

# Book covers all the ins and outs of construction rights in Quebec

Distinct building rules often baffle outsiders, but our system simpler than some others

Montreal lawyer David H. Kauffman has finally wrestled down the personal project that has consumed his every evening, weekend and holiday for the past five years.

Last week, Kauffman, a 35-year construction law practitioner with De Grandpré Chait LLP in Montreal, at last witnessed the launch of a 728-page book he wrote on the legal ins and outs of the Quebec construction industry.

The book, produced with the collaboration of Guy Gilain, the De Grandpré Chait construction litigator who acted as a "sounding board" for the project, is called *The Construction Hypothec* and may not be considered popular reading material.

But it is the first solo work published in English on the Quebec construction industry since 1932 and the first work of all to explain in depth how legal rights in the Quebec building business



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are different from other jurisdictions in North America following reforms made to the Quebec Civil Code in 1994.

For Kauffman, part of the challenge was demystifying and making simple the system of laws underpinning the Quebec construction industry that had sometimes baffled outsiders from other parts of Canada, the United States and Europe.

"I think I have deoiled a lot of the mystery surrounding the construction industry and Quebec and shown that it is a fairly easy place in which to do busi-

ness," Kauffman said in an interview yesterday.

"People from the rest of Canada who want to become involved in construction projects in Quebec have always been leery of doing so, and that comes back to the expression 'fear of the unknown,'" Kauffman said.

"Quebec, from a development perspective, is not that much different from the other Canadian provinces, but there is this perception that somehow Quebec is very different. It is not only the French language; it is also the different terminology that we use when it comes to many of the matters."

In fact, the way Kauffman explained it, the legal system governing construction in Quebec is actually simpler in some ways than in other parts of Canada and the United States, where there are other forms of construction liens.

"Other provinces and states in North America have more complicated systems, with statutes telling the parties how they have to conduct themselves, how they have to hold back certain monies to guarantee payment to contrac-

tors (either the so-called hold-back system or a fictitious trust vehicle)," Kauffman said. But those systems simply "impose an additional level of technicality and red tape on top of the lien system."

In Quebec, the construction hypothec alone provides protection for contractors and other players, such as architects and engineers, involved in a building project.

A construction creditor can activate the construction hypothec right, which is like a lien and exists in theory as soon as a contract is signed, at any point there is a problem that would lead to them not being paid simply by registering it.

Also, unlike elsewhere, the Quebec system provides what is, in essence, a special financial guarantee for construction participants through the hypothec system by ranking them ahead of other creditors, such as financial institutions, in the event of problems with payment or insolvency proceedings.

The book also details other Quebec specifics: the obligatory licensing of all contractors

through the Régie du bâtiment, or Quebec building office, and the history of the Quebec labour system that requires all construction workers to belong to one of five unions, which also handle training certification. With the exception of at least 25 U.S. states, elsewhere contractors do not have to be licensed and construction workers do not have to have training certification.

"I did not realize how much effort would be required, just putting everything together," said Kauffman, who also advises large corporations for special projects and reports on Quebec for *Construction Law Reports*, a review of legal developments. "It is a very thorough book. There are over 1,000 footnotes and each footnote contains reams of jurisprudence."

Meanwhile, a French-language edition of the book is in the works.

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André J. Payeur, the busy class-action defence lawyer at McCarthy Tétrault LLP and a past chair of the firm's Montreal

litigation team, has become a Fellow of the American College of Trial Lawyers.

The elite fellowship is extended by invitation only to lawyers who must have a minimum of 15 years of trial experience and a mastery of the art of advocacy, in addition to a high level of professionalism, civility and collegiality.

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Two lawyers from the Quebec City office of Langlois Kronström Desjardins LLP have defected to BCF LLP. They include Jean Dionne, a corporate finance specialist with more than 20 years of experience, particularly in venture capital for small and medium-size companies, and Richard Cantin, a business lawyer with 12 years of experience who is also active in venture and other types of financings along with acquisitions, reorganizations and technology transfers.

If you have any information to share about what is happening in the legal community, send it to [kleger@sympatico.ca](mailto:kleger@sympatico.ca)