "extériorisation" is Robidoux, J.'s, in *McCabe* v. *Lafontaine*, (1921), 59 C.S. 250 at p. 253.

[23] Laurent, *Principes de droit civil français*, 3e éd., t. 6, (Paris, 1878), nos. 144, 145, pp. 195-196; *Carpentier* v. *La Ville de Maisonneuve*, (1897), 11 C.S. 242 at p. 245, per Archibald, J.

[24] Mazeaud et Tunc, *op. cit.*, t. 1, no. 598, p. 689; Lalou, *op. cit.*, no. 944, p. 575; *Crédit Lyonnais* v. *Ardisson*, Req. 23 mars 1927, D.P. 1928.1.73, particularly the note by R. Savatier at p. 75.

[25] *Rivoire* v. *Imbert*, Cass. civ., 28 fév. 1848, Dev. 1848.1.311.

[26] Demolombe, *op. cit.*, t. 12, no. 658, p. 160.

[27] Leyat, *op. cit.*, p. 283.

[28] *Brand* v. *Hammersmith Railway Company*, (1867), L.R. 2 Q.B. 223 at p. 247.

two conditions must be met. First, as is the case in any delictual action, it must be shown that there exists damage, and then that this damage is substantial,[29] direct[30] and distinct from that common to the inhabitants at large.[31] The nature of the damage is measured by an objective, not a subjective, standard.[32] Second, the complainant must show that the prejudice which he suffers results from the deprivation, not merely of a certain advantage which he has derived from his property, but of a right to which he is entitled by reason of his ownership.[33]

> For instance, if an owner erects on his land a building which deprives his neighbour of the prospect which he previously enjoyed, this only deprives his neighbour of an advantage which he previously enjoyed, but to which

---

[29] W. W. Kerr, *A Treatise on the Law and Practice of Injunctions*, 6th ed., (London, 1927), at p. 137; *Adami* v. *The City of Montreal*, (1904), 25 C.S. 1 at p. 7, per Davidson, J.; *Chartier* v. *British Coal Corporation*, (1938), 76 C.S. 360 at p. 365, per McDougall, J.; *St. Helen Smelting Company* v. *Tipping*, (1866), 11 H.L.C. 642 at pp. 653-654, 11 E.R. 1483 at pp. 1487-1488, per Lord Weynsleydale; *Salvin* v. *North Brancepeth Coal Co.*, (1873), L.R. 9 Ch. App. 705 at p. 709, per James, L.J.

[30] *Adami* v. *The City of Montreal*, (1904), 25 C.S. 1 at p. 7, per Davidson, J.; Carbonnier, *op. cit.*, t. 2, no. 57, p. 190: "Exceptionnellement, il peut s'agir d'un dommage indirect..." He here refers to a French case in which the exceptional fire hazard to the neighboring properties created by the presence of the particular industry caused an increase in insurance premiums. Req. 27 janv. 1931, S. 1932.1.89.

[31] Fleming, *op. cit.*, p. 365; *Canada Paper Company* v. *Brown*, (1922), 63 S.C.R. 243 at p. 256, per Anglin, J.; *Adami* v. *The City of Montreal*, (1904), 25 C.S. 1 at p. 7, per Davidson, J. Cf. *Claude* v. *Weir*, (1888), 32 L.C.J. 213 (B.R.) at p. 221, per Cross, J., where there were no special damages suffered by the complainant. See also *Cairns* v. *Canada Refining and Smelting Co.*, (1914), 6 O.W.N. 562 (C.A.) at p. 564, 26 O.W.R. 490 at p. 495, per Mulock, C.J.

[32] The Latin maxim, *Lex non favet delicatorum votis*, has been accepted as the rule at common law, but the doctrine and jurisprudence on the point are divided in France. To this writer's knowledge there is no decision on the point in Quebec and, in this writer's opinion, the better view would appear to be that of the common law. See Kerr, *op. cit.*, p. 158: Fleming, *op. cit.*, p. 378; *Walter* v. *Selfe*, (1851), 4 DeG. M. and S. 315 at p. 322, 64 E.R. 849 at p. 852, per Sir J. L. Knight Bruce. *Noyes* v. *Huron & Erie Mtge Corp.*, [1932] O.R. 426, [1932] 3 D.L.R. 143. In France, see Planiol et Ripert, *op. cit.*, t. 3, no. 472, p. 447, opposing the notion of "réceptivité personnelle". *Contra:* Leyat, *op. cit.*, pp. 309-319; Mazeaud et Tunc, *op. cit.*, nos. 604-606, pp. 697-700, and the authorities referred to there.

[33] Marler, *op. cit.*, no. 169, p. 76: Laurent, *op. cit.*, t. 6, no. 142, pp. 190 *et seq.*; Baudry-Lacantinerie et Chauveau, *op. cit.*, t. 6, no. 217, p. 164; Demolombe, *op. cit.*, t. 12, no. 647, pp. 138-139.

> he had no legal or positive right and would therefore be no violation of his ownership.[34]

It follows that the erection of any building which depreciates the value of a neighbour's property by its mere presence is not an actionable nuisance, for it only deprives the owner of an advantage he previously enjoyed but to which he had no absolute right.[35] Such a building could only give rise to an action if the use to which it were put created a nuisance.

3. *The character of the neighbourhood*

Once damage is proved, the court must determine whether it has been caused by a reasonable, and therefore unsanctionable, or by an unreasonable, and therefore sanctionable, use of property.[36] The standard of reasonableness is based almost wholly on the character of the neighbourhood [37] and the level of inconvenience which must be supported in cities is greater than in the country.[38]

> Les inconvénients normaux du voisinage varient suivant les circonstances. Ils sont plus grands dans les villes, où il y a des usines et des manufactures. Les propriétaires de terrains urbains ne peuvent exiger que ces industries

---

[34] Wurtele, J., in *Drysdale* v. *Dugas*, (1897), 6 B.R. 278 at p. 283. See also *Crawford* v. *Protestant Hospital for the Insane*, (1891), M.L.R. 7 B.R. 57 at p. 75, per Dorion, C.J.; *Aubé* v. *Boutet*, (1931), 37 R.J. 474 (C.S.) at pp. 479-480, per Archambault, J. Also Demolombe, *op. cit.*, t. 12, no. 647, pp. 139-141; Toullier, *op. cit.*, t. 3, no. 328, p. 208; Zachariae, *op. cit.*, t. 2, no. 243, pp. 57-58; Domat, *op. cit.*, Pt. 1, liv. 2, tit. 8, sect. 3, no. 9; and the following French cases, *La Commune de Fagnon* v. *Massé*, Cass. civ., 29 nov. 1830, Dev. 1831.1.110; *La Commune d'Apprieux* v. *Perrin et Termoz*, Grenoble, 5 nov. 1834, Dev. 1834.2.491.

[35] *Aluminium Company of Canada* v. *Mackenzie*, [1951] R.L. (B.R.) 65 at p. 78, per Hyde, J.; *Carpentier* v. *La Ville de Maisonneuve*, (1897), 11 C.S. 242 at p. 244, per Archibald, J.; *Crawford* v. *Protestant hospital for the Insane*, (1891), M.L.R. 7 B.R. 57 at p. 75, per Dorion, C.J.; *Pickard* v. *Corporation des Commissaires du Havre de Montréal*, (1932), 70 C.S. 85 at pp. 86-87, per Archer, J.

[36] Demolombe, *op. cit.*, t. 12, no. 658, p. 160.

[37] What the French jurists refer to as "la qualité des lieux": Domat, *op cit.*, Pt. 1, liv. 1, tit. 12, sect. 2, no. 10; Demolombe, *op. cit.*, t. 12, no. 659, p. 163. *St. Helen's Smelting Company* v. *Tipping*, (1866), 11 H.L.C. 642 at p. 650, 11 E.R. 1483 at p. 1486, per Lord Westbury, L.C.; *Drysdale* v. *Dugas*, (1897), 26 S.C.R. 20 at p. 23, per Sir Henry Strong, C.J.; *Aubertin* v. *Montreal Light, Heat and Power*, (1936), 42 R.L. n.s. 424 (C.S.) at p. 440, per McDougall, J., "It is the degree of mischief, having regard to the locality, with which the Court is concerned"; *Robins* v. *The Dominion Coal Co.*, (1899), 16 C.S. 195 at p. 200, per Davidson, J.; *Carpentier* v. *La Ville de Maisonneuve*, (1897), 11 C.S. 242 at p. 248, per Archibald, J., "...these inconveniences vary in kind and in extent according to the circumstances of place and quality of the population".

[38] Demolombe, *op. cit.*, t. 12, no. 659, p. 163. *Colls* v. *Home and Colonial Stores Ltd.*, [1904] A.C. 179 at p. 185, 73 L.J. Ch. 484 at p. 488, per Lord Halsbury, L.C.

> émigrent à la campagne. Ils doivent en supporter les inconvénients qui sont une conséquence normale de leur présence, comme le bruit, la fumée, la poussière. Les propriétaires de ces industries doivent faire tout en leur pouvoir pour diminuer ces inconvénients inévitables, mais ils ne seront responsables en dommage que s'ils sont en faute.[39]

Within cities themselves there is a clear division in the jurisprudence between the responsibility for obnoxious activities carried on in residential districts and those carried on in manufacturing areas.[40] "What would be tolerable in a manufacturing district would be intolerable in a residential district."[41] The courts have generally been careful not to apply the "residential" decisions to "manufacturing" situations and vice versa, when the reasonableness of the nuisance is a point in issue.[42]

Although the word "residential" is nowhere defined by the cases, it would appear to apply to any area in which there are a substantial number of dwelling-houses, however humble or poor the homes may be.[43] Thus, an area in the vicinity of the Montreal harbour has been held to be residential.[44] Because of the nature and low level of inconvenience which one home-owner would expect from his neighbour, the courts have been very harsh in dealing with nui-

---

[39] Montpetit et Taillefer, *Droit civil de la Province de Québec*, t. 3, (Montréal, 1945), p. 108.

[40] Demolombe, *op. cit.*, t. 12, no. 659, p. 164.

[41] Marler, *op. cit.*, no. 160, p. 71. See also *Robins* v. *The Dominion Coal Co.*, (1899), 16 C.S. 195 at p. 200, per Davidson, J., "For example, what might be a nuisance on Sherbrooke Street would be none in the undoubtedly industrial district within the bounds of which plaintiff lives."; *Sturges* v. *Bridgman*, (1879), 11 Ch. D. 852 at p. 865, per Thesiger, L.J., "What would be a nuisance in *Belgrave Square* would not necessarily be so in *Bermondsey.*"; *Bamford* v. *Turnley*, (1860), 3 B. and S. 62 at p. 79, 122 E.R. 25 at p. 31, per Pollock, C.B., dissenting, "That may be a nuisance in *Grosvenor Square* which would be none in *Smithfield Market.*" See, in this context, the note of Henri Capitant to *Gilet* v. *Laurens*, Bordeaux, 5 mars 1903, D.P. 1908.2.49, "Tel dommage paraîtra supportable dans un faubourg industriel ou dans une rue commerçante qui, au contraire, donnera lieu à des dommages-intérêts si la propriété qui le subit se trouve dans un quartier paisible, bourgeoisement habité." See also *Michon* v. *Varigny*, Trib. civ. Lyon, 20 nov. 1926, Gaz. Pal. 1927.1.393; Mazeaud et Tunc, *op. cit.*, t. 1, no. 600, p. 695. Cf. *Atty.-Gen.* v. *Cole & Son*, [1901] 1 Ch. 205 at p. 206, per Kekewich, J.

[42] For example, see the decisions of *Chartier* v. *British Coal Corporation*, (1938), 76 C.S. 360 at p. 363, per McDougall, J., and *Aubertin* v. *Montreal Light, Heat and Power*, (1936), 42 R.L. n.s. 424 (C.S.) at p. 442, per McDougall, J.

[43] *Chartier* v. *British Coal Corporation*, (1938), 76 C.S. 360.

[44] *Ibid.*

sances caused by offensive trades in residential areas. A specific example of what the Court of Chancery was willing to tolerate in a residential area a century ago may be found in the following *dictum*:

> (W)hen in a street like Green Street the ground floor of a neighbouring house is turned into a stable, we are not to consider the noise of horses from that stable like the noise of a pianoforte from a neighbour's house, or the noise of a neighbour's children in their nursery, which are noises we must reasonably expect, and must to a considerable extent put up with.[45]

The Quebec courts have held the following to be abnormal and unreasonable uses of property in residential areas: an electric water pump in a City reservoir,[46] city dumps,[47] a soda-sulphate pulp producing process giving off malodourous fumes,[48] a coal-unloading station raising coal dust,[49] a stone-cutting operation,[50] stables releasing fetid odours,[51] a power-house equipped with enormous generators producing noise, smoke and vibrations,[52] a fox-pen discharging noxious smells,[53] lime-kilns,[54] an asbestos mine,[55] a quarry,[56] and a pork-curing factory.[57]

---

[45] *Ball* v. *Ray*, (1873), 8 Ch. App. 467 at p. 471, per Sir G. Mellish, L.J. Brief statements on the level of inconvenience to expect in a residential area may also be found in Marler, *op. cit.*, no. 160, p. 70 and in Laurent, *op. cit.*, t. 6, no. 144, p. 195.

[46] *Adami* v. *The City of Montreal*, (1904), 25 C.S. 1.

[47] *Boulanger* v. *La Cité de Québec*, (1934), 72 C.S. 445; *Christin dit St. Amour* v. *La Cité de Montréal*, (1895), 7 C.S. 228; *Ducker* v. *La Cité de Sherbrooke*, (1934), 40 R.L. n.s. 418 (C.S.).

[48] *Canada Paper Company* v. *Brown*, (1922), 63 S.C.R. 243.

[49] *Chartier* v. *British Coal Corporation*, (1938), 76 C.S. 360. Cf. the case of coal elevators and towers in an industrial area, *Robins* v. *The Dominion Coal Co.*, (1899), 16 C.S. 195.

[50] *Décarie* v. *Lyall*, (1911), 17 R.J. 299 (C.S.).

[51] *Drysdale* v. *Dugas*, (1897), 6 B.R. 278, 26 S.C.R. 20; *Cité de Québec* v. *Boucher*, (1936), 60 B.R. 152. Cf. the case of stables in a manufacturing neighbourhood, *Riberdy* v. *Crépeau*, (1936), 42 R.L. n.s. 402 (C.S.); *Bricault dit Lamarche* v. *Masson*, (1911), 40 C.S. 346.

[52] *A. Gareau* v. *Montreal Street Railway Company*, (1900), 31 S.C.R. 463; *Montreal Street Railway Company* v. *Félix Gareau*, (1901), 10 B.R. 417.

[53] *Genest* v. *Fillion*, (1936), 74 C.S. 66.

[54] *Gravel* v. *Gervais*, (1891), M.L.R. 7 C.S. 326.

[55] *Dame Jacques* v. *Asbestos Corporation Ltd.*, [1940] C.S. 182.

[56] *Ruel* v. *Villeray Quarry*, (1926), 64 C.S. 418.

[57] *St. Charles* v. *Doutre*, (1874), 18 L.C.J. 253 (B.R.).

III) Defences

1. *The industrial character of the neighbourhood*

It has repeatedly been held in each of the three jurisdictions mentioned in this paper that what would assuredly be a nuisance in a residential district might be none in an industrial area where the level of inconvenience to be expected is considerably higher.[58]

> It would of course be absurd to say that one who establishes a manufactory in the use of which great quantities of smoke are emitted, next door to a precisely similar manufactory maintained by his neighbour, whose works also emit smoke, commits a nuisance as regards the latter.[59]

It follows that where the courts have found that the nuisance complained of is not an uncommon or unique case in the neighbourhood or where the plaintiff had carried on a similarly objectionable trade himself, the action has not been maintained.[60] An exception to this rule exists where the defendant has not conformed with building or health regulations [61] or where it is obvious that no attempt has been made to eliminate a nuisance where the court recognizes that it could easily be done.[62] Thus the courts have maintained actions against a stable,[63] a laundry and dyeing plant [64] and an establishment producing electric light for a town,[65] while rejecting suits instituted against a tar manufacturer,[66] a stable,[67] a coal yard [68] and a tannery.[69]

The French courts and jurists have arrived at the same result as the Quebec and common law courts regarding the availability of

---

[58] See *supra* n. 41. See also at common law the leading decision of *St. Helen Smelting Company* v. *Tipping*, (1866), 11 H.L.C. 642, 11 E.R. 1483; and, in the law of France, the leading cases, *Gilet* v. *Laurens*, Bordeaux, 5 mars 1903, D.P. 1908.2.49, note H. Capitant, and *Dupont* v. *Lecante*, Cass. civ., 18 févr. 1907, D.P. 1907.1.385, note G. Ripert.

[59] Sir Henry Strong, C.J., in *Drysdale* v. *Dugas*, (1897), 26 S.C.R. 20 at p. 23.

[60] See discussion of *Riberdy* v. *Crépeau*, (1936), 42 R.L. n.s. 402 (C.S.) and *Cusson* v. *Galibert*, (1902), 22 C.S. 493, *infra* at n. 86.

[61] *Bricault dit Lamarche* v. *Masson*, (1911), 40 C.S. 346.

[62] *Bricault dit Lamarche* v. *Masson*, (1911), 40 C.S. 346; *Chalifour* v. *Mathieu*, (1929), 35 R.J. 197 (C.S.); *Carpentier* v. *La Ville de Maisonneuve*, (1897), 11 C.S. 242.

[63] *Bricault dit Lamarche* v. *Masson*, (1911), 40 C.S. 346.

[64] *Chalifour* v. *Mathieu*, (1929), 35 R.J. 197 (C.S.).

[65] *Carpentier* v. *La Ville de Maisonneuve*, (1897), 11 C.S. 242.

[66] *Aubertin* v. *Montreal Light, Heat and Power*, (1936), 42 R.L. n.s. 424 (C.S.).

[67] *Riberdy* v. *Crépeau*, (1936), 42 R.L. n.s. 402 (C.S.).

[68] *Robins* v. *The Dominion Coal Co.*, (1899), 16 C.S. 195.

[69] *Cusson* v. *Galibert*, (1902), 22 C.S. 493.

the industrial character of the neighbourhood as a defence by juxtaposing it with the defence of prior occupation and emerging with a theory of "pré-occupation collective"[70] which, unlike "pré-occupation individuelle",[71] is a good defence to the action.[72]

> Ce qui reste vrai, c'est qu'un industriel, s'établissant dans une localité déterminée et dans un quartier spécial de cette localité, peut très légitimement invoquer qu'il exploite son fonds suivant l'usage normal des lieux. On peut reconnaître ainsi l'existence d'une sorte de pré-occupation collective. Si le quartier est déjà couvert d'usines et de fours, le propriétaire d'un terrain serait mal venu à y faire bâtir une luxueuse villa et à se plaindre ensuite des inconvénients du voisinage. C'est lui, dans ce cas, qui donne à son fonds une destination incompatible avec sa situation.[73]

2. *The defence of reasonable care*

Is proof by the defendant that he has taken all reasonable care to avoid interfering with the proprietary rights of his neighbour sufficient to exculpate him from liability? In France and at common law the answer is clearly no. In Quebec the answer is not clear.

A. *The solution at common law*

Briefly, the liability of the tortfeasor in an action for damages caused by a nuisance is strict. When there is injury or inconvenience exceeding that to be expected having regard to the locality, the action will be maintained whether one has used the property negligently or with all possible care in the exercise of his business.[74]

---

[70] See Carbonnier, *op. cit.*, t. 2, no. 57, p. 191; Mazeaud et Tunc, *op. cit.*, t. 1, no. 601, pp. 695-696; Josserand, *op. cit.*, no. 1505, p. 778; and the complete treatment of the subject in Leyat, *op. cit.*, pp. 336-344. See also the following cases: *Robert* v. *Schor*, Besançon, 15 nov. 1934, S. 1935.2.94; *Dupont* v. *Lecante*, Cass. civ., 18 fév. 1907, D.P. 1907.1.385, note G. Ripert; *Gilet* v. *Laurens*, Bordeaux, 5 mars 1903, D.P. 1908.2.49; *Fontaine* v. *Brillais*, Troyes, 20 juillet 1921, Gaz. Pal. 1924.2.560 and the note by H. Solus at (1925), 24 Rev. trim. dr. civ. 144.

[71] See *infra, The defence of prior occupation,* at pp. 142-144.

[72] Demolombe, *op. cit.*, t. 12, nos. 659-659 bis, pp. 163-167, alone among the French jurists contends that "préoccupation individuelle" is a good defence to the action. See the criticism by Leyat, *op. cit.*, pp. 323-336 and the cases upholding that point of view cited in Mazeaud et Tunc, *op. cit.*, t. 1, no. 601, p. 696.

[73] G. Ripert, in his note following *Dupont* v. *Lecante*, Cass. civ., 18 fév. 1907, D.P. 1907.385 at p. 386.

[74] B. Wilson, *A Choice of Values*, (1961), 4 C.B.J. 448 at p. 453. See also *Ball* v. *Ray*, (1873), 8 Ch. App. 467 at p. 469, per Lord Selborne, L.C.; *Chandler Electric Company* v. *Fuller*, (1893), 21 S.C.R. 337 at p. 339, per Patterson, J.

> At common law, if I am sued for a nuisance, and the nuisance is proved, it is no defence on my part to say and to prove that I have taken all reasonable care to prevent it.[75]

The principle dates back to the old *Case of the Thorns*:[76]

> In all civil acts the law doth not so much regard the intent of the actor as the loss and damage of the party suffering... for though a man doth a lawful thing, yet if any damage do hereby befall another, he shall answer if he could have avoided it.[77]

It may be that the damage can only be avoided by cessation of the activity itself, but this is no defence to the action.

> If they cannot have two hundred horses together, even when they take proper precautions, all I can say is, they cannot have so many horses together.[78]

The Court of Common Pleas went even further in the case of *Humphries* v. *Cousins*,[79] holding the defendant liable although he was unaware of the existence of the cause of the nuisance on his property and for this reason was precluded from taking care to ensure that the pipe would not become defective and thereby leak waste matter into the basement of the plaintiff; per Benman, J.:[80]

> Indeed, if it be once established that the plaintiff's rights have been infringed by the defendant, and that the plaintiff has been thereby damnified, the fact that the defendant infringed them unknowingly and without negligence cannot avail him as a defence to an action by the plaintiff.

B. *The problem in Quebec*

The problem in Quebec and in France regarding the availability of the defence of reasonable care to an action to abate a proprietary nuisance results from the fact that the action, having no foundation in the articles on Real Property in the Code, has always been taken under art. 1053.[81] To most civilian legal minds, art. 1053 means "fault" and "fault" connotes an illicit act[82] or at least an

---

[75] *Rapier* v. *London Tramways*, [1893] 2 Ch. D. 588 at p. 599, per Lindley, L.J. See also *Polsue and Alfieri Ltd.* v. *Rushmer*, [1906] 1 Ch. 234 at p. 250, per Cozens Hardy, L.J.

[76] (1466), Y.B. 6 Ed. IV, 7a. pl. 18.

[77] Cited in *Lambert* v. *Bessey*, (1680), Sir T. Raym. 421 at p. 423, 83 E.R. 220 at p. 221.

[78] *Rapier* v. *London Tramways*, [1893] 2 Ch. D. 588 at p. 602.

[79] (1877), 2 C.P.D. 239.

[80] *Ibid.*, at p. 245.

[81] In France, the action has been taken under arts. 1382, 1383 C.N. See *supra* n. 4.

[82] "La faute suppose un fait illicite." Colin et Capitant, *op. cit.*, t. 1, no. 1025, p. 824. See also J.-B. Blais, *Responsabilité et obligations coutumières dans les rapports de voisinage*, (1965), 63 Rev. trim. dr. civ. 261.

actor who has not acted "en bon père de famille", who has not, in other words, taken all reasonable care to avoid the damage. According to Prof. Crépeau,[83] expressing this same idea in the more modern category-oriented language of "the intensity of obligations", art. 1053 is only an obligation of means,

> où le débiteur doit, non pas obtenir un résultat déterminé, mais uniquement prendre les moyens raisonnables qu'utiliserait un bon père de famille pour parvenir au résultat déterminé.[84]

The effect of this reading of art. 1053 on the burden of proof is as follows:

> En effet, le créancier d'une obligation de diligence doit supporter le fardeau de la preuve car, pour prouver l'inexécution de l'obligation du débiteur, il lui faut démontrer que ce dernier n'a pas pris les moyens raisonnables qu'exigeaient les circonstances, n'a pas agi comme un bon père de famille.[85]

If this is the correct view to take of the article, then proof by the defendant that he had used the most advanced scientific techniques and engineering methods and had sought the best advice, in other words, that he had taken all reasonable care, would be sufficient to repel the action.

a. *The jurisprudence*

Although a few isolated Quebec cases support the above view, that is, the traditional view,[86] the jurisprudence almost uniformly supports the proposition that the proprietor is subject to liability

---

[83] *Le Contenu obligationnel d'un contrat*, (1965), 43 Can. Bar Rev. 1.

[84] *Ibid.*, at p. 34.

[85] *Ibid.*, at p. 38.

[86] Two judgments of Archibald, J., which appear to adopt this view are influenced by other considerations. In *Carpentier* v. *La Ville de Maisonneuve*, (1897), 11 C.S. 242, some steps had been taken to reduce the noise and smoke caused by an establishment for the supply of electric light to the town, but the judge was "convinced by the proof that much could yet be done toward diminishing the inconvenience which plaintiff suffers." (at p. 250.) In *Cusson* v. *Galibert*, (1902), 22 C.S. 493, defendant's tannery was in a manufacturing neighbourhood and plaintiff, who had used his property as a slaughter-house for many years, had then created for himself "conditions much more objectionable than those by which he is now surrounded." (at p. 496.) Similarly, in the case of *Riberdy* v. *Crépeau*, (1936), 42 R.L. n.s. 402 (C.S.) (Gibsone, J.), the plaintiff had operated his own property as a carter for many years and, since the neighbourhood was not strictly residential, he could not complain of a stable, operated reasonably, next door. In *Aubertin* v. *Montreal Light, Heat and Power*, (1936), 42 R.L. n.s. 424 (C.S.), while McDougall, J., found that the plant in question had been maintained "in the most modern and scientific mauner", emphasis was placed on the fact that the neighbourhood was not residential, that the plaintiff's land was totally undeveloped and that the odour of tar is not in itself injurious.

as regards the damage caused once he is shown to be the author of the nuisance.[87]

In general, the Quebec courts have not boldly articulated this principle and have been content, upon finding the existence of a nuisance of unreasonable dimensions, to close their inquiry there without deciding whether reasonable care was, or could have been, taken to avoid the damage, thus coming to the same thing in the end. Where there is clear evidence that reasonable care has not been taken or that the nuisance may, by means available to the party causing it, be removed, the courts will, of course, not hesitate in maintaining the action.[88] The problem, not surprisingly, arises where there is unequivocal evidence to the effect that all reasonable care *has* been taken to avoid the damage.[89] On the several occasions when the Quebec courts have been faced with the situation where the greatest care had evidently been taken to avoid the nuisance, they have held that it was no defence to the action.

Thus, in *Chartier* v. *British Coal Corporation*,[90] McDougall, J., ruled:[91]

> Evidence has been adduced to show that the defendant's plant is operated with modern equipment, is well and efficiently conducted, and efforts made to cause as little inconvenience as possible. Since defendant has occupied

---

[87] *Adami* v. *The City of Montreal*, (1904), 25 C.S. 1 at p. 7, per Davidson, J.; *Chartier* v. *British Coal Corporation*, (1938), 76 C.S. 360 at p. 366, per McDougall, J.; *Christin dit St-Amour* v. *La Cité de Montréal*, (1895), 7 C.S. 228 at p. 229, per Gill, J.; *Cournoyer* v. *De Tonnaneourt* (1935), 59 B.R. 420 at p. 430, per Hall, J.; *Crawford* v. *Protestant Hospital for the Insane*, (1891), M.L.R. 7 B.R. 57 at p. 75, per Dorion, C.J.; *Décarie* v. *Lyall*, (1911), 17 R.J. 299 (C.S.) at p. 303, per Tellier, J.; *St. Charles* v. *Doutre*. (1874), 18 L.C.J. 253 (B.R.) at p. 257, per Ramsay, J.; *Drysdale* v. *Dugas*, (1897), 6 B.R. 278 at p. 283, per Wurtele, J., 26 S.C.R. 20 at pp. 25-26, per Sir Henry Strong, C.J.; *A. Gareau* v. *Montreal Street Railway Company*, (1900), 31 S.C.R. 463 at p. 467, per Girouard, J.; *Genest* v. *Filion*, (1936), 74 C.S. 66 at p. 67, per Langlais, J.; *Dame Jacques* v. *Asbestos Corporation Ltd.*, [1940] C.S. 182 at p. 184, per Laliberté, J.; *McCabe* v. *Dame Lafontaine*, (1921), 59 C.S. 250 at p. 253, per Robidoux, J.; *Montreal Street Railway Company* v. *Félix Gareau*, (1901), 10 B.R. 417 at p. 429, per Blanchet, J.; *Ouellette* v. *Cité de Hull*, (1934), 72 C.S. 239 (Trahan, J.); *Ruel* v. *Villeray Quarry*, (1926), 64 C.S. 418 (Surveyer, J.).

[88] Mazeaud et Tunc, *op. cit.*, t. 1, no. 612, p. 704 go as far as to suggest the following: "On comprend donc que les arrêts s'efforcent toujours de découvrir une pareille faute à l'encontre du propriétaire; ils s'appuient très souvent sur le fait que les précautions nécessaires n'ont pas été prises et se montrent parfois très exigeants sur ce point."

[89] Mazeaud et Tunc, *op. cit.*, t. 1, nos. 594, 597, pp. 686, 688; R. Savatier, *Traité de la responsabilité civile*, 2e éd., t. 1, (Paris, 1951), no. 71, p. 91; Henri Capitant, note, D.P. 1908.2.49; G. Ripert, note D.P. 1907.1.385.

[90] (1938), 76 C.S. 360.

[91] *Ibid.*, at p. 366.

> the premises, improved methods have been installed and extensive alterations made to the buildings and plant with a view to minimizing discomfort in the neighbourhood... Merely to show that great care has been taken in the use of one's property cannot, in law, be deemed sufficient to justify the continuance of a nuisance arising therefrom. The duty of the defendant goes further.

The care taken in the construction of an electrical plant in *Montreal Street Railway* v. *Gareau*[92] was no defence to the action.

> Le fait que l'appelante a construit son usine avec solidité, qu'elle a érigé ses machines suivant les règles de l'art et qu'elle les exploite avec prudence et uniquement pour les fins pour lesquelles elles sont destinées, ne peut la rendre indemne des dommages qu'elle cause.[93]

In the leading case of *Drysdale* v. *Dugas*,[94] Sir Henry Strong, C.J., held, in spite of the uncontested proof that the stable which was the cause of the nuisance has been constructed on the basis of the most improved and scientific plans, according to the municipal regulations and by-laws and with the best possible system of drainage and ventilation, that the defendant was liable for the damages caused to the plaintiff.[95]

> It was much insisted upon at the argument here and in the courts below also, that the fact that the appellant acted with extreme care and caution in carrying on his business constituted a justification of the acts complained of. This contention is, however, met and shown to be entirely without foundation in *Bamford* v. *Turnley*.[96]

The jurisprudence in France has definitively established the liability of the proprietor causing the damage in question whether he has taken all possible precautions or not.[97] The French courts have accepted the principle of liability without fault (or at least without its classical component, culpability[98]) for a century and a half.[99]

---

[92] (1901), 10 B.R. 417.

[93] *Ibid.*, at p. 429, per Blanchet, J.

[94] (1897), 26 S.C.R. 20.

[95] *Ibid.*, at pp. 25-26.

[96] (1860), 3 B. & S. 62, 31 L.J.Q.B. 286, 122 E.R. 25.

[97] Mazeaud et Tunc, *op. cit.*, t. 1, no. 597, p. 689; Blais, *loc. cit.*, pp. 263, 265-266.

[98] Geneviève Viney, *Le Déclin de la responsabilité individuelle*, (Paris, 1965), no. 341, p. 281.

[99] The earliest cases are *Lingard* v. *Harichaux*, Metz, 10 nov. 1808, S. 1808.2.438; *Mercy* v. *Mangin*, Metz, 16 août 1820, Dev. 1819-1821.2.309; and the following four cases, *Puzin* v. *Derosne*, Paris, 16 mars 1841, *Duburcq* v. *Poteau-Jacquart*, Douai, 10 janv. 1843, *Gaudry* v. *Lemire*, Rouen, 18 nov. 1842, and *Chalme* v. *Dorbeaux*, Rouen, 6 déc. 1842, all reported at D.P. 1843.2.137. Among the most recent French decisions on the point are *Société des hauts fourneaux de Chasse* v. *Lavigne*, 29 mars 1962, Bull. civ. 1962.2.258; *Carrière* v. *Reyne*, 7 juin 1963, Bull. civ. 1963.2.311; *Société Manufacture d'Estampage du Nord-Est* v. *Barillet*, 6 nov. 1963, Bull. civ. 1963.2.529; and *Société Frigos-Nantais* v. *Charriau*, 27 mai 1964, Bull. civ. 1964.2.310.

> En effet, elle (i.e. the law) n'a prescrit l'emploi de certaines précautions à ceux qui veulent élever des fours ou autres constructions dangereuses, que pour que les voisins n'eussent point à en souffrir, et dans la présomption que ces précautions seraient suffisantes; si donc, malgré ces mêmes précautions prises, lesdites constructions nuisent encore aux voisins et leur causent de graves incommodités, il est clair qu'il doit y être pourvu; autrement le voeu de la loi serait trompé et les voisins grevés d'un préjudice qu'elle a essentiellement voulu leur éviter.[100]

Although it is thus clear that in France the courts will not hesitate to apply art. 1382 C.N. to a case where the "mesure des obligations ordinaires" has been exceeded *whether fault in its classical sense is present or not,* the jurists have long sought to rationalize or explain these decisions by imputing to the defendant's conduct a measure of blameworthiness, culpability, heedlessness, negligent conduct or the like.[101]

b. *The doctrine*

Briefly, and somewhat broadly, the French jurists are divided into two schools in so far as the basis for the liability for nuisance is concerned. The first, apparently conceding that fault is necessary to the action under art. 1382 C.N., is composed of jurists variously defining that fault as an act which exceeds "la mesure des obligations ordinaires de voisinage",[102] generates an *immissio* onto the property of the neighbour,[103] causes "à ses voisins une gêne supérieure à celle que l'on doit normalement souffrir",[104] breaches the "obligations de voisinage" imposed by the Code Napoleon,[105] or abuses one's right of ownership.[106]

---

[100] *Mercy* v. *Mangin,* Metz, 16 août 1820. Dev. 1819-1821.2.309.

[101] For a general review of the various theories which have been proferred and criticisms thereof, see Carbonnier, *op. cit.,* t. 2, no. 59, pp. 194-195; Leyat, *op. cit.,* pp. 71-158; Ripert, *op. cit.,* pp. 244-284; Mazeaud et Tunc, *op. cit.,* t. 1, nos. 615-619, pp. 705-707; Blais, *loc. cit.,* pp. 278-284.

[102] H. et L. Mazeaud, in Mazeaud et Tunc, *op. cit.,* t. 1, no. 620, p. 708. Tunc takes a different position. See *infra* n. 104. See also Savatier, *op. cit.,* no. 71, p. 90; Lalou, *op. cit.,* no. 942, p. 575.

[103] Leyat, *op. cit., passim,* especially at pp. 158 *et seq.*

[104] Tunc, in Mazeaud et Tunc, *op. cit.,* t. 1, no. 621-2, pp. 709-711. See his criticism of H. et L. Mazeaud, *ibid.,* no. 621, pp. 708-709. See also Planiol et Ripert, *op. cit.,* t. 3, no. 471, p. 446, where the fault is seen as causing the "gêne exceptionnelle sans réparer le préjudice".

[105] Capitant, *loc. cit.* See *supra* n. 5.

[106] Colin et Capitant, *op. cit.,* t. 1, no. 1025, pp. 824-825. Note that the 11th edition referred to in this paper was "entièrement refondu et mis à jour" by L.J. de la Morandière.

The second school espouses the theory of risk "sous le masque de la faute", say Mazeaud et Tunc.[107] In fact, Josserand,[108] for one, appears to mask nothing. He goes as far as the common law theorists who advocate risk as the only admissible theory of allocation of tort loss liability in the modern world.[109]

> (C)'est un principe de justice distributive et qui tend à pénétrer de plus en plus dans le droit, que celui qui crée un risque doit, si ce risque vient à se réaliser aux dépens d'une tierce personne, réparer les dommages causés... (L)'acte excessif, encore que non fautif, devient une source de responsabilité, parce que créateur d'un risque exceptionnel et anormal.[110]

The theory of risk has recently been expounded in France by Mlle. Geneviève Viney [111] and placed upon solid logical ground.

> Or, il est rationnellement impossible de tenir pour une faute l'ouverture régulière d'une salle de spectacles, malgré le caractère insupportable du trouble qu'il apporte au voisin, locataire à titre d'habitation.[112]
>
> On peut cependant, sans artifice, faire de la théorie des troubles de voisinage, un chapitre particulier de la responsabilité de l'exploitant professionnel, car c'est lorsqu'elle frappe ce dernier qu'elle prend toute son originalité et se distingue véritablement du droit commun de la responsabilité pour faute.[113]
>
> Défini comme une "charge sociale", le trouble anormal ou excessif, issu du voisinage, doit logiquement être répercuté sur la société. Or, nous l'avons vu, la qualité d'exploitant professionnel confère au responsable une facilité exceptionnelle pour effectuer ce transfert des risques en le diffusant sur les consommatours.[114]

It was recognized as long ago as 1900 by Hauriou [115] that the theory of fault functioned well when an individual was able to oversee all the details of his industry, the exploitation of which exceeded neither the strength of his personality nor his *diligentia*. The existence of the "grande entreprise" is incompatible with the notion of the *pater familias* as the basis of delictual liability in this area.

c. *A suggested solution*

It is clear then that the classical notion of fault has little, if any, place in the law of nuisance, but if fault as a concept need still be retained in some form, it is submitted that it may be reconciled

---

[107] *Op. cit.*, t. 1, no. 615, p. 705.
[108] *Op. cit.*, nos. 1503, 1505, pp. 829, 830.
[109] Fleming, *op. cit.*, pp. 4-15.
[110] Josserand, *op. cit.*, no. 1505, p. 830.
[111] *Op. cit.*; see *supra* n. 98.
[112] *Ibid.*, no. 341, p. 281.
[113] *Ibid.*, no. 342, p. 282.
[114] *Ibid.*, no. 346, p. 287.
[115] Note at S. 1900.3.1 at p. 3.

with the Quebec jurisprudence and the traditional understanding of art. 1053 in the following way. If "fault", as it is used in that article, be interpreted as "the breach of a legal duty",[116] then the intensity of the obligation imposed by art. 1053 may, in each case, be determined by first ascertaining the intensity of the legal duty in question. This approach would free the courts from the rigid and unyielding scope of applicability of the general article on delictual responsibility and would obviate the present "forcing" of situations into the confines of fault and reasonable care. This interpretation would give the article the flexibility it must have been intended to possess: the application indifferently to breaches of any legal duty, whether its intensity be that of means, result or warranty. The wording of the last clause of the article supports this view by stating that fault may consist in the mere performance of a "positive act", independently of "imprudence, neglect or want of skill".[117]

It is true that one may argue, in support of Prof. Crépeau's interpretation of art. 1053, that one is not using the care of a "bon père de famille" in establishing the nuisance-generating industry in a residential neighbourhood in the first place, but this is to confuse the improper manner of doing something which, if done properly, would not be sanctionable with impropriety in doing the thing at all. The first is negligence; the second *stricto sensu* is not. Furthermore, such an approach cannot be reconciled with the line of cases concerning the prior occupation of the author of the nuisance, which will be discussed in the following section.

3. *The defence of prior occupation*

With the exception of three cases, all involving tanneries,[118] the Quebec courts have consistently held that the prior occupation of the defendant gives him no right to continue the nuisance without

---

[116] Planiol, *Traité élémentaire de droit civil*, 4e éd., t. 2, Paris 1907, no. 863, p. 275: "La faute est un manquement à une obligation préexistante, dont la loi ordonne la réparation quand il a causé un dommage à autrui."

[117] Art. 1383 C.N. is to the same effect. See *supra* n. 4.

[118] *McGibbon* v. *Bédard*, (1886), 30 L.C.J. 282; M.L.R. 6 B.R. 422: note here that the Court of Appeal found, not only that the respondent had come to the nuisance, but that no nuisance had in fact existed before he had been "instrumental in having the drain in question covered over, and in this way had aggravated the nuisance, in consequence of which he was not entitled to claim damages". (at p. 285.) In *Cusson* v. *Galibert*, (1902), 22 C.S. 493 at p. 496, Archibald, J., found that "his occupation was subsequent to that of the defendants, and that plaintiff actually used his own property for years as a slaughter-house, thus creating for himself conditions much more objectionable than those by which

indemnifying the plaintiff for the damage which he has caused.[119] In *Drysdale* v. *Dugas*, Wurtele, J., held that "Everyone is bound to know the law and he (the defendant) must be presumed to have foreseen this consequence when he built his livery stable."[120]

> Every right, from absolute ownership in property down to a mere easement, is purchased and holden subject to the restriction that it shall be so exercised as not to injure others. Though at the time it be remote and inoffensive, the purchaser is bound to know at his peril that it may become otherwise by the residence of many people in the vicinity, and that it must yield to by-laws and other regular remedies for the suppression of nuisances.[121]

Thus, in a case where the defendant had erected his lime-kilns "en pleine campagne" forty years before the plaintiff had purchased his property and the city had spread out to the nuisance, the court held that the defendant was liable to pay damages although not to suffer the suppression of his trade.[122]

> Considérant que dans l'application de ce principe, il n'y a pas lieu de distinguer entre les propriétaires voisins qui ont construit avant l'érection de l'établissement industriel et ceux qui ont bâti après le commencement de son exploitation, ces derniers n'ayant usé que d'un droit en bâtissant

---

he is now surrounded". See also the judgment of Cross, J., in *Claude* v. *Weir*, (1888), 32 L.C.J. 213 (B.R.) at p. 222 and the *considérants* of the Court reported in (1888), M.L.R. 4 B.R. 197 at p. 223. The remarks of Cross, J., at 221 in 32 L.C.J. and those of Dorion, C.J., at 214 in M.L.R. 4 B.R. to the effect that causality was not proved between the acts of the defendant and the damages suffered by the plaintiff undoubtedly render the remarks of the learned judges as to the effect of prior occupation *obiter*.

[119] *Gravel* v. *Gervais*, (1891), M.L.R. 7 C.S. 326 at p. 334, per Taschereau, J.; *St. Charles* v. *Doutre*, (1874), 18 L.C.J. 253 at p. 257, per Ramsay, J.; *Jacques* v. *Asbestos Corporation Ltd.*, [1940] C.S. 182, per Laliberté, J.; *Ruel* v. *Villeray Quarry*, (1926), 64 C.S. 418, per Surveyer, J.; *Drysdale* v. *Dugas*, (1897), 26 S.C.R. 20 at p. 25, per Sir Henry Strong, C.J., 6 B.R. 278 at p. 286, per Wurtele, J. See also Kerr, *op. cit.*, pp. 189-190 and the following cases: *Sturges* v. *Bridgman*, (1879), 11 Ch.D. 852 at p. 859, per Jessel, M.R.; *Hurlbut* v. *McKone*, (1887), 55 Conn. 31; *Commonwealth* v. *Upton*, (1856), 6 Gray 473 at pp. 475-476, per Merrick, J.; *Fertilizing Co.* v. *Village of Hyde Park*, (1878), 97 U.S. 659 at p. 668, 24 L. Ed. 1036, per Swayne, J. With the exception of Demolombe, *op. cit.*, t. 12, nos. 659-659 bis, pp. 163-167, the French jurists unanimously reject the validity of "préoccupation individuelle" as a defence to the action, while accepting that of "préoccupation collective". See *supra, The industrial character of the neighbourhood*, at pp. 134-5. See also, by way of example, *Liotardi* v. *Roche*, Aix, 19 nov. 1878, S. 1879.2.139; *Lévy* v. *Zohra bent Aouda bent Touhami*, Alger, 22 fév. 1898, S. 1899.2.107, D.P. 1899.2.6; *Dupont* v. *Lecante*, Cass. civ., 18 fév. 1907, D.P. 1907.1.385.

[120] (1897), 6 B.R. 278 at p. 286.

[121] *Fertilizing Co.* v. *Village of Hyde Park*, (1878), 97 U.S. 659 at p. 668, 24 L. Ed. 1036, per Swayne, J.

[122] *Gravel* v. *Gervais*, (1891), M.L.R. 7 C.S. 326 (Taschereau, J.).

> sur leur propriété, et ce droit ne pouvant être lésé par le fait de l'existence, même antérieure, d'un établissement nuisible.[123]

The English Court of Chancery went even further than merely protecting the right of a subsequent acquirer to build and live upon his land in peace and comfort in *Sturges* v. *Bridgman*.[124] In that case the court ordered the indemnification of a long-time possessor against an anterior nuisance of which he had not previously complained and which had not, in fact, been a nuisance to him until the tortfeasor had put his land to a new purpose which made it so.

> The fact that the man has made a noise which has not injured me or interfered with my comfort or enjoyment in any way, cannot deprive me of my right to the land, or interfere with my right to come to the Court when it does seriously interfere with my comfortable enjoyment.[125]

4. *Public necessity of the activity*

The value, usefulness or even necessity of the industry or trade to the public at large is no defence against an action taken by a proprietor who has proven that he has suffered substantial, direct and distinct damage which the Court has found to be unreasonable with respect to the character of the neighbourhood.[126]

> It is no answer to say that the defendant is only making a reasonable use of his property, because there are many trades and many occupations which are not only reasonable, but necessary to be followed, and which still cannot be allowed to be followed in the proximity of dwelling-houses, so as to interfere with the comfort of their inhabitants. I suppose that a blacksmith's trade is as necessary as most trades in the kingdom; or I might take instances of many noisy and offensive trades, some of which are absolutely and indispensably necessary for the welfare of mankind that some houses and pieces of land should be devoted; therefore I think that is not the test.[127]

The Supreme Court has followed this statement of the law on two occasions,[128] issuing an injunction in one of the cases despite

---

[123] *Ibid.*, at p. 334.

[124] (1879), 11 Ch.D. 852.

[125] *Ibid.*, at p. 859, per Jessel, M.R.

[126] Note that there will be an exception to this rule in the case of a corporation statutorily empowered to pursue certain purposes from which damage may result to property-owners. See *infra, The Defence of Statutory Authorization*, at pp. 145-7.

[127] *Broder* v. *Saillard*, (1876), 2 Ch.D. 692 at p. 701, per Jessel, M.R. For a similar holding in a Quebec case, see *Drysdale* v. *Dugas*, both in the Court of Queen's Bench, (1897), 6 B.R. 278 at p. 286, and in the Supreme Court, (1897), 26 S.C.R. 20 at p. 25. More recently. see the statement of Lacourciere, J., in *Plater* v. *Town of Collingwood*, (1967), 65 D.L.R. (2d) 492 (Ont. H. C.) at p. 497.

[128] *Drysdale* v. *Dugas*, see *supra* n. 83, and *Canada Paper Company* v. *Brown*, (1922), 63 S.C.R. 243. See also *La Ville de Sorel* v. *Vincent*, (1888), 32 L.C.J. 314 (B.R.) at p. 315, per Gill, J.

the fact that the industrial process in question represented a material advantage to the company on which the prosperity of the town in which it was situated depended; per Idington, J.:[129]

> The argument, that because the exercise by appellant of powers it arrogates to itself but are non-existent in law, may conduce to the prosperity of the little town or village in which the appellants' works are situated, seems to have led to a mass of irrelevant evidence being adduced, and as a result thereof the confusion of thought that produces the remarkable conclusion that because the prosperity of said town or village would be enhanced by the use of the new process therefore the respondent has no rights upon which to rest his rights of property.
>
> I cannot assent to any such mode of reasoning or that there exists in law any such basis for taking from any man his property and all or any part of what is implied therein.

A contrary view was expressed by Dorion, C.J., of the Court of Queen's Bench in the case of *Claude* v. *Weir*,[130] affirmed by the Supreme Court,[131] but the remarks are *obiter*.[132]

5. *The defence of statutory authorization*

Generally speaking, corporations constitute "ideal or artificial persons".[133] They are thus subject to the ordinary laws respecting delictual liability[134] except in the case where they are statutorily endowed with the right to do certain acts.[135] No liability can arise from the performance of those acts, provided that the rights are

---

[129] *Canada Paper Company* v. *Brown*, (1922), 63 S.C.R. 243 at p. 248.

[130] (1888), M.L.R. 4 B.R. 197 at pp. 220-221. The case is also reported at (1888), 32 L.C.J. 213, but the remarks of Dorion, C.J., are too extensively abridged there to bear on this issue. Note that the remarks of Cross, J., on other points are reported more extensively in the latter report. See as an interesting comparison to the remarks of Dorion, C.J., in this case his *obiter* remarks in *Crawford* v. *Protestant Hospital for the Insane*, (1891), M.L.R. 7 B.R. 57 at p. 75: "The current of the authorities is that however useful an institution is, if it is detrimental to the neighbours it may be ordered to be destroyed."

[131] *Sub nom. Weir* v. *Claude*, (1890), 16 S.C.R. 575. Taschereau, J., dismissed the appeal "entirely adopting the reason of Chief Justice Dorion in the court below".

[132] See *supra* n. 118.

[133] Art. 352 C.C.

[134] Art. 356 C.C. See also Marler, *op. cit.*, no. 168A, p. 75; *Gareau* v. *Montreal Street Railway Company*, (1900), 31 S.C.R. 463 at p. 467, per Girouard, J.

[135] The law of France regarding the consequences of statutory authorization on nuisance was incorporated into the law of Quebec by the Court of Queen's Bench in *Canadian Pacific Railway Co.* v. *Roy*, (1900), 9 B.R. 551. See e.g. the statement of Hall, J., at p. 571, but this position was rejected out of hand by the Privy Council, [1902] A.C. 220, (1902), 12 B.R. 543, C.R. [12] A.C. 374.

exercised properly, without negligence on the part of the corporation, in the place and manner indicated by the legislation.[136] By such a grant or authorization a corporation gains

> the right to do not only what is convenient, or what is usual, or what is common in the district, or what is simply reasonable, but what is *necessary* for the use and enjoyment of the right granted.[137]

It follows that there is complete immunity for any damage which is the *inevitable* result of the exercise of this right.[138]

> (Y)et when the legislature has sanctioned and authorized the use of a particular thing, and it is used for the purpose for which it was authorized, and every precaution has been observed to prevent injury, the sanction of the legislature carries with it this consequence, that if damage results from the use of the thing independently of negligence, the party using it is not responsible.[139]

Although the immunity may work a special injury against an individual, that individual has no action and will not have *any* remedy unless one is provided in the statute granting the powers.[140] It must be remembered that "such powers are not in themselves charters to commit torts and to damage third persons at large"[141] and that there is no protection afforded to a corporation negligent in the exercise of the powers granted to it.[142] Furthermore, negligence need not even be proved when a statutorily endowed corporation does something which it has not been expressly authorized to do and

---

[136] *Canadian Pacific Railway Co.* v. *Roy*, [1902] A.C. 220, (1902), 12 B.R. 543, C.R. [12] A.C. 374; *Booley* v. *Canadian National Railways*, (1937), 62 B.R. 193; *Canadian National Railways* v. *Seiwell*, [1956] B.R. 443; *The Grand Trunk Railway Company* v. *Labrèche*, (1923), 64 S.C.R. 15; *Grenier* v. *Ville de Drummondville*, (1929), 47 B.R. 454; *Vaughan* v. *The Taff Vale Railway Company*, (1860), 5 H. & N. 679, 157 E.R. 1351; *Purmal* v. *Medicine Hat*, (1908), 7 W.L.R. 437.

[137] *Aubertin* v. *Montreal Light, Heat and Power Cons.*, (1936), 42 R.L. n.s. 424 (C.S.) at p. 444, 74 C.S. 171 at p. 177.

[138] *Manchester Corporation* v. *Farnworth*, [1930] A.C. 171 at p. 183, per Viscount Dunedin; *Canadian Pacific Railway Co.* v. *Roy*, [1902] A.C. 220 at p. 229, per the Lord Chancellor; *Plater* v. *Town of Collingwood*, (1967), 65 D.L.R. (2d) 492 (Ont. H.C.).

[139] *Vaughan* v. *The Taff Vale Railway Company*, (1860), 5 H. & N. 679 at p. 685, 157 E.R. 1351 at p. 1354, per Cockburn, C.J.

[140] *Mayor and Councillors of East Fremanthe* v. *Annois*, [1902] A.C. 213 at p. 217, per Lord Macnaghten; *Hammersmith Railway Co.* v. *Brand*, (1869), L.R. 4 H.L. 171 at p. 215, per Lord Cairns.

[141] *Quebec Railway, Light, Heat and Power Company Limited* v. *Vandry*, [1920] A.C. 662, 48 B.R. 278 at p. 291, per Lord Sumner.

[142] *Grenier* v. *Ville de Drummondville*, (1929), 47 B.R. 454 at p. 457, per Rivard, J.; *The Grand Trunk Railway Company* v. *Labrèche*, (1923), 64 S.C.R. 15 at p. 23, per Anglin, J.; *Aubertin* v. *Montreal Light, Heat and Power Cons.*, (1936), 42 R.L. n.s. 424 (C.S.) at p. 444, 74 C.S. 171 at p. 178, per McDougall, J.

which is not incidental to those purposes which it has been authorized to pursue.[143] This will also be the case where the right is not exercised in the ordinary mode of exercising such a right and "in such manner as to cause the least possible inconvenience or injury to the Public."[144] Thus, in the case of *Adami* v. *The City of Montreal,*[145] the City was held liable for installing a noisy electric water pump as a substitute for the quieter and less efficient steam pumps used formerly.

> Now, there is no dispute that the respondents can pump water up to the high level reservoir without using an electrical pump of this kind. They have committed themselves to a pure experiment, and they cannot be permitted to work this out at the cost of the health and suffering of an extended neighbourhood. If express and statutory concession or authority existed for the use of such a pump, then whatever the results, they would need to be borne. But no such law exists.
>
> A public duty authorized by statute must be distinguished from the manner of its execution.[146]

It should also be noted that no action can be maintained against the municipal corporation which authorized another corporation to undertake certain projects when a nuisance is caused by the grantee corporation.[147]

The basis for the protection of the statutorily endowed corporation against actions for damages occurring in the exercise of the exercise of the rights conferred is the doctrine of the supremacy of the legislature,[148] coupled with the presumption that the legislature conferred the rights for a purpose which it does not intend should be defeated.[149] Thus the exercise of that right cannot constitute a delict or tort no matter how great the inconvenience to the public or to an individual,[150] provided that the authority has been obeyed to the letter and that there has been no negligence (which the legislature cannot be presumed to have authorized).

---

[143] *Paris* v. *Marine Industries Ltd.*, [1944] B.R. 436 at p. 445, per Galipeault, J.; *Cité de Montréal* v. *Lesage*, (1922), 33 B.R. 458 at pp. 460-461, per Martin, J.; *Jones* v. *Festiniog Railway Co.*, (1868), L.R. 3 Q.B. 733 at p. 736, per Blackburn, J.; Hon. Charles Fitzpatrick, *The Case of Roy and The Canadian Pacific Railway Co.*, (1902), 8 R.L. n.s. 346 at pp. 352, 365.

[144] *Ross* v. *La Compagnie des Chars Urbains*, (1878), 10 R.L. 27 (B.R.) at p. 50, 2 L.N. 338 at p. 339.

[145] (1904), 25 C.S. 1.

[146] *Ibid.*, at p. 11, per Davidson, J. See also *Plater* v. *Town of Collingwood*, (1967), 65 D.L.R. (2d) 492 (Ont. H.C.) at p. 496.

[147] *La Corporation de la Cité de Trois-Rivières* v. *Lessard*, (1880), 10 R.L. 441 (B.R.); *La Corporation de la Cité de Québec* v. *Renaud*, (1884), 19 R.L. 590; *Hébert* v. *La Cité de St-Jean*, (1935), 41 R.J. 408 (C.S.).

[148] *Canadian Pacific Railway Co.* v. *Roy*, [1902] A.C. 220.

[149] *Hammersmith Railway Co.* v. *Brand*, (1869), L.R. 4 H.L. 171.

[150] *Rex* v. *Pease*, (1832), 4 B. & Ad. 30; 110 E.R. 366.

IV) Conclusion

We may conclude by observing that, whatever be the role of French and English authorities in the courts of this Province, these jurisdictions and our own share, in terms at least of practical consequences, a nearly common set of principles in this area of the law. Where differences exist, not of nomenclature but of substance, as in the case of "réceptivité personnelle" and the defence of statutory authorization, it is the law of France which, on the basis of the jurisprudence, appears to be the "odd man out". The most significant of the principles held in common is, of course, that of responsibility without fault and the approach, as a corollary, to a theory of risk: *ubi emolumentum est ibi onus esse debet.* We may conclude from this that the fact that an area was commercially or industrially zoned would be no defence to an action except in so far as it tended to show, in the presence of other factors as well, that the area was industrial in character and that the inconvenience caused did not exceed that which might be expected in the area.

The fact that the defences of reasonable care, prior occupation and public necessity of the activity are generally rejected by the courts has hidden the fact, due to the limited scope of this paper, that they may play a determinative role in the assessment of damages or the willingness or refusal of the court to grant an injunction. These questions, along with the problem of future damages, are properly the subject of a separate paper devoted to that subject alone.

The problems in the law of delict which have been raised in this paper are not limited to this narrow area of the law and it is hoped that, with the revision of the Civil Code, provision will be made for the more flexible and progressive attitude toward civil responsibility necessitated by our modern industrial society.

Ronald I. COHEN *

---

* Editor-in-Chief, McGill Law Journal.