

Case Law Excerpts

# TORT LAW IN CANADA

DAVID LAWAL, BARRISTER & ALLEN M. LINDSEY

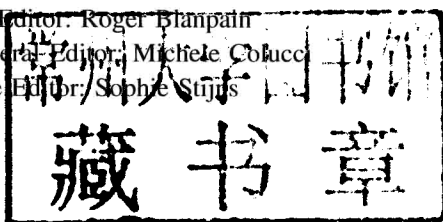
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## **Tort Law in Canada**

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# **Tort Law in Canada**

# Short Explanatory Introduction

Canada partakes of two legal traditions: the civilian and the common law.

Until 1763 Quebec, known as New France, was under the authority of the King of France. What is now known as Quebec was populated by French immigrants, and the laws governing New France were the *Coutume de Paris*, the various Royal Ordinances, and the French criminal law.

In 1763 by the Treaty of Paris, France ceded its territories in northern America to the British, who in turn, under the treaty and the Quebec Act (1774), left to the French-speaking population the private law then in force, the use of the French language, and the liberty of practicing the Catholic religion.

Canada, and not simply the geographical area now known as Quebec, received English-speaking immigrants. In 1791 what was then known as Canada was divided into Lower Canada (Quebec) and Upper Canada (Ontario) under the Constitutional Act. At that time, while English common law regulated the private law relationship in Upper Canada, Lower Canada continued to be governed by civilian French sources.

In 1866, after the Union Act of 1840, and one year before the Confederation, Quebec adopted its first Civil Code, known as the Civil Code of Lower Canada, while Ontario and all the other provinces who had joined the Canadian Confederation kept the common law system.

This explains why in the area of private law – and particularly in that of civil liability – Canada enjoys two different systems: one of codified civil law in Quebec and one of English common law in the rest of the country.

Because of this bi-jural system, we thought it best to present the Canadian tort or delictual system in two separate sections of this monograph, rather than trying to integrate them into one presentation. Therefore, the tables of contents are also presented separately.

The two systems of civil liability really are quite different, and it would be wrong not to recognize this. Hence, section one will describe the civil law of Quebec and section two will outline the common law of torts in the other provinces and territories. The common law presentation, it will be seen, has been rearranged from its usual organization to correspond more to the civil law arrangement.

The Supreme Court of Canada is the court of last resort for both the civil law and the common law. At least three of the nine judges must be from Quebec to ensure that the civilian tradition is well represented on the court in civil law cases.

# Quebec

# List of Abbreviations

All. E. R.	All English Reports
Am. J. Comp. L.	American Journal of Comparative Law
C.A.	Court of Appeal
Cass.	Cour de Cassation (France)
C.B.R.	Canadian Bar Review
C. de D.	Cahiers de droit
C.C.Q.	Civil Code of Quebec
C.C.L.C.	Civil Code of Lower Canada
Cr. C.	Criminal Code
K.B.	King's Bench (Court of Appeal)
McGill L.J.	McGill Law Journal
R. du B.	Revue du Barreau
R.D.U.S.	Revue de droit de l'Université de Sherbrooke
R.G.D.	Revue générale de droit
R.I.D.C.	Revue internationale de droit comparé
R.J.Q.	Recueil de jurisprudence du Québec
R.J.T.	Revue juridique Thémis
R.L.	Revue légale
R.R.A.	Recueil en responsabilité et assurance
R.S.Q.	Revised Statutes of Quebec
S.C.	Superior Court
S.C.R.	Supreme Court Reports
U. of T. L.J.	University of Toronto Law Journal

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