L'environnement et la responsabilité civile délictuelle en "common law" canadienne

Environmental Torts Liability in Canadian Common Law

by

Maurice Tancelin

Industrial society ranks environmental considerations as a poor second to economic growth. In Canada the several available common law remedies are not equally effective in recovering for damages caused by pollution but one of them, public nuisance, could potentially prove effective given the recent developments in the recognition of standing to sue. Legislative action has been industry-oriented for the most part (and deliberately so), and has rarely favoured the environment. There is evidence, however, of a recent change in judicial thinking in pollution cases. At the international or transnational level, in cases of dramatic damages a completely new system of compensation was established. The piecemeal approach of the legislators means that the environment as a whole is still waiting for relief.

La protection de l'environnement en droit pénal canadien

Canadian Criminal Law and the Protection of the Environment

by

Hélène Dumont

Traditional criminal law, providing as it does for the protection of such values as the preservation of life and liberty, developed before it was possible to foresee the immense potential of modern man to degrade and destroy his physical surroundings. Consequently it offers very little in the way of coercive action against those guilty of the destruction of the environment. If by chance some traditional offence can be applied to cover a form of pollution, the low rate of prosecutions attests to the fact that the harm to life and liberty caused by pollution has not yet radically shocked our collective social consciousness.

The fifty-odd statutes that provide for offences arising from the pollution of the environment are strict liability offences, another indication that the legislatures do not view pollution as a particularly disgraceful or even serious crime. The penalties attached to such offences are essentially of a pecuniary nature borne by the financially well-off polluter as being the price to be paid for the right to discharge pollutants into the environment.

Lastly, the disparate and sporadic application of repressive measures in environmental law results from the lack of resources set aside for the detection of polluters, as well as from the lack of interest on the part of governments in enforcing anti-pollution laws.

La protection de l'environnement et ses implications en droit constitutionnel

The Constitutional Implications of Environmental Protection

by

Gérald Beaudoin

This article deals with the protection of the environment and its implications in Canadian constitutional law. The Fathers of Confederation, in the section of the *B.N.A. Act* dealing with the distribution of legislative powers, did not provide for the protection of the environment. At the time of Confederation no threat of pollution was recognized, and as a result the protection of the environment is nowhere enumerated in the *B.N.A. Act*.

It is the author's opinion that the legislative jurisdiction as to the protection of the environment is divided between the Parliament of Canada and the legislatures of the provinces and that several heads of powers are implicated. A recent decision of the Supreme Court seems to confirm the view that we are in the presence of a divided jurisdiction similar to the jurisdiction relating to inflation. In such an area the recourse to the federal emergency power appears to be quite remote. In any case, the recourse to the "national dimension doctrine" cannot be justified.

Both Parliament and the legislatures may adequately fight pollution on the basis of many of the powers enumerated in sections 91 and 92, and also by virtue of their proprietary rights which are recognized in the Constitution.

Finally, the author is of the opinion that there is no need to amend the *B.N.A. Act* to attribute exclusive jurisdiction over pollution either to Parliament or to the legislatures, or to give them a concurrent jurisdiction. A divided jurisdiction should not be an excuse for inaction on the part of any government, provincial or federal, but a divided jurisdiction is still the best functional solution to the problem of environmental protection.

La protection des travailleurs contre les maladies industrielles et les effets de la pollution

Protecting Workers Against Industry-Related Illnesses and the Effects of Pollution

by

Jean Denis Gagnon

Although concern for the protection of the environment in Quebec, as elsewhere, is a recent phenomenon, pollution as a cause of industrial disease has received governmental attention since the end of the last century. Provisions dealing with health conditions in the place of work are now found in many statutes, regulations, and collective agreements. These provisions

generally deal with precautions which the employer must take. As well, special compensation is available for workers who suffer from certain industrial diseases or who are injured on the job.

This article examines collective agreements that regulate health and security conditions in the place of work. Employer/employee committees on health and security play an active role in the regulation of such conditions. These committees are sometimes empowered to decide whether employees are justified in refusing to work under certain circumstances.

Finally, the author points out that laws and regulations are more effective than collective agreements in dealing with health protection as the former apply to non-unionized as well as to unionized workers, and are also applicable industry-wide so that competitors are subject to the same rules and restrictions.

L'aménagement du territoire en droit public québécois
Land Use Planning in Quebec Public Law

by

Jane Matthews Glenn

This article synthesizes Quebec land use control legislation, classifying it under the traditional terminology of decentralization/centralization and concentration/deconcentration.

It first analyzes legislation reflecting "centrifugal" forces, that is, those forces favouring local autonomy in land use control decisions. For historic as well as geographic reasons, the traditional administrative structure in Quebec has been a strongly decentralized one, with the creation of a large number of small municipalities almost totally autonomous in matters of land use control. Thus, local autonomy, but paid for in isolation and inefficiency. The Quebec government is trying to resolve these problems in two ways: firstly, still within the framework of a decentralized structure, by reducing the number of local units through amalgamation or the creation of urban communities; and secondly, turning to the technique of deconcentration, by developing a regionalized structure for its own provincial organization.

The "centripetal" forces, that is, those tending towards a centralized decision-making power, are represented by the increased efforts of the Quebec government either to control the activities of local authorities or even to intervene directly in the planning process where necessary. As well, the government is wrestling with the problem of the coordination of the activities of its various departments.

The author concludes that during the last ten years an increasingly important place has been given to the question of land use control in Quebec and that one can expect further fundamental changes in the near future.

A la recherche du statut juridique de l'environnement: L'Arbre reconsidéré

Legal Rights for the Environment: A Reappraisal of the Trce

by

Jean Denis Archambault

This article adopts a non-anthropocentric attitude towards the law, that is, may things, as well as persons, have rights. To what extent may trees, as representative of natural objects typical to Quebec, be considered to be holders of legal rights, possessors of a juridical status independent of any human intervention. In order to decide whether a thing may be a holder of legal rights there are three questions to be answered:

1) Can the thing institute legal actions at its behest?
2) Does the court take injury to the thing itself into account when granting relief?
3) Does the relief accorded benefit the thing itself?

The author looks to the Civil Code, the jurisprudence, and the public law of the province to determine whether Quebec law permits a tree to be the holder of legal rights, the conclusion being that Quebec law deems a tree not to have juridical personality. A tree, can never, on its own, institute legal proceedings. Instead an action must be taken by someone with a particular interest. In such an action the intrinsic value of the tree is not taken into account; rather the attitude of the courts has been to indemnify the person bringing the action for the damage he himself has suffered. The legislator, moreover, has generally seen trees as objects of economic, rather than ecological, value.

As a tree itself is incapable of instituting legal proceedings, the author recommends that the notion of standing be enlarged to permit any concerned person or association to take an action for the purpose of protecting a tree. To do so must involve judicial recognition of the intrinsic value of a tree when awarding damages and/or penalties. Further, the amount awarded should be used for the benefit of the tree itself, not that of the owner of the tree. The author believes that these are the preconditions necessary to ensure true juridical status for the environment.

L'application de la théorie des troubles de voisinage au droit de l'environnement du Québec

The Application of the Theory of "Neighbourhood Troubles" in Quebec Environmental Law

by

Jean Hétu

This article deals with the application of the theory of abuse of rights in Quebec environmental law. Based upon provisions in the Quebec Civil Code, this traditional legal technique for the protection of the environment is comparable in many ways to the theory of nuisance in the common law. Its application results in an action for damages which is generally joined to a request for injunctive relief.

After defining the criteria of fault that are accepted in the doctrine and in Quebec case law with regard to abuse of rights, the author explains how the principal arguments invoked by the different parties involved in litigation are treated by the courts. These arguments include those based on the fact that the accused polluter has the necessary permission from the competent legislative or administrative authorities; the character of the premises; the fact that the accused offender was established there first; the question of tolerance; public interest; the cost of anti-pollution devices; and contributory negligence. Lastly, he explores the limits of the recourse to an action in damages and/or for injunctive relief in the light of the above arguments.

L'intérêt à poursuivre et la protection de l'environnement en droit québécois et canadien

Standing to Sue and the Protection of the Environment in Quebec and Canadian Law

by

Lorne Giroux

This article discusses the problem of *locus standi* in the context of the battle for environmental protection in Canadian and Quebec law. The author focuses on three situations where the traditional approach to *locus standi* impedes the effectiveness of judicial intervention in environmental matters. The first situation arises when members of the public want to participate in the administration of provincial environmental control legislation or seek judicial control of the administrative action of public authorities invested with conservation powers and responsibilities. The second situation arises in the urban area where legal standing rules tend to hinder the enforcement of municipal land use controls by private citizens while, in the third situation

the same rules have prevented environmental associations from using the judicial system for the furtherance of the public interest.

The author believes that a solution to the problem of *locus standi* may come from two directions. Recent constitutional cases have shown a liberalization of the attitude of the courts toward *locus standi* although their applicability to administrative law cases has not yet been clearly determined. Furthermore, a more effective use could be made of "relator proceedings", either in obtaining the authorization of the Attorney-General, or in having the court exercise its discretion to grant standing to a private citizen in case of a refusal of permission by the Attorney-General.

La protection de l'environnement culturel canadien et québécois
The Protection of the Cultural Environment in Canada and Quebec

by

Jacques L'Heureux

The community, in general, and each citizen, in particular, have a right to the protection of their common heritage.

The Quebec *Cultural Property Act* provides three main procedures for the protection of cultural immoveable property: recognition by the Minister of Cultural Affairs, classification by that same Minister, and declaration of historic districts. Federal laws provide for recognition by the Minister of Indian and Northern Affairs and the creation of National Historic Parks.

The main effect of recognition under the Quebec *Cultural Property Act* is the obligation to give to the Minister of Cultural Affairs notice of intention to destroy, repair, change or alienate a recognized immoveable and notice of saisin of such an immoveable. Classification has more important effects. In particular, a classified immoveable must be kept in good condition and shall not be alienated without the authorization of the Minister. Moreover, such an immoveable and the property situated in a perimeter of 500 feet from it shall not be destroyed, repaired or altered without the authorization of the Minister. The main effects of the declaration of an historic district are to require the authorization of the Minister before demolishing, repairing or altering an immoveable and to permit regulation and planning of the district. Recognition of immoveables, creation of National Historic Parks and dispositions protecting property in Indian reserves, under federal law, have very limited effects.

In order to protect cultural immoveable property it is possible to use means not meant specifically for this end: acquisition of immoveables, master plans, zoning, programmes provided for in the *Quebec Housing Corporation Act* and in the *National Housing Act*, designation of special areas, and the projects of the National Capital Commission.

The protection of cultural immoveable property in Quebec depends too greatly on the discretion of the Minister of Cultural Affairs. The Cultural Property Commission, now only an advisory body, should have the power to decide on matters of recognition, classification and approbation of works.

Le Canada et la pollution de la mer par les navires
Canada's Role in the Prevention of Marine Pollution

by

Francis Rigaldies

The problem of marine pollution is one of great immediate importance. The world's oceans are in danger; they can no longer provide food for millions of inhabitants and still absorb the refuse of civilization. Canada, with its 60 000 miles of coastline has played an extremely active role in the rapidly changing Law of the Sea. Canada's dissatisfaction with the present state of the law has resulted in unilateral (and hotly contested) legislative action in the area of marine pollution. At the Third Conference on the Law of the Sea, Canada's active participation has contributed significantly to the Single Negotiating Text, which to date, has not taken treaty form. Much is left to be done, but at least there is hope for the future.