

Serge Surin

The issue of reviewing
the constitutionality
of the statutes
by the people's initiative



Contents

ACKNOWLEDGEMENTS	5
FOREWORD.....	7
INTRODUCTION.....	9
I – REVIEW OF CONSTITUTIONALITY OF THE LAW INITIATED BY THE PEOPLE IN APPEAL CASE: DISCONNECTIONS AND SIMILARITIES IN CANADIAN AND FRENCH SYSTEMS BETWEEN THE COMMON LAW AND THE ROMAN LAW FAMILIES.....	31
II – THE RIGHT FOR THE PEOPLE TO STRUGGLE AGAINST STATUTES THEY FIND UNFAIR BY JUDICIAL REVIEW IN CANADA AND IN FRANCE: ANOTHER COUNTER- POWER FOR THE EXECUTIVE AND THE LEGISLATIVE BRANCHES	57
CONCLUSION	69

Acknowledgements

For this Work of Research I have to thank first the Director of my Teaching and Research Department at the University Paris 1 Panthéon-Sorbonne, Mrs. Géraldine CHAVRIER, who authorized me to get this extraordinary experience abroad.

Secondly, my acknowledgements go to the Île-de-France Regional Council for granting my stay during the Six-Month spent in Ottawa.

Thirdly, I am grateful to Mr. Pierre THIBAUT, the Assistant Dean of the Faculty of Law (Civil Law Section) at the University of Ottawa, and Mrs. Sophie THERIAULT, my Supervisor Professor during my research, for all their precious supports along this Academic Writing.

Fourthly, I would like to thank all the Bryan Dickson Law Library staff and also Sirs Wladimir REBINCZAC and Michel-Adrien SHEPPART at the Library of the Canadian Supreme Court for their intelligent advices in terms of bibliography used in this Work of Research.

And finally, I am also grateful to all the people who supported and helped me in construing this paper. Although their names are not drafted down here, they shall know how much I appreciate their collaboration.

Foreword

As the most important actors in democracy, the people are not only some electors who delegate all their powers and confidence to the classic branches of government. They participate actively in the life of the society by inciting the removal of bad and unfair statutes enacted by Parliament and applicable to them, statutes that often infringe their rights and freedoms guaranteed by the Constitution. They do so specifically by using their right in judicial review of statutes before the competent judges. The current work of research consists of comparing the judicial review initiated by the people in France and in Canada. The right for the people to seek judicial review of statutes became effective in France only one year ago. This work hereby aims to compare the system of judicial review at the initiative of the people recently implemented in France under the name of Priority Question of Constitutionality or QPC by comparison with the Canadian system of judicial review under the name of Constitutional Question that has been in effect for many years.

Introduction

The main objective of this research is to compare the French system of control of constitutionality (or judicial review) a posteriori of the laws enacted by Parliament and the Canadian one in the same field. Consequently, the main rule to be used in our analysis will be the Constitution of both, France and Canada. So, because the subject calls a comparative study in a high legal level, it appears difficult to take into account only the French and Canadian Constitutions without a look at the Constitutions of other influential countries in the world like that of the United States of America or yet that the United Kingdom to not quote only them. The United States case is notable for at least one reason: indeed we have to remember that the American Supreme Court under Chief Justice John Marshall invented the concept of judicial review of statutes in *Marbury v. Madison* (1803), a concept of constitutionalism that remains an international one according to Professors Jerome A. Barron and

C. Thomas Dienes, and Markus G. Puder's words¹. The objective to reach is how constitutional review of statutes at the people's initiative impacts upon political life in France and in Canada.

According to the Oxford Dictionary of Law² a Constitution is "The rules and practices that determine the composition and functions of the organs of central and local government in a state and regulate the relationship between the individual and the state. Most states have a written constitution, one of the fundamental provisions of which is that it can itself be amended only in accordance with a special procedure. The constitution of the UK is largely unwritten. It consists partly of statutes, for the amendment of which by subsequent statutes no special is required [by Act of Parliament], but also, to a very significant extent, of common law rules and constitutional convention³."

¹ Jerome A. Barron and C. Thomas Dienes, Constitutional Law, in a nutshell, 7th Edition, 2009, West Nutshell Series. See also Markus G. Puder in his note untitled Supremacy of the law and judicial review in the European Union: celebrating Marbury v. Madison with Costa v. Enel where he stated that "The text, spirit, myth, and legacy of Marbury v. Madison have been invoked to inspire, explain, praise, legitimize, and yes, criticize and deconstruct the concept and exercise of judicial review, not only in the United States, but also in jurisdictions all over the world", George Washington International review, 2004.

² The Oxford Dictionary of Law, seventh edition, 2009. Edited by Jonathan Law and Elyzabeth A. Martin – Oxford University Press.

³ For a precise knowledge of constitutional convention meaning, see Professor Vernon Bogdanor, The New British Constitution, Cornwall Publishing, 2009, pp. 117 and 126.