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Revisiting Québec’s Jus Commune in the Era of the Human Rights Charters†

Québec is a distinct society because of its history, its legal system, and its values. Our analysis examines the delicate issue of the relationship between the Canadian Charter of Rights and Freedoms, the Québec Charter of Human Rights and Freedoms, and the Civil Code of Québec, the primary expression of Québec’s jus commune, as noted in its Preliminary Provision. As of the nineteenth century, a doctrinal trend born of the desire to protect the integrity of the civil law system grew worried about the “disruptive” influence of the common law on the civil law and, more specifically, on the Civil Code of Lower Canada. The doctrine later expressed reluctance as to the entry of fundamental rights into Quebec private law. The charters of rights were, and are sometimes still, perceived as disruptive elements, capable of distorting the Civil Code. We want to show that the influence of human rights philosophy on Québec’s jus commune is not only inevitable but desirable. The Civil Code and, more broadly, Québec’s jus commune, can only be enriched by respect for fundamental rights.

INTRODUCTION

A Civil Code reflects the vision society has of itself and what it wants to be. It touches the everyday life of each individual from birth to death. It is the framework on which the social fabric is built.¹

In Quebec (Attorney General) v. A.,² the Supreme Court of Canada recognized the constitutional validity of the differential treatment of married and de facto spouses under the Civil Code of Québec (C.C.Q.)³ in the event of separation. In her judgment, Chief

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¹ This text appears on the back cover of QUE., MINISTÈRE DE LA JUSTICE, COMMENTAIRES DU MINISTRE DE LA JUSTICE: LE CODE CIVIL DU QUÉBEC (1993) (translated by authors).


³ Civil Code of Québec [C.C.Q.], S.Q. 1991, c. 64.
Justice McLachlin held that the provisions under review were discriminatory within the meaning of Section 15(1) of the Canadian Charter of Rights and Freedoms, but that this interference with the right to equality was justifiable in a free and democratic society under Section 1 of the Canadian Charter. In support of this conclusion, she noted the distinct nature of Québec society, its history, its legal system, and its values. She felt that this specificity explained and justified the Québec legislature’s choice to set itself apart from the other Canadian provincial legislatures, which had recognized, to varying degrees, de facto relationships.

In our opinion, the deference shown by the Chief Justice to civilian provincial law in a dispute involving fundamental rights raises the delicate issue of the relationship between the charters of rights and the Civil Code of Québec, which represents the primary expression of Québec’s *jus commune*, as noted in its Preliminary Provision. The Chief Justice’s opinion also expresses an implicit concern about the influence of the common law on Québec civil law.

Our analysis examines the reconceptualization of Québec’s *jus commune* as influenced by fundamental rights. It focuses more specifically on the sometimes negative perception of this phenomenon by the courts and the doctrine, a perception which in our view has no raison d’être. As of the nineteenth century, a doctrinal trend born of the desire to protect the integrity of the civil law system grew worried about the “disruptive” influence of the common law on the civil law and, more specifically, on the Civil Code of Lower Canada, the precursor to today’s Civil Code. Some viewed the common law as “contaminating” the civil law. We feel that it was in this same spirit that the doctrine later expressed reluctance as to the entry of fundamental rights into Québec private law. The charters of rights were, and are sometimes still, perceived as disruptive or exogenous elements, capable of distorting, disorganizing, even marginalizing the Civil Code. A review of the jurisprudence reveals that the courts

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are also concerned about preserving the uniqueness of the civil law.\(^9\)

We want to show that the influence of human rights philosophy on Québec’s *jus commune* is not only inevitable, but desirable. The Civil Code and, more broadly, Québec’s *jus commune*, can only be enriched by respect for fundamental rights.\(^10\) Québec’s *jus commune* is not distorted by a transformation that includes greater protection of human rights; rather, such a transformation reflects an adaptation to a contemporary context. A civil code is “the most typical reflection of a people’s values. One can say, show me your code, and I will tell you who you are!”\(^11\) Thus, the very essence of a civil code is to evolve, including through interpretation, at the same rhythm as the society it governs. Inasmuch as respect for fundamental rights is central to the values of Québec society, the Civil Code provisions can legitimately bear the stamp of these rights and they can serve to inspire those who interpret these provisions. It is in this sense that the legislature was careful to state, in the Preliminary Provision, that the Civil Code of Québec must be interpreted “in harmony” with the province’s Charter of Human Rights and Freedoms.\(^12\)

This Article takes a two-pronged approach. First we will examine the defense mechanisms of the courts and the doctrine against the influence of the common law and the charters of rights on the *jus commune* (Part I). We will then show that the growing preoccupation of Québec civil law with respect for human rights is not a sign of its contamination by the common law, but reflects instead a change in mentality (Part II).

### I. Defense Mechanisms of Québec’s *Jus Commune*

Protecting the originality of the civil law system is a recurring theme in Québec doctrine and jurisprudence, both when the civil law was first codified as well as today in the age of charters and globalization. The desire to protect civil law against possibly disruptive influences falls within the larger context of protecting Québec’s identity and is added to other distinctive values of Québec society, such as protecting the French language and culture in a North American con-

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text. The influence of the common law has been perceived as a disruptive element that threatens the “purity” and “integrity” of the civilian tradition. The Québec legal community developed a defense mechanism against common law solutions or interpretations that could be incorporated into civil law (as will be discussed in Part I.A). Without deciding whether this reaction was justified, we note that today the legal community appears to have redirected its attention elsewhere—the Canadian and Québec Charters were, and continue to be, viewed as documents inspired by the common law that, therefore, destabilize the integrity of the civil law system (Part I.B). One author offers a good illustration of this defense mechanism, which he describes as legal nationalism, by first analyzing “contamination by the common law: an exaggerated threat?” and then by discussing “contamination by constitutional law: an insidious threat?”

We have used the term “defense mechanism” to describe this phenomenon, since we believe it best illustrates the dynamic at play: a defensive reaction in response to what is perceived as a threat, an attack, or even a danger. Other terms (resistance, insecurity, concern, fear, reluctance, and susceptibility) seem less appropriate. Far from being neutral, our choice of terminology conveys the idea of a survival response in a minority situation.

A. Mechanisms with Respect to the Common Law

The idea of preserving the integrity of Québec’s civil law emerged early on in the legal community. In 1866, the Civil Code of Lower

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15. For the similar metaphor of an immune system, see Sylvio Normand, Un thème dominant de la pensée juridique traditionnelle au Québec: La sauvegarde de l’intégrité du droit civil, 32 McGill L.J. 559, 574 (1987).

16. On the destabilizing potential of charters, see Gaudreault-Desbiens, supra note 8.


18. See the outline of Adrian Popovici’s article, supra note 7, at 609 (translated by authors). For a different point of view on the common law influence on Québec civil law, see Baudouin, supra note 10; Jean-Louis Baudouin, Quel avenir pour le Code civil du Québec?, 88 Canadian Bar Rev. 497 (2009) [hereinafter Baudouin, Quel avenir].

Canada was adopted to, among other things, protect the civil law on the eve of Canadian Confederation (1867). André Morel considered the political situation during the years 1849–1857 to be key to the decision to codify private law. The issue at the time was whether to form a federation of British colonies or to annex Lower Canada (now the province of Québec) to the United States. Louis Baudouin stated that the Code was “born of the need for French survival.” Maximilien Caron viewed codification as an opportunity to “shelter our law from the unjustified influence of the common law.” Maurice Tancelin described Québec civil law as the “law of survival.”

Transformed into an instrument of identity worthy of the highest respect, the Civil Code of Lower Canada was amended very little over the years. This legislative stagnation almost proved fatal. Out of sync with social realities, the Civil Code of Lower Canada could no longer fulfill its role as the *jus commune.* As of the early 1950s, a profound revision of the Civil Code appeared essential so that it could continue to fulfill this role.

At the beginning of the twentieth century, the Supreme Court also played a role in the legal community’s development of a defense mechanism against the common law. The highest court’s tendency at the time to standardize Canadian law by imposing common law solutions on civil law has been documented by Québec civilians, who


viewed this as a threat to the coherence of Québec civil law. During the same period, while Canadian common law lawyers were arguing in favor of standardizing the law in Canada, Québec lawyers, inversely, were proposing either adding a civil division to the Supreme Court of Canada or having the Québec Court of Appeal act as the final court of appeal in civil matters.

The standardization of law by the Supreme Court of Canada dwindled through the twentieth century, with the highest court thus acknowledging the diversity of sources of law in Canada. It has now recognized the autonomy of the civil law with respect to the common law. Moreover, the Supreme Court has refocused its priorities since the Canadian Charter was adopted and now hears few cases that raise civil law issues.

Québec doctrinal writers’ defensive reaction against the influence of the common law seems to be less present today. The adoption of a new Civil Code in 1991, a sign of a healthy codified Roman system, has contributed to this situation. In addition, the 1991 Civil Code has served as a model elsewhere, which has reinforced a sense of security. The more abundant and innovative civilian doctrine in Québec is distancing itself from the French model. Common law in-

31. Tancelin, supra note 14, at 29; Baudouin, supra note 14, at 736; Baudouin, Crise de croissance, supra note 26, at 412.
33. See Québec (Agence du Revenu) v. Services Environnementaux AES inc., 2013 SCC 65, [2013] 3 S.C.R. 838, paras. 48ff. The Supreme Court of Canada held in that case that there was no need to import the common law doctrine of rectification into Québec’s law of obligations because article 1425 of the Civil Code of Québec authorizes the correction of a discrepancy between the common intention of the parties and the intention declared in the acts.
34. See Louis LeBel, L’influence de la Cour suprême du Canada sur l’application du Code civil du Québec depuis 1994, 88 CANADIAN BAR REV. 231 (2009); Popovici, supra note 7; Glenn, supra note 32.
35. Baudouin, supra note 10; Baudouin, Quel avenir, supra note 18; Jutras, supra note 14.
37. In 1966, Jean-Louis Baudouin talked about deficiency in Québec’s legal scholarship: Baudouin, Crise de croissance, supra note 26, at 403. By contrast, in 1993, Pierre-Gabriel Jobin noted the blooming of Québec’s legal scholarship, see L’influence de la doctrine française sur le droit civil québécois : le rapprochement et l’éloignement
stitions have been successfully incorporated into Québec civil law without threatening the civilian tradition, one such example being the trust.38 Punitive damages are another example of successful incorporation of common law institutions into civil law.39 As Jean-Louis Baudouin said, “[t]o borrow means to make it yours, and to make it yours is to insert the new standard into the receiving legal framework.”40

B. Mechanisms with Respect to the Charters

Some Québec civilians also harbored resistance to the Canadian and Québec Charters41—which they saw as a menace,42 a potential and insidious danger43—and their possible “negative” influence as a disruptive or exogenous element in the Civil Code and civil law.44 And yet, the Québec Charter, adopted prior to the Canadian Charter, could very well have been perceived as a symbol of identity for Québec, like the Civil Code. We surmise that the same defense mechanism is at work here: The resistance to the influence of the charters is based on the concern of some Québec civilian lawyers about the “assimilationist” influence of the common law on the civil law. Associating the common law and charters of rights, these civilians see them as “negative” influences on the coherence of the civil law system and the place occupied by the Code.45

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38. See Madeleine Cantin Cumyn, L’origine de la fiducie québécoise, in Mélanges Paul-André Crépeau 199 (1997).
39. C.C.Q. art. 1621.
40. Baudouin, Quel avenir, supra note 18, at 504 (translated by authors).
41. On the existence of this resistance, see Gaudreault-Desbiens, supra note 8.
43. Popovici, supra note 7, at 614.
44. Other civil law scholars adopted a more positive attitude towards charters. See, e.g., Baudouin, supra note 10, at 620 (“the influence of charters” on civil law is an enrichment of traditional private law” (translated by authors)). Others were not resistant, but instead indifferent towards the charters’ influence; they considered that the jus commune was enough to protect fundamental rights. According to Madeleine Caron, article 1053 of the Civil Code of Lower Canada was in itself a complete human rights charter. See Madeleine Caron, Le Code civil québécois, instrument de protection des droits et libertés de la personne?, 56 Canadian Bar Rev. 197 (1978).
45. Adrian Popovici makes this link in his article, Personality Rights—A Civil Law Concept, supra note 42, at 357: “There is no doubt that the Canadian Constitution, albeit written, is not a civilian constitution. It is a daughter of the common law, which does not acknowledge the category or concept of subjective rights—Das subjektive Recht.” In another article, Le rôle de la Cour suprême en droit civil, supra note 7, at 614, he affirms: “Nobody would refuse to see the preponderance, indeed the exclusivity, of the common law system in constitutional law” (translated by authors). See also Adrian Popovici, La renonciation à un droit de la personnalité, in Colloque du trentenaire 1975–2005 : Regards croisés sur le droit privé 99 (Centre de recherche en droit privé et comparé du Québec ed., 2008); Popovici, supra note 17; Adrian Popovici, De l’impact de la Charte des droits et libertés de la personne sur le droit de la responsabilité civile : un mariage raté?, in La pertinence renouvelée du
The charters of rights are viewed first as a methodological threat. The courts have significant latitude when interpreting them, thereby increasing the role of jurisprudence. Fundamental rights are therefore perceived as potentially causing the civil law to drift toward the common law. In our opinion, this fear is due to a poor understanding of the interpretation methodologies used in both the civil and common law. In reality, it is precisely because they are drafted like a Civil Code (i.e., using general wording in the form of statements of principle) that the charters of rights require a dynamic and evolving interpretation, thus affording the courts this flexibility.47

The charters of rights are also perceived as a conceptual threat. Adrian Popovici's example illustrating what he describes as the insidious threat of the constitutionalization of private law by constitutional law is interesting in this regard.48 In a series of articles,49 he argues that the personality rights protected in the Civil Code under article 3 differ from the fundamental rights entrenched in the charters. Interferences with fundamental rights (for example, the right to privacy) may be justified under Section 1 of the Canadian Charter or section 9.1 of the Québec Charter. Therefore, there may be a lawful interference.50 In the civil law, conversely, an interference with a personality right (again, such as the right to privacy) cannot be justified—there cannot be any lawful interference. Popovici considers that allowing for such a lawful interference is therefore a distortion of civil law, a loss of the uniqueness of the civil law: "In civil law, an interference with a personality right is the conclusion of the reasoning; in public law, an interference with a fundamental right is the first step in the reasoning."51

The courts and the doctrine are, however, somewhat resistant to using human rights concepts. The link between extra-contractual fault (article 1457 C.C.Q.) and unlawful interference with a fundamental right protected by the Québec Charter (under section 49, paragraph 1) is a good illustration. Indeed, a review of the jurisprudence reveals that the remedial scheme put in place by the Charter was, to a large extent, equated with the scheme operating under the
jus commune rules on civil liability. We believe that this interpretation limits the remedial power of the Charter.

The first paragraph of section 49 of the Québec Charter provides that “[a]ny unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain . . . compensation for the moral or material prejudice resulting therefrom.” In 1996, in Béliveau St-Jacques, the Supreme Court of Canada was asked for the first time to specify the nature and conditions for bringing such an action. After first being compensated under the Act Respecting Industrial Accidents and Occupational Diseases (A.I.A.O.D.) (for an occupational injury caused by harassment by a superior), an employee launched an action based on the Charter seeking damages a second time for the same facts. While the A.I.A.O.D. created a no-fault liability regime for workplace accidents and occupational diseases, in exchange it deprived the victim of a workplace injury of the possibility of instituting an action in “civil liability” against his or her employer for that injury. In order to determine whether the employee was nonetheless entitled to reparation under the Québec Charter, the Court had to decide if the action provided for in the first paragraph of section 49 amounted to an action in “civil liability.”

In a split decision of five judges to two, the Supreme Court decided that the action in compensatory damages under section 49 of the Charter is a civil liability action within the meaning of section 438 of the A.I.A.O.D. Mr. Justice Gonthier, writing for the majority, held that “the Charter does not create a parallel system of compensation” and that the first paragraph of section 49 of the Québec Charter and article 1053 of the Civil Code of Lower Canada—now article 1457 of the Civil Code of Québec—are based “on the same legal principle of liability associated with wrongful conduct.” As with article 1457 C.C.Q., the plaintiff must, therefore, establish a fault, a prejudice, and a causal connection between the fault and the prejudice to obtain compensatory damages under section 49 of the Charter. In sum, while the arrival of the Québec Charter might have created a new autonomous compensatory remedy in the event of an “unlawful interference” with a fundamental right—and in our opinion provide better compensation for victims—the highest court in the land instead decided in Béliveau St-Jacques to consider section 49

54. Id. s. 438.
57. Id. at para. 122. See also Bou Malhab, 2011 SCC 9, para. 23.
of the Charter as an aspect of the ordinary rules of civil liability when fault arises in a Charter context.

The Supreme Court did, however, partially review its position after initially totally assimilating the concepts of “unlawful interference” and “fault.” Although it persists in saying that “[t]he concept of an unlawful act, on which s. 49 is based, often coincides with the concept of civil fault,” the Court now seems to recognize that the concept of unlawful interference has a broader scope than that of fault. Finding that “[i]t is sometimes necessary to put an end to actions or change practices or procedures that are incompatible with the Quebec Charter, even where there is no fault within the meaning of the law of civil liability,” the highest court in the land in fact admitted that some actions may unlawfully interfere with a protected charter right without, however, constituting a civil fault. This is why the theories of indirect discrimination and systemic discrimination are based on a conception of unlawful interference to which the notion of fault is completely foreign. There is indirect discrimination when the application of a standard—neutral in appearances—results in discrimination. Similarly, systemic discrimination occurs when the combination of a set of standards, practices, policies, and attitudes—even though not designed to discriminate—has the effect of excluding some people with a personal trait that is a prohibited ground of discrimination under the Charter.

Even if the analysis of facts based on the civilian notion of fault and that based on the notion of unlawful interference most often end in the same result, we feel that the courts should develop the reflex of reasoning based on the notion of unlawful interference because it makes it easier for the person whose rights and freedoms have been violated to obtain compensation. In fact, in addition to allowing compensation for actions that might not be considered a fault within the meaning of the civil law, using the notion of unlawful interference alleviates, to a certain extent, the victim’s burden of proof.

62. Incidentally, note that the use of the legal presumptions of liability of the principal (art. 1463 C.C.Q.), the mandator of a minor (art. 2164 C.C.Q.), the person having parental authority (arts. 600, 1459 C.C.Q.), the custodian (art. 1460 C.C.Q.),
courts indeed seem to recognize a shared burden of proof between the victim, who must show an interference with one of the charter-protected rights, and the defendant, who must then attempt to establish the lawfulness of the interference. Borrowed from public law, this bipartite approach means that the burden of proof is transferred midway from the plaintiff to the defendant.63

While a desire to protect a cultural and legal identity may have explained the resistance of the Québec legal community to the common law and the charters in the past, mentalities have changed. The Civil Code—the jus commune—now serves to protect human rights as well.

II. HUMAN RIGHTS: A SOURCE OF ENRICHMENT FOR QUÉBEC’S JUS COMMUNE

In the years following the end of the Second World War, a growing number of voices decried the Civil Code of Lower Canada’s increasing failure to adapt to the social reality and called for its revision.64 A vast project to reform the Civil Code of Lower Canada was launched in 1955 in order to bridge the gap between the civil law and Québec’s social realities, culminating in the Civil Code of Québec’s adoption in 1991 and entry into force in 1994. During this long revision process, the legislature did not merely amend the letter of the Code; it signaled a change in spirit.65 One of the main features of this revision was the preeminence placed on the human person, now considered “the cornerstone of Private Law relationships.”66 Aware that Québec could no longer “stand aside from the vast movement for the extension and protection of human rights,” the Civil Code Revision Office wished to express “the fundamental principles which accord a

and the owner of an animal (art. 1466 C.C.Q.) may also ease the victim’s burden of proving an interference with any fundamental right or freedom. Given that these Civil Code rules foster optimal protection of human rights, it seems legitimate for the courts to apply them in the context of the Québec Charter.


66. Crépeau, Foreword, supra note 11, at XXIX.
central position to the individual in private law.”67 Like other civil codes from which its drafters drew inspiration,68 the Civil Code of Québec contains several provisions whose primary purpose is to protect a fundamental right (see Part II.A). Moreover, its Preliminary Provision directs that the Civil Code articles should be interpreted in light of human rights (Part II.B). Adopted in the age of charters of rights, the Code therefore reflects the social values of its time.69

A. The Civil Code of Québec: A Tool for Protecting Human Rights

At the outset, it should be noted that the text that was to become the Québec Charter of Human Rights and Freedoms was initially supposed to be in the Civil Code of Québec itself. In 1968, the members of the Civil Code Revision Office had in fact proposed including a “declaration of civil rights” in the new Code.70 Borrowing heavily from the draft Charter of Human Rights drawn up several years earlier by Professor Jacques-Yvan Morin,71 as well as from international human rights instruments,72 the text proposed by the Office prohibited some forms of discrimination, protected a series of fundamental freedoms and rights, and provided a remedy in the event of unlawful interference with these same rights and freedoms. By the drafters’ own admission, inserting such a declaration within the Code could not, however, “take the place of a complete charter of human rights, especially as regards political, social and economic rights.”73 Therefore, with the consent of the Civil Code Revision Office, Québec equipped itself with an instrument to protect human rights separate from the Code.74

Although the idea of entrenching the Québec Charter in the Code was rejected, the Civil Code of Québec does place significant emphasis on human rights and freedoms; in some way, it constitutes a “continuation of the charter.”75 Several articles in the first Book of

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67. CIVIL CODE REVISION OFFICE, REPORT ON CIVIL RIGHTS 5 (1968).
68. See id. at 7.
70. CIVIL CODE REVISION OFFICE, supra note 67, at 5.
73. CIVIL CODE REVISION OFFICE, supra note 67 at 9.
74. See Morel, supra note 71, at 6; Alain-Robert Nadeau, La Charte des droits et libertés de la personne : origines, enjeux et perspectives, 66 R. DU B. (SPECIAL ISSUE) 1, 6–7 (2006).
75. M. (M.) c. V. (S.) (1998), J.E. 99-375 (C.S.) (translated by authors). See also Québec (Commission des droits de la personne et des droits de la jeunesse) c. Poulin,
the Code reproduce provisions of the Quebec Charter almost word for word.\textsuperscript{76} Such is the case for articles guaranteeing the right to life,\textsuperscript{77} integrity,\textsuperscript{78} safeguard of reputation,\textsuperscript{79} and privacy.\textsuperscript{80} Other provisions spread out elsewhere in the Code protect vulnerable persons and guarantee their fundamental rights.\textsuperscript{81}

The influence of human rights is especially noticeable in family law, which was part of an early and partial revision of the Civil Code which came into force in 1980;\textsuperscript{82} that revision was subsequently integrated with some changes and adaptations into the global Civil Code revision that came into force in 1994. Several fundamental rights in fact contributed to remodeling Quebec family law, including freedom of religion,\textsuperscript{83} the best interests of the child,\textsuperscript{84} the maintenance and recognition of multiculturalism,\textsuperscript{85} and individual autonomy.\textsuperscript{86} However, the greatest changes resulted from introducing the right to equality in filiation and conjugal relationships.

With the 1980 sectorial revision, equality between children was recognized regardless of their parents’ matrimonial status (article 522 C.C.Q.). In conjugal relationships, the authority of the husband as head of the family (the marital authority) was replaced by equal rights and obligations of spouses (article 392 C.C.Q.). The spouses together now “take in hand the moral and material direction of the


\textsuperscript{77} C.C.Q. art. 3; Charter of Human Rights and Freedoms, C.Q.L.R., c. C-12, s. 1.

\textsuperscript{78} C.C.Q. art. 10; Charter of Human Rights and Freedoms s. 1.

\textsuperscript{79} C.C.Q. art. 35; Charter of Human Rights and Freedoms s. 4.

\textsuperscript{80} C.C.Q. art. 35; Charter of Human Rights and Freedoms s. 5.

\textsuperscript{81} For a list of these articles, see Mélanie Samson, \textit{Les interactions de la Charte des droits et libertés de la personne avec le Code civil du Québec : une harmonie à concrétiser} 132–46 (2014).

\textsuperscript{82} These provisions were adopted under the title \textit{Civil Code of Québec}, but since the global Civil Code revision came into force in 1994, reference to this early Code always includes the mention “1980” or “L. II/L. IV” (for the Books of the Civil Code then envisaged for the future). Therefore, for a decade, Québec was in the unusual situation of having two civil codes in force, i.e., the Civil Code of Lower Canada and the Civil Code of Québec (1980). In the present text, reference is made to the provisions of the Civil Code of Québec now in force, rather than those of the 1980 Civil Code.


\textsuperscript{85} \textit{Bruker}, 2007 SCC 54.

family” (article 394 C.C.Q.). They also contribute “in proportion to their respective means” to the household expenses, including “by their activities within the home” (article 396 C.C.Q.). Further, “[a] spouse who enters into a contract for the current needs of the family also binds the other spouse for the whole, if they are not separated from bed and board” (article 397 C.C.Q.). In addition, “[t]he spouses choose the family residence together” (article 395 C.C.Q.). “[B]oth spouses retain their respective names” during the marriage, as well (article 393 C.C.Q.). The Québec legislature, to counter any potential injustices resulting from a conjugal breakdown, especially to women, adopted the compensatory allowance (article 427 C.C.Q.), a mechanism by which a spouse who enriched the former spouse's patrimony by work in the home can obtain compensation.87 Faced with the courts' reluctance to apply this measure (which has a similar purpose to a claim for unjustified enrichment, article 1493 C.C.Q.) after it was introduced in the 1980 Civil Code, the legislature imposed the family patrimony in 1989,88 applicable regardless of the matrimonial regime chosen by the spouses. Marriage thus became an economic union between spouses, the purpose of which was, among other things, to protect the most vulnerable.

The measures adopted over the years to protect the vulnerable spouse in the marriage excluded same-sex spouses. This form of discrimination was, however, partially remedied by redefining the term “spouse.” Already in 1999 the Supreme Court of Canada had stated that laws granting benefits to heterosexual de facto spouses should apply equally to same-sex spouses.89 In 2002, well before the federal government introduced a law recognizing same-sex marriage,90 Québec adopted a law allowing “civil unions” (a type of registered partnership) for both same-sex and different-sex couples that produced exactly the same effects as marriage91 (article 521.1, paragraph 1, C.C.Q.). Then, in 2004, the Québec Court of Appeal declared that the definition of marriage as it appeared in federal law92 could not exclude same-sex couples.93 In 2005, a federal statute

87. See Alain Roy, Le contrat de mariage réinventé : Perspectives sociodiridaires pour une réforme (2002).
88. Act to Amend the Civil Code of Québec and Other Legislation in Order to Favour Economic Equality Between Spouses, S.Q. 1989, c. 55. The concept of “family patrimony” is roughly analogous to that of “matrimonial property” or “family property” in the common law.
92. The Federal Law–Civil Law Harmonization Act, No. 1, S.C. 2001, c. 4, s. 5, provided at the time that marriage was strictly between “a man and a woman.”
amended the definition of marriage to include same-sex couples.\textsuperscript{94} The expanded definition of marriage encompassing same-sex couples was also accompanied by new rules on filiation allowing any couple or single person to adopt (article 546 C.C.Q.) or to access assisted procreation services without discrimination.\textsuperscript{95}

While Québec recognized same-sex civil unions and ultimately marriages, thereby eliminating discrimination toward gay and lesbian couples, the same was not true for de facto unions (both same-sex and different-sex). A vulnerable spouse who separated from a de facto spouse was not legally protected under the Civil Code of Québec, in contrast to married spouses.\textsuperscript{96}

In 2013, in a very highly publicized case due to the amounts involved and the fame of the couple concerned, Canada’s highest court ruled on the constitutional validity of the differential legislative treatment of married and unmarried couples under Québec law.\textsuperscript{97} In a very split (nine judges, four opinions), very complex, and very long decision, the Supreme Court held that the Civil Code articles exclusively protecting married couples in the event of a breakdown (that is, providing for support for the vulnerable spouse and partition of the family patrimony) were valid under the Canadian Charter. An analysis of this decision exceeds the scope of this study. Note, however, that the decision of Mr. Justice LeBel and Chief Justice McLachlin’s concurring opinion in the result, as well as the dissenting opinion of Madam Justice Abella, all discuss the interaction of the civil law with the common law. While Justice LeBel, the three judges who concurred with him,\textsuperscript{98} and Justice Abella\textsuperscript{99} appeared open to the
civil law borrowing from the common law to legislate de facto spouses, Chief Justice McLaclhin was more concerned with respecting Québec's legislative position on allowing freedom of choice of de facto couples to prevail over all other considerations. In her eyes, the absence of legislation governing de facto relationships fell into the "range of reasonable alternatives for maximizing choice and autonomy in the matter of family assets and support." Accordingly, the discrimination that resulted from the differential treatment was justified. The Chief Justice particularly emphasized "the need to allow legislatures a margin of appreciation on difficult social issues and the need to be sensitive to the constitutional responsibility of each province to legislate for its population." In our opinion, in so doing, she was attempting to counter the criticism regarding the "contamination" of the civil law that has been directed at the highest court since the late nineteenth century, in particular since the Canadian Charter was adopted.

We feel that the Québec legislature should rapidly intervene and enact legislation on de facto unions, and if it does, this should not be seen as a symptom of any undue influence of the common law or human rights on the civil law. It will instead be a sign of the Civil Code's vitality and its capacity to fully assume its role of jus commune in family matters. De facto unions are a widely accepted family model in Québec. According to the most recent statistics, de facto couples account for 37% of Québec families. These couples at present do not fall under the family law provisions of the Civil Code—the jus commune—which, as a result, is out of sync with the new social reality. This situation is a concern, especially because many de facto couples wrongly believe that they will be protected under the Civil Code should they separate. In short, by ignoring de facto spouses, the Civil Code is failing to respond to the needs or expectations of a large proportion of the population. Legislating de facto unions would allow the Civil Code to operate in symbiosis with Québec society and

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100. Id. at para. 447.
101. Id. at para. 447.
102. Popovici, supra note 17.
104. The Québec Chamber of Notaries conducted a survey on this topic in March 2013, after the decision in Quebec (Att'y Gen.) v. A. was rendered. As the results showed, despite the media coverage surrounding the case, the population in general does not know its rights in the event of a separation. CROP & CHAMBRE DES NOTAIRES DU QUÉBEC, CROP À MESURÉ LES PERCEPTIONS DES QUÉBÉCOIS VIVANT EN UNION DE FAIT QUANT À LEUR ÉTAT MATRIMONIAL (Mar. 2013), available at http://www.ledevoir.com/documents/pdf/uniondefaitcrop2013.pdf.
to better fulfil its role as the *jus commune*, which is intended to apply to the greatest number of people.

**B. Human Rights: A Paramount Element in Interpreting the Civil Code of Québec**

A civil code often begins with a preliminary title whose provisions express the major orientations and fundamental principles underlying the statute as a whole, guide its application and interpretation, and govern its incorporation into the overall legal system. In the Civil Code of Québec, this function is fulfilled by one single Preliminary Provision, which states:

The Civil Code of Québec, . . . *in harmony* with the Charter of human rights and freedoms . . . and the general principles of law, governs persons, relations between persons, and property.

The Civil Code comprises a body of rules which, in all matters within the letter, spirit or object of its provisions, lays down the *jus commune*, expressly or by implication. In these matters, the Code is the foundation of all other laws, although other laws may complement the Code or make exceptions to it.

The Preliminary Provision of the Civil Code of Québec contains extremely important information about the Québec legal system. One, it places the Civil Code in a “harmonious” relationship with the province’s Charter of Human Rights and Freedoms and the general principles of law (see Part II.B.1). And two, it expressly grants the Code the status of *jus commune* (Part II.B.2). In sum, it introduces a nurturing relationship between the Québec Charter and the Civil Code of Québec.

1. Interpreting the Civil Code in Harmony with the Charter of Human Rights and Freedoms

Employed by the legislature in a provision intended to guide the Civil Code’s interpretation, the notion of “harmony” is itself open to interpretation. Two major trends emerge from the jurisprudence and the doctrine. Some see “the Preliminary Provision [as] an expression of the legislature’s intention to place the [Civil Code and the Québec Charter] on an equal footing.” For others, ourselves included, the

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105. See, e.g., the French, Spanish, Louisiana, Chilean, Swiss, and Romanian civil codes.
106. Emphasis added.
107. Alain-François Bisson, *La Disposition préliminaire du Code civil du Québec*, 44 *McGill L.J.* 539, 556 n.70 (translated by authors); see literature cited therein. See also Pierre Bosset, *La Charte des droits et libertés de la personne dans l’ordre consti-
Preliminary Provision should instead be read as the “solemn confirmation of the Charter’s primacy”\textsuperscript{108} over the other laws, including the Code.

On a formal level, the Charter of Human Rights and Freedoms is an ordinary statute that can be amended or repealed like any other, without any particular formality. Like other federal and provincial human rights laws, however, the Québec Charter has been recognized by the jurisprudence as having quasi-constitutional status,\textsuperscript{109} which grants it primacy over other legislation,\textsuperscript{110} including the Civil Code of Québec.\textsuperscript{111} The paramountcy of sections 1 to 38 is, furthermore, expressly stated in section 52. Given the preparatory work, there is every reason to believe that the Québec Charter was mentioned in the Preliminary Provision of the Civil Code of Québec in order to confirm its privileged status and subject the Code to its provisions.\textsuperscript{112}

The primacy of the Québec Charter over the Civil Code means that a provision of the Code may be declared inoperative to the extent it is inconsistent with those of the Québec Charter.\textsuperscript{113} However, the assertion—in a Preliminary Provision whose primary purpose is to guide the Code’s interpretation—that the Civil Code and the Québec Charter are harmonious implies much more. In so saying, the legislature established “a ‘formality’ (‘canon’) requiring that a civil standard must always be interpreted as encompassing human rights.”\textsuperscript{114} In other words, the Code “must be interpreted in the spirit of rights and

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\textsuperscript{108} Bosset, \textit{supra} note 107, at 8 (translated by authors). \textit{See} Michèle Rivet, \textit{La discrimination dans la vie au travail : le droit à l'égalité à l'heure de la mondialisation}, 34 R.D.U.S. 275, 282 (2003); \textit{Commission des droits de la personne du Québec, Commentaires sur le projet de loi 125 (Code civil du Québec)} 6 (1991).


\textsuperscript{111} 2747-3174 Québec Inc \textit{v. Québec (Régie des permis d'alcool)}, [1996] 3 S.C.R. 919, para. 90.

\textsuperscript{112} \textit{See} \textit{Samson, supra} note 81, at 37–39.


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freedoms.”115 The Preliminary Provision of the Civil Code echoes section 53 of the Québec Charter,116 under which the Charter must “be considered a code for the proper interpretation of laws.”117

_Syndicat Northcrest v. Amselem_118 is a good example of an interpretation of the Civil Code in light of the Québec Charter. In this case, the Jewish owners of a condominium unit had installed sukkahs (small huts used for religious purposes) on their balcony during the Jewish holiday of Sukkot, in violation of the condominium agreement’s prohibition against any construction on the balconies of the luxury complex for safety and aesthetic reasons.119 Unable to come to an agreement, the condominium’s “syndicate” (i.e., board) applied for an injunction forcing the recalcitrant owners to demolish their sukkahs. The condo owners claimed that their freedom of religion prevailed over the condominium agreement. The case ended up before the Supreme Court of Canada. In a very split decision that overturned the lower courts, the Supreme Court acknowledged that the condominium agreement violated the condo owners’ freedom of religion. According to an observer, the highest court in Canada arrived at this conclusion by interpreting article 1056 C.C.Q. in accordance with the Québec Charter: “While the letter of the Civil Code may impose restrictions on the rights of [condominium owners] when justified by the purpose, characteristics, or location of the immovable, now such restrictions must also respect fundamental rights, specifically religious freedom.”120

The Québec Charter not only serves as a guide to interpreting the Civil Code provisions; it offers means of protection that supplement those in place under the Code for some fundamental rights violations. For example, section 48 of the Charter provides that “[e]very aged person and every handicapped person has a right to protection against any form of exploitation.”121 This section, which protects vulnerable persons in society, comes into play in, among other situations, cases where the legislature has refused to legislate—namely, “lesion” (akin to unconscionable use of bargaining

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116. “If any doubt arises in the interpretation of a provision of the Act, it shall be resolved in keeping with the intent of the Charter.” Charter of Human Rights and Freedoms, C.Q.L.R., c. C-12, s. 53.
119. The Civil Code of Québec allows the declaration of co-ownership to limit the rights of the co-owners. C.C.Q. arts. 1056, 1063.
advantage) between persons of full age. Indeed, the Civil Code recognizes lesion in only three situations: in respect of protected persons of full age, in respect of minors, and where the law expressly provides for it (article 1405 C.C.Q.). ¹²² This situation has been decried by doctrinal writers.¹²³ According to the Québec Court of Appeal, which has adopted a broad interpretation of section 48 of the Charter, “[t]he different measures provided in the Civil Code do not offer an appropriate or satisfactory solution to the different forms of exploitation that elderly or handicapped persons might suffer.”¹²⁴ Section 48, however, adds an extra dimension to the Civil Code’s provisions: “One, [it] extends protection to elderly persons who are exploited regardless of the validity of their consent or the existence of a scheme of protection and two, [it] covers any form of exploitation and is not limited to simply controlling juridical acts or obligations entered into by elderly persons.”¹²⁵ The court recognized both the similarity between lesion and exploitation under section 48 and the difference, specifically that section 48 has a broader scope and goes beyond any consent to a juridical act.

If the Québec Charter guides the Civil Code’s interpretation and palliates its deficiencies, the inverse is also partly true. In fact, we will see in the next part of the text that its status as the jus commune implies that the Civil Code informs the Québec Charter’s interpretation.

2. Interpreting the Civil Code as an Expression of the Jus Commune

The Civil Code of Lower Canada was the jus commune of Québec in private law relationships, even though the text itself made no mention of this status.¹²⁶ In public law, the role of jus commune was reserved instead for the common law.¹²⁷ When it adopted the Civil Code of Québec in 1991, the Québec legislature innovated by ex-

¹²². Sections 8 and 9 of the Consumer Protection Act, C.Q.L.R., c. P-40.1, offer a solution to this problem. In case of exploitation of the consumer, the contract is void. These provisions admit both “objective” and “subjective” lesion. Objective lesion takes into account the unconscionable treatment of the vulnerable party based on objective circumstances (e.g., price), whereas subjective lesion takes into account personal circumstances (e.g., financial capacity of the disadvantaged party).


¹²⁴. Vallée, 2005 QCCA 316, para. 29 (translated by authors).

¹²⁵. Id., para. 24 (translated by authors).


pressly granting it the status of Québec’s *jus commune*, even in matters of public law.128

Due to this status, the Civil Code was accorded “an important suppletive role: The Civil Code rules apply when no other solution is provided under any other statute.”129 In other words, the Code is a “reservoir of rules” that apply as long as “there is no derogation under any other law.”130 It is the “normative supplement” to these laws.131

The Civil Code even plays a suppletive role in human rights protection.132 This is why, for example, the Civil Code rules on prescription,133 on the liability of the person having parental responsibility or their substitute;134 on the liability of mandators,135 principals,136 directors,137 and animal owners;138 on the lifting of the corporate veil;139 on the solidarity of debtors;140 on determining the quantum of compensatory or punitive damages;141 and on calculating

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130. Allard, *supra* note 75, at 60 (translated by authors). See also Brisson, *supra* note 76, at 296; *DICTIONNAIRE DE DROIT PRIVÉ*, *supra* note 127, at 197 (sub verbo “droit civil”), 199 (sub verbo “droit commun”).
interest and the additional indemnity\textsuperscript{142} have all already been used as the suppletive \textit{jus commune} when applying the Qu\textquoteright{ebec Charter.

In addition to having a suppletive role, the Civil Code\textapos;s status as the \textit{jus commune} influences how its provisions are interpreted.\textsuperscript{143} One of these effects is to make the Code very receptive to the influence of human rights. In his comments on the Civil Code, the Minister of Justice noted that enshrining the Code as the \textit{jus commune} dictates that its provisions are to receive a “dynamic interpretation.”\textsuperscript{144} The interpreter must be creative because the \textit{jus commune} “needs to be fertilized or risk becoming inadequate.”\textsuperscript{145} Indeed, “the Code must be able to transcend time, taking social changes over the years into account, but without having to be periodically revised. This endurance requires a dynamic or evolving interpretation.”\textsuperscript{146}

A review of the jurisprudence reveals that for a long time, human rights have had a “fertilizing” effect on the \textit{jus commune}. We know that the text of the Civil Code abounds with easily adaptable concepts.\textsuperscript{147} These concepts are all “pores through which the code can breathe, be reinvigorated and adapt according to the interpretation it will be given as our society evolves.”\textsuperscript{148} Over time, the meaning of these concepts has progressively developed so that a growing number of actions that interfere with human rights and freedoms are now punished.

Well before the charters of rights came into force, the concepts of fault,\textsuperscript{149} public order,\textsuperscript{150} and good morals\textsuperscript{151} gave rise to sanctions for infringements of the rights to life, equality, freedom, physical integrity, safeguard of honor and reputation, privacy, free enjoyment of property, and information, as well as for violations of the freedoms of conscience and religion, opinion, assembly, association, and expres-

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\item \textsuperscript{143} Pierre-André Côté, \textit{L'interprétation de la loi en droit civil et en droit statutaire : communauté de langue et différences d'acents}, 31 R.J.T. 45 (1997).
\item \textsuperscript{144} QUE., MINISTÈRE DE LA JUSTICE, supra note 1, at 1 (translated by authors).
\item \textsuperscript{145} Pierre Carignan, \textit{De l'exégèse et de la créa

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sion, both contractually and extra-contractually. Article 1053 of the Civil Code of Lower Canada, now article 1457 C.C.Q., was even portrayed as a “genuine charter of rights.” That said, recourse to traditional civil law concepts and principles did not always translate into optimal protection for human rights.

The legislature decided to adopt a Charter of Human Rights and Freedoms in particular to remedy the uncertainty resulting from the use of general civil liability rules to protect human rights. Even if actions under section 49 of the Québec Charter are having difficulty being recognized as truly autonomous from the jus commune civil liability, as mentioned earlier, the Charter’s coming into force appears to have at least contributed to the notions of fault and public order becoming more effective tools for the protection of human rights. The current concept of a reasonable person refers to one who “respects fundamental rights,” with the result that any action that violates one of these rights is generally considered a civil fault.

Similarly, “[t]he advent and subsequent development of rights and freedoms are in the process of shaking up traditional legal concepts of public order.” By adopting a “broader” definition of this notion,

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152. CIVIL CODE REVISION OFFICE, supra note 67, at 5. See also Allard, supra note 75, at 40; Caron, supra note 44; Pierre-Gabriel Jobin, Contrats et droits de la personne : un arrimage laborieux, in MÉLANGES JEAN PINEAU 357, 360–68 (Benoît Moore ed., 2003); LeBel, supra note 63, at 235–39; Normand, An Introduction to Quebec Civil Law, supra note 64, at 41–42; Louis Perret, De l’impact de la Charte des droits et libertés de la personne sur le droit civil des contrats et de la responsabilité au Québec, 12 REVUE GÉNÉRALE DE DROIT 121, 123–36 (1981); Bertrand Roy, La Charte située dans son contexte, in LES DROITS DE LA PERSONNE DANS LEUR APPLICATION 18–23 (Barreau du Québec ed., 1980); F.R. Scott, The Bill of Rights and Quebec Law, 37 CANADIAN BAR REV. 135 (1959).


154. LeBel, supra note 63, at 238. See also Perret, supra note 152, at 132; Roy, supra note 152, at 21.


158. JOBIN & VÉZINA, supra note 123, at 198 (translated by authors).

159. Roy, supra note 152.
the courts tend to find that any conduct that interferes with a right protected under the Québec Charter contravenes public order.\textsuperscript{160}

The affinities between civil law and the Québec Charter have become clearer since the Civil Code of Québec came into force in 1994. The Québec Charter and the Civil Code of Québec are in large part “a reflection of shared principles.”\textsuperscript{161} The notion of harmony in the Preliminary Provision of the Civil Code of Québec does not merely introduce an equal or even subordinate relationship between the Code and the Québec Charter. The reality it describes is both richer and more complex. The stated harmony between the Civil Code and the Charter means that the courts must consider the interaction between these two laws so as to ensure that “human rights and freedoms are better protected.”\textsuperscript{162}

**CONCLUSION**

Adopted with a view to simplifying the study and practice of law,\textsuperscript{163} the Civil Code of Lower Canada quickly became a strong symbol of identity.\textsuperscript{164} Presented as “one of the most precious bequests received” from our French ancestors alongside the French language and the Catholic religion,\textsuperscript{165} it became a symbol of “the resistance of the French fact in British North America.”\textsuperscript{166} The Code reflected the

\textsuperscript{160} See, e.g., Coutu c. Commission des droits de la personne et des droits de la jeunesse, J.E. 98-2088 (C.A.), para. 37.


\textsuperscript{162} Langevin, supra note 76 (translated by authors).

\textsuperscript{163} Normand, supra note 25, at 623–25.


values, language, and culture of Lower Canada, and was to contribute to ensuring its survival;\textsuperscript{167} it was part of its “immune system.”\textsuperscript{168}

In this context, it is understandable that the legal community was concerned about preserving the integrity of the Civil Code of Lower Canada and fought against the common law’s influence on its interpretation. The argument about protecting the Code’s integrity was first raised with respect to methodology. The idea emerged in both the jurisprudence and the doctrine that the Civil Code interpretation rules differed from the common law statutory interpretation rules.\textsuperscript{169} Furthermore, authors were opposed to the courts using common law notions to define civil law institutions. For its part, the legislature was hesitant to amend the Code; it preferred to adopt specific statutes that derogated from or supplemented it.

For several decades now, the doctrine has seemed less preoccupied by the influence of the common law per se on the interpretation of the Civil Code. With the advent of the Québec and Canadian Charters, there has in fact been more concern about the influence of human rights on the civil law. This new “threat” to the originality of the civil law is, however, often confused with the former. Fundamental rights are expected to cause the civil law to drift toward the common law because they originate in public law\textsuperscript{170}—derived in part from the common law, even in Québec\textsuperscript{171}—and because the courts have significant latitude in how they are interpreted, increasing the role of jurisprudence.\textsuperscript{172}

In our opinion, the influence of the common law on the civil law must be distinguished from the ascendancy of human rights philosophy over the same civil law; these are two very distinct phenomena. It is not for us to say whether the resistance of the doctrine and the jurisprudence to the influence of the common law on the civil law was or was not justified in the last century. It seems clear, however, that resistance to the rise of human rights in Québec private law has no raison d’être. The increased sensitivity of Québec civil law to human rights is a logical evolution in a Western context and contributes to its enrichment. It respects the hierarchy of sources of law as well as the objectives underlying the civil law’s codification and its function as the \textit{jus commune}.

The spread of human rights in the civil law is not singular to Québec. Even though it is not happening everywhere at the same speed, the entry of human rights into the law is evident in several

\textsuperscript{167} Normand, supra note 25, at 630; Normand, supra note 15.
\textsuperscript{168} Normand, supra note 15, at 574.
\textsuperscript{169} Id. at 575.
\textsuperscript{170} Rivet & Montpetit, supra note 155, at 934 n.47.
\textsuperscript{172} Grimaldi, supra note 46.
civilian jurisdictions, including Germany,\textsuperscript{173} Spain,\textsuperscript{174} Italy,\textsuperscript{175} Portugal,\textsuperscript{176} and France.\textsuperscript{177} It forms part of a vast movement to constitutionalize law, in which “constitutional standards progressively become the common foundation of various branches of the law.”\textsuperscript{178}

In Québec, fundamental rights are protected by the Canadian and Québec Charters, which have primacy over all other laws, including the Civil Code. The influence of human rights on the Civil Code’s interpretation is therefore dictated by the hierarchy of sources of law. Moreover, it is legitimated by the Preliminary Provision of the Civil Code directing that harmony must be sought between the Code and the Charter of Human Rights and Freedoms.

In addition to this explanation, which can be described as formal or Kelsenian, the influence of human rights on Québec civil law appears inherent in its codification and its status as the \textit{jus commune}. It is the very essence of a Civil Code to translate the dominant values of the society it governs into law. In 1977, when the Civil Code Revision Office sent the Québec government its report containing the new draft Civil Code, the legislature had just entrenched the Charter of Human Rights and Freedoms, “a document that expresses the most...
fundamental values of Québec society.”179 Canada was about to do likewise by enshrining in the Canadian Charter of Rights and Freedoms “the fundamental values of Canadian society,”180 such as human dignity and equality.181 The Civil Code necessarily bears the stamp of these same values. In the words of Professor Paul-André Crépeau, then president of the Civil Code Revision Office, the Code had “to reflect the social, moral, and economic realities of today’s Québec,”182 including its concern that human rights be respected.

In sum, the place accorded to human rights in the Civil Code of Québec is not a symptom of the contamination of Québec civil law, but a sign of its healthy evolution. The legislature did a fine job of accomplishing this when it reformed the Civil Code, and it is now left to the courts to continue this evolution. Because it is enduring and, mostly, because it is the *jus commune*, the Civil Code of Québec must receive a dynamic interpretation to ensure its “ability to adjust to society.”183 Consequently, its interpreters cannot ignore the transformation that occurred in Québec’s legal culture as a result of the advent of the charters of rights.184

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182. Crépeau, *Foreword*, supra note 11, at XXIV.
184. Concerning the transformation of Québec legal culture under the influence of the charters, see Gaudreault-Desbiens, *supra* note 8; Sylvio Normand, *La culture juridique et l’acculturation du droit: le Québec*, 1 ISAIDAT L. REV., no. 2 (SPECIAL ISSUE 1), art. 23, at 22ff. (2011); Popovici, *supra* note 17, at 235–36.