Trust Quarterly Review

The remedy of rectification in Quebec civil law

How the Supreme Court of Canada fashioned a civil-law equivalent to the common-law remedy of rectification.

Abstract

- A case commentary on the 2013 Supreme Court of Canada decision confirming availability of a remedy in Quebec civil law similar to the equitable remedy of rectification in common law.
- A trans-systemic approach was applied to achieve similar remedial results in civil law as in the common law.
- The analysis and decision were firmly grounded in fundamental rules of interpretation in the Quebec law of obligations, premised on the principle of consensualism.
- A fundamental distinction exists between exchange of consents and written expression of that exchange.
- It is open to the court to intervene to find that amendments made by parties to erroneous writings were legitimate and consistent with their true common intention.
- Tax authorities do not have acquired rights to have erroneous documentation continue to apply, but tax consequences are to be determined in the proper tax forum.
- Scope of rectification remedy does not extend to retroactive tax planning.

In seeking guidance from comparative law materials the court must always be alive to structural differences between legal systems.[1]

In Quebec (Agence du Revenu) v Services Environnementaux AES Inc,[2] (AES) the Supreme Court of Canada confirmed the availability of a remedy under the Civil Code of Quebec (CCQ)[3] similar to the equitable remedy of rectification as known in the common law, in order to redress errors in contractual documents that did not reflect the intentions of the parties. The unanimous decision of the Supreme Court, written by LeBel J, the only civil-law jurist on the bench, dismissed the appeals in companion cases by the Agence du Revenu du Quebec (ARQ),[4] in which the Attorney General of Canada intervened on behalf of the Canada Revenue Agency (CRA) in support of the ARQ.

The Superior Court of Quebec (Superior Court) and the Quebec Court of Appeal (Court of Appeal), as well as the Supreme Court, were faced with resolving the dilemma as to the compatibility of a remedy of rectification as available in the common law with the civil-law system. Framed differently, the issue was whether there is a remedy replicating rectification that could be justified on the basis of Quebec civil-law principles.

It is at the level of the rulings by the Court of Appeal, as endorsed by the Supreme Court, in a modified version, that the issue was properly resolved in a manner juridically coherent with civil-law principles.

While the factual elements of the transactions in issue and the arguments advanced by the parties in the proceedings are undoubtedly of interest,[5] the focus of this article will be on the broader implications of the AES decision in the context of the interplay between the common law and the civil law, with the overlay of fiscal considerations.

Remedy of rectification

The established view is that rectification is an equitable remedy within the jurisdiction of a court deriving from equity and, accordingly, it is classified as a form of discretionary relief from the strict common-law rule regarding the sanctity of a written contractual instrument. Traditionally, it was available to reform or correct a document, where the terms do not reflect the true intentions of the parties, as captured in the oft-cited Snell's Principles of Equity:[6]

> *In such cases, equity has the power to reform, or rectify, that instrument so as to make it accord with the true agreement. What is rectified is not a mistake in the transaction itself, but a mistake in the way in which that transaction has been expressed in writing.*

It is also important to underscore the declaratory or restorative nature operating nunc pro tunc of the remedy and not, strictly speaking, its retroactive effect. Furthermore, central to an understanding of the remedy is that it is concerned with the rectification of documents that are supposed to represent an intended legal transaction but fail to do so.

The remedy of rectification in common-law Canada is designed to correct a mistake in carrying out the settled intentions of the parties as established by the evidence. The remedy may be invoked in cases of genuine mistake to ensure that the instrument contains the provisions that the parties actually intended it to contain; it is not used to vary the intentions of the parties, or to speculate on the substance of those intentions.[7]

The standard of proof in rectification cases is the balance of probabilities, but the courts require convincing proof. The evidence must be clear and unambiguous that a mistake had been made, particularly when there is a conflict between the alleged intention and the written document. The uncontradicted parol evidence of the parties may be insufficient, and the courts will require some objective manifestation of the intention before ordering rectification.[8]

While it has traditionally been applied to contracts in common-law Canada, rectification has been applied to various legal documents when the legal transaction is one founded on intention and the documentation evidencing the transaction is contrary to the specific and continuing intentions of the parties from the very outset of the transaction.[9] . By way of contrast, rectification relief in Quebec is strictly confined to contracts, as illustrated by the present state of the jurisprudence as herein discussed.

There has been a notable increase in rectification orders emanating from provincial superior courts in common-law Canada, notably to remedy unintended tax results. The floodgates were opened well over a decade ago by the decision in Juliar v Canada (Attorney General),[10] and the high-water mark was reached in the 2012 decision in McPeake v Canada (Attorney General).[11] The significance of

these cases serves not only to comprehend the intervention of the Attorney General of Canada in AES, but also, by way of further contrast with the trend in common-law Canada, to highlight the rather restrained reach of the remedy in Quebec to date.

Origins and history of the cases

In both Services Environnementaux and Riopel, shareholders had engaged in corporate reorganisation and tax-planning transactions which, although factually different, were both intended to achieve tax neutrality. However, their intended objective was not attained due to errors committed by the shareholders' advisors in preparing the contractual documentation for implementation of the intended plan. Among the most egregious of the errors committed in Riopel was that the share transfers and amalgamations were carried out in reverse order, and, in Services Environnementaux, the adjusted cost base of the shares for the purpose of effecting the share transfers on a rollover basis was wrongly calculated so that the transactions could not be tax-neutral, contrary to what had been intended. As a consequence of these errors, the provincial and federal tax authorities issued notices of assessments claiming tax that these taxpayers had not expected to pay. Subsequently, the taxpayers attempted to remedy the documentation by petitioning the Superior Court for rectification of the original documents and, in Services Environnementaux, also for a declaratory judgment to obtain recognition of the agreement they had actually reached by amending the documents to reflect their true intentions. Both tax agencies contested the motions on the basis that there was no provision in Quebec's rules of civil procedure to permit such motions and that the so-called application for rectification was totally foreign to Quebec's law of obligations.

The Superior Court rendered contradictory judgments, granting the motion for rectification in Services Environnementaux and dismissing the motion in Riopel.

In the Services Environnementaux case, the favourable decision rendered by the Superior Court is sketchy in its reasoning, merely relying on what has been described as 'permissive' precedents,[12] without any depth of analysis. What compounds dissatisfaction with the unimpressive reasoning of the Superior Court is the unsubstantiated and loosely articulated declaration that the correction has a retroactive effect. Strictly speaking, 'the remedy is restorative not "retroactive"', aligning as it does the faulty documentation with the underlying intentions of the parties in order to restore the parties to their original bargain.[13]

Slightly more than a year later, the Superior Court reversed itself by rejecting the motion in the Riopel case for rectification of the contract, adopting a restrictive view of the available recourses and powers of the court for correction of a contract, thus dismissing any possible resort under any guise to a remedy of rectification similar to that in the common law. The Superior Court stated that its power to rectify was confined to the narrow ambit of correcting a material lapsus or 'clerical error', and thus dismissed the motion because the error in issue was deemed to be substantial, which rendered the contract null.

The Court of Appeal dismissed the appeal of the ARQ in Services Environnementaux and two months later overturned the lower court's decision in Riopel.

The two Court of Appeal decisions are part of a trilogy of decisions rendered in 2011 that are remarkable for articulating a juridical justification anchored firmly in the law of obligations set out in Book Five of the CCQ as the basis for the rectification of contracts in the civil law of Quebec.[14] . The Court of Appeal established a solid basis for justifying rectification and thereby succeeded not only in shaking off the 'clerical error' straitjacket identified by the lower court in Riopel as circumscribing the court's power to rectify, but also in resisting capitulation to the siren call of the common-law doctrine of rectification.

Although the two cases were heard together by the Supreme Court, they were conducted independently of one another in both the Superior Court and the Court of Appeal.

Trans-systemic approach

It is instructive to consider the dynamics of the debate before the Supreme Court against the backdrop of the Canadian legal landscape. Canada is a bijural country whose constitutional framework can be summed up in the maxim 'one country, two systems'. The co-existence of two legal systems – the common law and the civil law – in Canada has presented, and continues to present, unique challenges for divergence and convergence for judicial determinations, especially at the level of the Supreme Court. The fact that the province of Quebec is a civil-law jurisdiction surrounded by common-law jurisdictions has spawned challenges for its courts and for the Supreme Court.

The difficulties become further compounded at times in a mixed legal culture such as Quebec where the complex matrix of two legal systems exists. This duality of jurisdictional competence is especially striking in Quebec, where private law based on civil-law principles encounters the federal statutory regime largely inspired by the common law. It is not surprising then that the perennial dilemma in the province of Quebec facing both the judiciary, when called upon to adjudicate, and the legislator, when formulating legislation, has revolved around the extent to which common-law concepts are to be allowed to intrude into, or to be persuasive in, the civil law. Both doctrinally and judicially, Quebec civilians have on more than one occasion grappled with reconciling common-law doctrines and institutions with civil-law concepts and principles.

The decisions rendered by the Court of Appeal, as confirmed by the Supreme Court, are exemplary in so far as they unequivocally reject the application of the equitable remedy of rectification in favour of seeking a resolution that could sit comfortably within the basic principles and terminology of the civil law. In so doing, it could be said that the judiciary ultimately succeeded in 'civilianising' the remedy of rectification, in the sense that it is now expressed in the AES decision within a framework of legal thought with which civilians are familiar.

While the decision of the Supreme Court was rendered within the parameters of a conceptual framework that is governed by a juridical regime different to that of the common law, it has fashioned a remedy that is the functional equivalent of the equitable remedy of rectification in the common law. Despite the manifest debt owed to the equitable remedy of rectification, the Supreme Court, supported in its reasoning by that of the Court of Appeal, went beyond parochialism to formulate a solution that is compatible with the realities of today's taxpayers engaging in legitimate transactions. It has succeeded in achieving parallelism without replicating the conceptual framework of the equitable remedy of rectification.

In essence, the reasoning of the Supreme Court displays a trans-systemic sensitivity in an endeavour to establish definitional, structural and functional categories of legal thought that aspire, in turn, to construct a supportive basis for the remedy of rectification in the civil law. Despite the striking similarities of the end result under both systems of law, the legal language and juridical foundations of the remedies remain necessarily different. To the enormous credit of the Court of Appeal and the Supreme Court and their principled decision-making, what has been attained is civilian institutional integrity and just and fair convergence applicable to taxpayers across Canada, so as to produce equal tax benefits to, and obligations for, all Canadian taxpayers, irrespective of the legal system that governs them.

Analysis and decision

The analysis by the Supreme Court and the decision at which it arrived were contextualised exclusively within the framework of the CCQ. They were based upon the fundamental rules of the law of obligations 'which is premised upon a principle of consensualism and in which a fundamental distinction exists between the exchange of consents and the written expression of that exchange'.15 . In support of his analysis, LeBel J referred to the key provisions in the CCQ and the leading doctrinal authorities.16

As stated by the Court of Appeal, 17 and the Supreme Court,18 in the law of obligations as set out in Book Five of the CCQ, an important distinction is maintained between the negotium and the instrumentum, to replicate the language of the Court of Appeal in the cases at bar – that is, between the meeting of the parties' minds and the physical medium recording that meeting of the minds.

A contract under the civil law of Quebec does not require a physical sign or medium or prescribed form unless the legislator has so ordained, as in the case of a marriage contract (article 440 CCQ) or a gratuitous contract, such as a gift, not perfected by immediate delivery and possession (article 1824 CCQ), both of which must be in notarial form. The overriding principle is that the contract resides in the negotium or agreement of wills, meeting of minds or common intentions of the parties.

The Supreme Court considered the question of evidentiary requirements to determine the parties' true intention. The court had to be satisfied that the agreements in question were bona fide contracts in the civil-law sense. The court considered the relationship between what the parties claim to have been

their true intention and their declared ‘papered’ agreement. Given that the testimonial and documentary evidence of the parties’ intentions was adduced without any objections, the requirements of the law of evidence did not come into play in the case at bar. However, LeBel J warned about the possibility of the impact of the rules of evidence on the resolution of substantive issues in rectification cases in the future.

The Supreme Court noted that the dispute between the parties raised both procedural and substantive issues, concluding that the former were of minor significance, but that the dispute was centered on the resolution of substantive issues. With respect to the procedural issues, the amendments made by the parties to the acts in issue were not precluded by the rules of civil procedure: the question was argued in an adversarial process; given that the appeals necessarily concerned the revenue agencies, they were impleaded in accordance with article 5 Code of Civil Procedure (CCP)19 and the fundamental rules of civil procedure; and there was a real dispute about the nature of the parties’ common intention that fell within the competency of the Superior Court. It is crucial to emphasise that the characterisation and resolution of the issues by the Supreme Court did not involve either a substantive restructuring of the parties’ transactions or the making of a judicial contract. Therefore, a motion for rectification was the appropriate procedure, which enabled the court to make declaratory conclusions. In this regard, it is worth highlighting the finding of the Supreme Court that ‘what was often called rectification in the course of these proceedings basically involved recognising the parties’ amendments and finding that they were legitimate and necessary’.20

The pivotal provision of law upon which the Court of Appeal relied in rendering the two decisions was article 1425 CCQ, concerning the primacy of the common intention of the parties in the interpretation of a contract:

Art 1425. The common intention of the parties rather than adherence to the literal meaning of the words shall be sought in interpreting a contract.

The Supreme Court agreed with the Court of Appeal that the determination of the common intention or will of the parties represents a true exercise of interpretation and it was open to the courts to intervene for that purpose under article 1425 CCQ. The discrepancy revealed in the evidence between the common intention of the parties and the expression or declaration of that intention in itself raises an interpretation issue. The interpretation exercise comes down to a basic choice as to which should prevail: the proven common intention or the apparent intention identified in the act. The determination of this question reverts to the root of the obligation.

The Supreme Court, while acknowledging that the imperatives of certainty and stability of transactions and of protection of the rights of third parties dictated a cautious approach when it comes to contradicting or modifying the terms of a private writing,21 held that there were no such obstacles in the case at bar.

Given that the evidence had established that the true agreement of wills was as described by the parties and that there were errors in the writings giving effect to their agreement, the parties were free to amend them, such correction resulting from the actual will of the parties, as sanctioned by article 1439 CCQ:

> *Art 1439. A contract may not be resolved, resiliated, modified or revoked except on grounds recognised by law or by agreement of the parties.*

Hence, the Supreme Court concluded there was no need to resort to a supposed power to correct based on the implicit powers of the Superior Court.22

Although the Supreme Court did not elaborate further on the 'superintending and reforming power of the Superior Court'23 deriving from English and Welsh law, there is an important nuance to be noted. While, strictly speaking, the equitable remedy of rectification may be considered to be a jurisdictional competency known only in the common-law system, there does also exist a discretionary power to do justice in the semblance of equitable relief, which mitigates the strict severity of the rules of law in the civil-law system of Quebec, as in most developed systems of law.

Judiciary's attitude towards the Fisc

The intervention of the Attorney General of Canada on behalf of the CRA in AES merits some scrutiny and comment. The intervention appears to have been motivated by the CRA's displeasure with the expanding scope of the rectification remedy accorded by common-law provincial superior courts in the wake of the Juliar decision.24

LeBel J deftly circumvented the request by the intervener to consider and arrest the expanding exercise of the power of rectification by noting that the two appeals before the Supreme Court governed by Quebec civil law were not appropriate cases in which to opine on the remedy of rectification in the common law.

Of further interest is the carefully worded discussion by LeBel J of the situation of the revenue agencies with respect to their acquired rights in light of the issuance of notices of assessment to the taxpayers in question on the basis of the erroneous acts, which raised a jurisdictional issue. LeBel J observed that 'the interplay of the civil law and tax law limits the scope of this Court's intervention, and of that of the Court of Appeal and the Superior Court'.25 While the nature and legal consequences of transactions with tax implications are determined by reference to the common law or civil law, as the case may be, the court making this determination does not have the authority to rule on the notices of assessment or objections and the ensuing tax consequences. LeBel J deferred the decision regarding the validity and effects of the notices of assessment and the subsequent tax consequences to the appropriate forum for tax appeals established by Parliament.

On the question of whether the tax authorities were entitled to have erroneous declarations continue to apply, the Supreme Court concurred with the principle laid down by the Court of Appeal in both cases that, if a contractual document had not properly implemented the agreement of the parties, then the court could allow the amendment to restore the integrity of the original contract provided that third parties had not relied on the erroneous document, drawing an analogy with the rules on simulation at articles 1451 and 1452 CCQ.26 . However, since that was not the case in the instant circumstances, the tax authorities could not rely on acquired rights to have erroneous documentation continue to apply, unless they had the status of 'special assignees… entitled to collect part of the economic proceeds of the transactions',27 which status LeBel J denied them. AES confirms that the nature and legal consequences of contractual transactions are characterised by reference to the general law, whether civil or common, even though, subsidiarily tax law applies to them.

Reach of AES decision

The AES decision was met with overwhelming enthusiasm by the legal community, especially tax advisors, as enhancing and enlarging the arsenal of tools available to Quebec taxpayers to correct tax transactions producing unintended consequences. It is an important decision not only for establishing a solid juridical basis and coherent justification for rectification but also for broadening the basis for seeking relief in Quebec. It further achieves harmonisation between the civil law and common law in an area of the law, taxation, that is fraught with pitfalls for the taxpayer. It succeeds in attaining for taxpayers, burdened by erroneously documented intentional transactions, results that are similar whether governed by the civil law of Quebec or by the common law, albeit conceptually and terminologically cast in the mould of the legal system of the governing law.

Yet, this enthusiasm must be tempered by adherence to the scope and applicability of the remedy in circumstances envisaged by the Supreme Court. For example, it will not operate in circumstances where the interests of an innocent third party would be prejudiced. It is also crucial to be mindful of the reservations and words of warning enunciated by LeBel J:

Taxpayers should not view this recognition of the primacy of the parties' internal will – or common intention – as an invitation to engage in bold tax planning on the assumption that it will always be possible for them to redo their contracts retroactively should that planning fail. A taxpayer's intention to reduce his or her tax liability would not on its own constitute the object of an obligation within the meaning of article 1373 CCQ, since it would not be sufficiently determinate or determinable. Nor would it even constitute the object of a contract within the meaning of article 1412 CCQ. Absent a more precise and more clearly defined object, no contract would be formed. In such a case, article 1425 could not

be relied on to justify seeking the common intention of the parties in order to give effect to that intention, despite the words of the writings prepared to record it. 28

Legal advisors should take heed that it would be a mistake to extrapolate from the AES decision the existence of a broad-based remedy for the purpose of modifying the terms of documents producing adverse tax consequences in a wide spectrum of circumstances.

In a recent *ex parte* Quebec case,29 , the applicants sought an amendment to a trust deed pursuant to article 1294(2) CCQ, with retroactive effect, in order to avoid the possibility of negative tax consequences arising from new interpretations of tax legislation, given that a clause in the trust instrument conferred a reversionary right in favour of the settlor. The Superior Court seised of the matter in its non-contentious division referred to the AES decision,30 but refused to accede to the application to amend the document a posteriori because to do so would be tantamount to embarking upon the slippery slope of retroactive tax planning.

It is clear, based on the Desourdy case, that the AES remedy will not be granted for retroactive tax planning. It will also not be extended to rectify documents that produce unintended tax consequences, such as in the case of wills or trusts, where specific remedies are available within defined limitations and subject to certain criteria, as, for example, article 714 CCQ for formalistic defects in wills, article 1294 CCQ for the variation and termination of trusts, and articles 223 and following CCP on improbation for notarial documents for material or intentional error.

Conclusion

The AES decision rendered by the Supreme Court confirms the broadening trend for relief when tax planning takes a wrong turn and the outcome is detrimental to the taxpayers' intention because faulty documentation does not correctly reflect the parties' intention or, in other words, when the instrumentum does not reflect the negotium. Within the CCQ, there is now a sound juridical basis enabling taxpayers to seek similar relief as in the common law.

The AES decision ensures more comprehensive fairness for Canadian taxpayers, regardless of the legal system that governs their transaction. The achievement of the Supreme Court in the AES decision was to craft a solution applying coherent methodology in accordance with civilian principles.

The author wishes to thank her colleague, Scott Kerwin of Borden Ladner Gervais LLP, Vancouver, British Columbia, for his comments with respect to the remedy of rectification in common-law Canada.

A Scottish perspective

By Ian Macdonald TEP Head of Private Client at Wright, Johnston & Mackenzie LLP Solicitiors in Glasgow and Edinburgh

The trans-systemic approach in Quebec outlined in Marilyn's article has interesting parallels in Scotland, which can also be described as 'a civil-law jurisdiction surrounded by common-law jurisdictions'. Currently (This article describes the position before the Scottish independence referendum on 18 September 2014) Scotland is part of the UK, which comprises Scotland, England, Wales and Northern Ireland, but Scotland has always had its own distinctive legal system and, except for the period between 1707 and 1999, its own Parliament.

The main influences on the development of Scots law from the Middle Ages were ecclesiastical law, Roman (civil) law and feudal land law. Along with many other areas of law affecting property, succession and obligations, the Scots law of trusts really began to develop early in the 17th century around a simple promise or obligation of the 'trustee' to hold the fund for the beneficiary. Interestingly, by this time Scotland and England as nations had already been united by the Union of the Crowns in 1603, so it was inevitable that English influences would affect the development of Scots law from this early stage.

Scots law was first codified by Viscount Stair around 1680 and the Scots law of trusts has since developed through a combination of statutes and judicial interpretation. The UK Parliament has always legislated separately on trust matters for Scotland and England and Wales (for the sake of simplicity, I will refer hereafter only to England), and property, trusts and succession are now among the matters devolved to the Scottish Parliament (although a large number of worthwhile amendments and additions to Scottish trust law proposed by the Scottish Law Commission since 1999 have not yet borne fruit in the form of Scottish legislation).

The UK Parliament has always had sole responsibility for tax law and this has inevitably brought English common-law influences to bear on the Scots law of trusts. In a few situations, however, UK tax law makes specific provision for Scottish trust and succession concepts that have no theoretical or practical equivalent in England, rather than trying to make Scotland adopt the common-law position. Scots law has thus retained its distinctive view that the trustee has a right of ownership of the trust property and the beneficiaries' rights are personal against the trustee. Scots law does not confer on the beneficiary any equitable rights of ownership in the trust fund. The civil-law principles as developed by the courts have been expanded by legislation over the years but the absence of a role for equity means that applications to the Scottish courts by trustees seeking directions or by beneficiaries seeking review of trustees' discretionary powers are relatively rare.

Many of the principles that have developed in England through the court of equity are covered by statute in Scotland, one example particularly relevant to this article being rectification of trusts and other documents that fail to give effect to the agreed intentions of the parties (Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, s8 (the title of the Act is an indication in itself of the approach that the UK legislators have taken to updating Scots law). See also 'Rectifying trusts – a

Scottish perspective' by Ian Macdonald and John Grant, Trust Quarterly Review, volume 10, issue 2, 2012, page 27).

In recent years, trust practitioners have probably had the greatest influence on the Scottish civil law of trusts and the English common law, and the flow of ideas has definitely been two-way. Those drafting and administering trusts in both traditions have sought to overcome the limitations of their domestic trust law and, in doing so, have often drawn on the positive features of the other system while avoiding its difficulties.

On a conceptual level, the theory of the Scots law of trusts is very different from the common law and its history is quite distinct, but the mutual influences over the years have brought Scottish and English trusts in practice to a similar destination, although by different routes.

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1. *Lord Steyn, 'The Challenge of Comparative Law', (2006) 8 European Journal of Law Reform 3, 7*
2. *2013 SCC 65*
3. *LQ 1991, c64*
4. *Quebec (Sous-ministre du Revenu) v Services Environnementaux AES Inc, 2009 QCCS 790 (Can LII) (Services Environnementaux) and Riopel v Canada (Agence du Revenu), 2010 QCCS 1576 (Can LII) (Riopel)*
5. *Supra, note 2, paras 4–14 for details of the evidence concerning the transactions that gave rise to the disputes between the tax authorities and the taxpayers; see also Gideon Ng, 'Rectification of Tax Transactions in Quebec: Quebec (Agence du Revenu) v Services Environnementaux,' 33 (2014) Estates, Trusts & Pensions Journal 223*
6. *John McGhee, 31st ed, (Sweet & Maxwell, 2005), 14-02; see generally on rectification in Canada: Catherine Brown, 'Re-doing Trusts and Gifts for Tax Purposes – The Equitable Rs: Rectification, Recission and Resulting Trusts', 32 (2013) Estates, Trusts & Pensions Journal 123; Catherine Brown and Arthur J Cockfield, 'Rectification of Tax Mistakes Versus Retroactive Tax Laws: Reconciling Competing Visions of the Rule of Law', 61:3 (2013) Canadian Tax Journal 563; and Lionel Smith, 'Can I Change My Mind? Undoing Trustee Decisions' 27 (2008) Estates, Trusts & Pensions Journal 284*
7. *Wasauksing First Nation v Wasausink Lands Inc, [2004] OJ No.810 (QL) (CA)*
8. *Denham Ford Sales Ltd v Canada Life Assurance Co, 2006 ABQB 649*
9. *Smith, supra, note 6, 287*
10. *(2000), 50 OR (3rd) 728, 136 OAC 301; leave to appeal to SCC refused, 153 OAC 195*
11. *2012 DTC 5042, 2012 BCSC 132*
12. *Brochu c Placements Donald Brochu Inc, 2007 QCCS 6500 and Imperial Tobacco Canada Ltée c Quebec (Sous-ministre du Revenu), 2006 QCCQ 8273; see critical commentary by Chantal Perreault and Paul Martel, 'Développements récents en droits des affaires 2012', Service de la formation continue du Barreau du Quebec, (Éditions Yvon Blais, 2012), 1, 47-48, EYB2012 DEV 1867*
13. *Brown, 'Re-Doing Trusts and Gifts for Tax Purposes', supra, note 6, 127*
14. *The third decision is Ihag-Holding AG v Corporation Intrawest, 2011 QCCA 1986*

15. *Supra, note 2, para 52*
16. *Ibid, para 30*
17. *Supra, note 4, para 17 in both cases*
18. *Supra, note 2, para 32*
19. *LRQ, c C-25*
20. *Supra, note 2, para 51, in fine*
21. *Supra, note 2, para 49*
22. *Supra, note 2, para 50*
23. *Article 33 CCP*
24. *Supra, note 10*
25. *Supra, note 2, para 42*
26. *Supra, note 4, para 19 in both cases*
27. *Supra, note 2, para 45*
28. *Supra, note 2, para 54*
29. *Desourdy Re, 2014 CarswellQue 123, EYB 2013-232066, 2013 QCCS 147*
30. *Citing paragraphs 52, 53 and 54, supra, note 2*

https://journal.step.org/tqr-june-2014/remedy-rectification-quebec-civil-law