
Preface

H. Patrick Glenn*

It is a great pleasure to introduce this collection of essays of the *McGill Law Journal* on recent legislation of the Russian Federation, more particularly on the new *Civil Code of the Russian Federation*.¹ For the last three years the Institute of Comparative Law of McGill University, the law firm Ogilvy Renault, and the Private Law Research Center Attached to the Office of the President of the Russian Federation have been engaged in a collaborative project on Russian legislative reform and its dissemination. The project has been financed by the Canadian International Development Agency. Montreal participants have provided reports and commentaries to the Russian drafters, the *Civil Code of Quebec* has been translated and published in Russian,² and members of the Private Law Centre have lectured and done research at McGill. This Special Issue of the *McGill Law Journal* allows the doctrinal foundation of the new Russian legislation to be made available to a wider audience. We are very grateful for the collaboration of the distinguished Russian and western contributors. The editors of the *McGill Law Journal* are to be congratulated for bringing the project to fruition, in spite of difficulties of communication, coordination, and translation. Special thanks are due to Peter Sahlas, Project Manager in Moscow, and to Professor John E.C. Brierley for his assistance with the Russian texts.

Legislating in contemporary Russia is a complex process. Measures directed toward establishing a market economy are opposed by many of those who are active in the legislative process; the traditional adherence of Russian private law to continental and particularly German models is challenged by other western legal models; the strong attachment to particularly Russian institutions and traditions must be weighed against the necessity of adherence to international standards. In these circumstances, the coming into force of Parts 1 and 2 of the C.C.R.F. in 1994 and 1996—within five years of the fall of the Soviet Union—is a remarkable legislative accomplishment. It is

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Revue de droit de McGill 1999

To be cited as: (1999) 44 McGill L.J. 255

Mode de référence : (1999) 44 R.D. McGill 255

¹ Part 1 was enacted in 1994: *Sobranie zakonodatelstva R.F.* (1994) No. 32, item 3301; and Part 2 was enacted in 1995: *Sobranie zakonodatelstva R.F.* (1996) No. 5, item 410 [hereinafter C.C.R.F.]. For the English-language translation, see P.B. Maggs & A.N. Zhiltsov, eds., *The Civil Code of the Russian Federation*, trans. P.B. Maggs & A.N. Zhiltsov (Armonk, N.Y.: M.E. Sharpe, 1997).

² O.M. Kozyr & A.A. Makovskaya, eds., *Grajdansk: Kodeks Kvebeka* (Moscow: Statut, 1999).

hoped that the C.C.R.F. will be completed by the enactment of Part 3—dealing with intellectual property, successions, and private international law—within the next year.

The essays in this collection provide valuable information on the extent of the transformation of Russian law, and even some information on its application. The C.C.R.F. has been described as the “economic constitution” of the new Russia³ and its first article proclaims “the inviolability of ownership, freedom of contract, the impermissibility of arbitrary interference by anyone in private affairs, [and] the necessity of the unhindered realization of civil law rights.” Professor Knieper’s article on stability and transition in the C.C.R.F. critically assesses the extent of innovation effected by the C.C.R.F. While it exhaustively regulates the new private relations it seeks to encourage, Professor Knieper is critical of its retention of Soviet forms of state and municipal corporate persons (“unitary enterprises”) and privileges accorded to state standard-form contracts. He also regrets the continuation of the Soviet practice of excluding family law from the C.C.R.F., suggesting ongoing endorsement of the older attitude of the bourgeois, exploitive nature of civil law, from which families had to be protected. He argues against amendment of the C.C.R.F., however, arguing that it now requires stability rather than ongoing, instrumental change. Professor Maggs compares the C.C.R.F. with the *Uniform Commercial Code* (“U.C.C.”) of the United States, both creations of federal jurisdictions and both benefiting from the legal talent which can be drawn together at the federal as opposed to local level. Professor Maggs defends Russian particularity, however, and argues against the transplantation of codes such as the U.C.C., which rely heavily on the legal tradition from which they are drawn.

Property is at the heart of private-law legal relations and the legal regulation of movable and immovable property remains highly controversial in Russia. Professor Sukhanov provides a magisterial summary of basic concepts of Russian property law and their evolution. The law is very much in the civilian, continental tradition—which excludes the trust, as drawn from “absolutely alien Anglo-American approaches.” Its application to land is outlined by Dr. Kozyr, who acknowledges, however, the ongoing legislative stalemate which has led to the suspension of application of Chapter 17 of the C.C.R.F. on ownership and other rights in land.

The commercial dimensions of the C.C.R.F. and its supporting legislation are dealt with in the articles by Komarov, Braginsky, Vitryansky, and Hendley, Murrell and Ryterman. President Komarov provides an overview of the general provisions of the C.C.R.F. dealing with liability for the violation of obligations, insisting on the new importance of monetary damages, a major move away from Soviet insistence on specific performance by the agencies of a planned economy. Dr. Braginsky outlines the wide range of structures for entrepreneurial activities now available in Russia, as well as the particular position of the foreign entrepreneur. Deputy Chairman Vitryansky of the Higher Court of Arbitration summarizes the remarkable development of bank-

³ A.L. Makovsky, “Preface to the English Translation of the Civil Code” in Maggs & Zhiltsov, *supra* note 1, xlix at lii.

ruptcy law in Russia since 1993 (bankruptcies rising from 100 in 1993 to 4,600 in 1997) as an indication of the new accountability of commercial enterprises. He situates Russian bankruptcy law as constituting a "golden mean" on a continuum between pro-debtor jurisdictions—*e.g.* France and the United States—and pro-creditor jurisdictions—*e.g.* other continental countries. The article by Professors Hendley and Murrell and Mr. Ryterman is particularly interesting because of the empirical research which they have conducted and which indicates a high level of application of the new Russian law (contrary to speculation and anecdotal evidence). Their research among corporate enterprises in different regions of Russia shows little use of private "enforcers" and regular use of legal institutions. Moreover, the state *arbitrazh* courts used for commercial disputes succeed in 95% of the cases in providing a decision within a two month period, a level of performance remarkable by western standards. There are, however, problems of enforcement.

A final group of essays indicates the increased importance of international private-law relations in the new Russia. Mr. Rozenberg provides a valuable guide to the place and priority of international agreements in the field of private law. He also tracks the use of international standards⁴ in new Russian domestic legislation. M. Fabre indicates how Russian commercial interests now extend to the emerging spatial commercial market. In the final essay, Dr. Zvekov indicates how Russia, like Quebec, has recognized the necessity of a full and codified statement of private international law to facilitate multiple, trans-border private law relations.

At the height of the Cold War, Soviet jurists argued for fundamental incommensurability between socialist and bourgeois legal orders.⁵ This appears to have been an exaggerated claim. There are still problems of communication, translation, and understanding of Russian law for western jurists, but the present Special Issue of the McGill Law Journal makes a major contribution to mutual understanding.

⁴ Notably from the *United Nations Convention on Contracts for the International Sale of Goods*, 11 April 1980, 1489 U.N.T.S. 3.

⁵ For the debate, see K. Zweigert & H. Kötz, *Introduction to Comparative Law*, trans. T. Weir, 2nd ed. (Oxford: Clarendon Press, 1987) at 37, 38 (with references); and G. Ajani, *Diritto dell'Europa orientale* (Torino: U.T.E.T., 1996) at 34ff. (also on the notion of discontinuity between earlier bourgeois law and the new socialist order).