

THE REVISION OF THE CIVIL CODE

To use a French expression: "Le vent est aux révisions". In France, a Commission composed of twelve eminent Jurists has been at work since 1945 to revise the french civil code (or Code Napoléon). Their final report has not yet been submitted to the Parliament. In Louisiana, where as we know, the civil law is similar to that of the province of Quebec, a revision is also taking place. The Quebec Code dates back to the year 1866. It has therefore been in force during the last ninety years. Our Provincial Parliament has deemed it advisable that the time for a revision had been reached. Indeed the Codifiers of 1866 themselves, in their report, had advised that a revision might be undertaken after some thirty years. If that recommendation were to be followed, it may be said that the revision of the Code is long overdue.

Moreover, it was of course impossible for the Codifiers to foresee the tremendous developments of the future. Both the authors of the Code Napoléon and those of the Quebec Code realized the necessity of the legislation growing to the demands of new times and circumstances. Lord Shaw, speaking at a meeting of the Canadian Bar Association, once said: "Law must not be enclosed in a monumental past and must move with the times". In other words, for the solution of the problems arising in the present era, we should not be tied down exclusively to the teachings of the Roman Law or the precepts of the Coutumes which ruled in the course of the Middle Ages. To use the words of Mr. Justice Holmes, the great jurist of the United States Supreme Court: "The life of the law has not been logic, it has been experience." And after outlining the factors which determined the rules by which men should be governed, Mr. Justice Holmes added: "The law embodies the story of the nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms or corollaries of a book of mathematics." To which may be compared what Sir Frederick Pollock wrote in his *Expansion of the Common Law*, p. 14: "Law is not an affair of bare literal precepts, as the mechanical school would make it, but is the sense of Justice taking form in peoples and races."

The Romans had already expressed the same view. They had an adage: *Lex fit consensu populi* ("Law spreads from the consent or volition of the people"). So that what a revision of the Civil Code should endeavour to accomplish, I modestly submit, is to ascertain the reaction of the people of this Province to the Code as it now stands and to embody in the new suggestions the improvements and the modifications which the people desire and which are compatible with the fundamental and basic principles of our civil law. That result ought to be made safe by the fact that the report of the Commissioners who have been appointed will first be submitted to the Attorney-General of the Province and afterwards be deposited by him before the

Provincial Parliament whose function it will be to examine it, to discuss it, to amend it wherever found necessary and finally to adopt it, as representatives of the people of this Province. Thus will it become a law expressing the consent of the people of this Province and in accordance with the sound standards of democracy.

The whole proceeding will undoubtedly require minute consultation and study, and prudent handling and direction. But it has to be admitted that such an important and delicate work cannot be hastily disposed of. It must take form in an atmosphere of patience and of wise thought and consideration.

THIBAUDEAU RINFRET*

*The Right Honourable Thibaudeau Rinfret, P.C., Former Chief Justice of Canada; Commissioner for the Revision of the Civil Code.