

Les Cahiers de droit



MADELEINE MAILHOT, *Les bons mots du civil et du pénal*,
Montréal, Wilson & Lafleur, 2005, 332 p., ISBN 2-89127-717-1.

Wallace Schwab

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Chronique bibliographique

MADELEINE MAILHOT, **Les bons mots du civil et du pénal**, Montréal, Wilson & Lafleur, 2005, 332 p., ISBN 2-89127-717-1.

Here is the book I've been waiting for! The author, Madeleine Mailhot speaks to her readers in prose... Legal Prose! Her approach to this issue is one of a ripe fruit just waiting to be harvested.

The building blocks of legal discourse, especially in its written form and in all human tongues – encompass technicality, concepts governing real life situations, terms of art, stock phrases sometimes elevated to the rank of incantations, and interminable sentences desperately seeking to include or exclude everything in their path... known frequently to fail to do either. Ms. Mailhot has staked the boundaries of her study around the near indefinable area of stock phrases: the manner in which one expresses the law; “comment on dit le droit”, and not to be confused with neighbouring legal terminology – those other building blocks of legal architecture.

To begin with, a word about stock phrases and their place in legal discourse. They may be typified by these examples taken from her repertory: in regard to section x, on the ground of y, notwithstanding z. These are connectors that glue together the disparate items of interest to the law. Let's see some more: “You may proceed”, says the judge. “Ms. A's consent was not free and informed”, states the attorney. “And”, asks the prosecutor, “were the parties closely or distantly related to each other”. This is the prose that breathes logical continuity into the judicial quest for understanding and decision making. The forms and delivery of such statements follow time-honoured patterns familiar to their users.

Madeleine Mailhot's desire to explore this field amounts to a daunting undertaking, at the risk of spinning off in too many directions. The results, however, are a masterly achievement of creative pedagogy. The material organization of the book begins with the sources of the law (constitution, statutory instruments, civil and common law systems, case law and scholarly writings), then the *dramatis personae* (lawyers, judges, registrars or clerks, and interpreters), followed by an overview of civil and criminal matters (two chapters) and concludes with three chapters on legal aid, courts and tribunals, and appeals. Examples abound despite the fact that Ms. Mailhot just scratches the surface of this vast subject.

Yet this is not all! In the appended four schedules, Author Mailhot changes roles to become Educator Mailhot proposing exercises and drills to sharpen legal draftspersons' acuity in handling the subtleties of law language that often ensnare the unwary. Exercises in vocabulary, grammar, expressions, inappropriate loan words (anglicisms) and text correction provide a well-rounded program of definite interest to beginners and also to seasoned wordsmiths seeking to refresh or upgrade their talents.

My wishful thinking leads me to state that space, time and the fundamental orientation of this study obviously could not cover a comparative analysis of English language usages born of need in the civil law system of Québec. Another trail one day to be blazed!

Finally, Ms. Mailhot's opus constitutes a wonderful complementary shelf companion to Professor's Reid's *Dictionnaire de droit québécois et canadien*. No legal draftsman, wordsmith, translator, or merely curious language lover, should deprive themselves

of either treasure. Furthermore, it must be emphasized that these works, in conjunction with the “Dictionnaire de droit privé et lexiques bilingues” (Centre de recherche en droit privé et comparé du Québec), the Canadian Common Law Dictionary, Law of Property and Estates”, and many other similar achievements throughout Canada (May I be excused for not citing them!), all add up to this: Canada, a relatively modest-sized nation population-wise, has risen to unbeknown heights in legal lexicography – a world leader no less, owing to its gross national expertise in juri-lexical production, be this in quality or quantity. The presence of so many works blanket the Canadian legal scene. I dare anyone to claim this to be an exaggeration!

Obviously, I am limiting my appraisal to the “French-English” and “English-French” axis. Nonetheless, might my readers pardon me for unabashedly “touting our horn”... but **our scholars deserve credit where credit is due**. So, our affectionate thanks to all such authors, administrators and researchers: Madeleine Mailhot, Hubert Reid, Paul-André Crépeau, Albert Mayrand, Réjean Patry, Nicholas Kasirer, John Brierley[†], Jean-Claude Gémard, Gérard Snow and a host of other equally worthy contributors whose names deserve their place in a yet non-existent Canadian Legal Language Hall of Fame. They have made and continue to make our greatness.

Wallace SCHWAB

Translator, linguist and writer

CARMEN LAVALLÉE, **L'enfant, ses familles et les institutions de l'adoption. Regards sur le droit français et le droit québécois**, Montréal, Wilson & Lafleur, 2005, 541 p., ISBN 2-89127-713-9.

Cet ouvrage considérable de la professeure Carmen Lavallée se situe dans le prolongement de sa thèse de doctorat, soutenue avec brio en 2002 à l'Université Lyon III – Jean Moulin. Il s'agit d'une étude historique, analytique et comparative fouillée. L'auteure

y exploite pleinement les sources classiques (textes de loi, doctrine, jurisprudence) du droit de l'adoption, cette institution qui «force à s'interroger encore et toujours sur ce qu'est la famille et sur ce qu'est l'enfant», ainsi que le mentionnent dans la préface Jean-Louis Baudouin et Jacqueline Rubellin-Devichi. L'auteur n'hésite pas non plus à recourir à une abondante documentation ressortissant à d'autres champs disciplinaires, notamment l'histoire, la sociologie, la psychologie et l'anthropologie, ce qui enrichit et agrmente son propos.

En introduction, la professeure Lavallée présente les questions cruciales qui se posent aujourd'hui en matière d'adoption, lesquelles sont reprises par la suite de façon approfondie: mentionnons, entre autres, l'adoption simple, l'adoption par des personnes de même sexe et l'adoption intrafamiliale; elle y livre aussi un exposé particulièrement étoffé et convaincant de l'histoire de cette institution en France et au Québec. Cet exposé constitue pour ainsi dire un essai en soi. Enfin, l'auteure y soulève les questions fondamentales qui divisent les tenants de diverses approches au regard de l'adoption: «Déchirée entre le modèle protectionniste qui vise à donner à l'enfant une famille considérée comme adéquate par les spécialistes, et le modèle généalogique qui constitue [un construit social, un montage institutionnel au sein duquel chaque sujet trouve sa place dans un ordre symbolique qui le dépasse], l'adoption erre entre deux pôles», (p. 34).

L'ouvrage de Carmen Lavallée se divise d'ailleurs en deux grandes parties qui correspondent aux deux visées principales de l'adoption. Celle-ci est d'abord envisagée comme une institution fondée sur l'attribution d'une filiation (partie I), puis comme un mécanisme de protection fondé sur l'intérêt de l'enfant (partie II). Il ressort de l'analyse effectuée par la professeure Lavallée que l'adoption française se rattache d'abord à la première visée, alors que l'adoption québécoise se réclame surtout de la seconde. Il ne faut cependant pas croire qu'il n'est question que de droit français dans la première partie de l'ouvrage et que de droit québécois dans