Osgoode Hall Law School of York University
Osgoode Digital Commons

Articles & Book Chapters | Faculty Scholarship

1974

Book Review: La nouvelle profession d'avocat, by Emmanuel Blanc

Sharon A. Williams
Osgoode Hall Law School of York University

Source Publication:
Canadian Bar Review. Volume 52, Number 2 (1974), p. 338-344.

Follow this and additional works at: https://digitalcommons.osgoode.yorku.ca/scholarly_works

This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License.

Recommended Citation
Williams, Sharon A. "Book Review: La nouvelle profession d'avocat, by Emmanuel Blanc." *Canadian Bar Review* 52.2 (1974): 338-344.

This Book Review is brought to you for free and open access by the Faculty Scholarship at Osgoode Digital Commons. It has been accepted for inclusion in Articles & Book Chapters by an authorized administrator of Osgoode Digital Commons.

La nouvelle profession d'avocat. By EMMANUEL BLANC. Paris: Librairie du Journal des Notaires et des Avocats. 1972. Pp. 463. (No price given)

Until 1971, the legal profession in France was comprised of several classes of lawyers whose functions were complementary and in many cases overlapped. The *avocats* did to a large extent the work of the barrister and solicitor in England, but were limited to representation of the client in court. The *avoués* prepared the procedural documents, in fact doing part of the English solicitor's work. They also had the exclusive right to prepare and lodge pleadings. *Notaires* had, and still do have as they are unaffected by the reform, the monopoly of preparing wills, property deeds, mortgages, leases and formal company documents. Most of the everyday legal work went to the *conseils juridiques,* who were not required to have a formal legal training or qualifications, and yet did most of the advising and administration done by solicitors in England. In some of the special commercial courts *agréés* pleaded, and in the *Cour de cassation* and *Conseil d'Etat,* France's high courts, certain *avocats* had an exclusive right of audience.

The law of December 31st, 1971,[1] "*portant réforme de certaines professions judiciaires et juridiques*" brought about a fundamental reform. It is, to quote the author of the present com-

---

[8] P. 142.

* L. C. Green, University Professor, University of Alberta, Edmonton.

[1] Loi n° 71-1130, du 31 décembre 1971, 5 janvier 1972, Journal Officiel de la République Française, p. 131, and Gazette du Palais (1971), (2e sem.), p. 236.

mentary, "*la plus extraordinaire équipée législative de ces dernières années*". This law and subsequent decrees have provoked much discussion among the many professional people upon whom it is to have a great effect, as well as the millions of citizens and potential users of the law in France.

In the parliamentary debate on the French legal profession, the primary intention was to bring the *conseils juridiques* into the re-organization. However, it was realized that this was impossible as there was no exact estimate of how many were practising in France (figures ranged from five thousand to fifteen thousand). Secondly, since there was no necessity for them to have a formal legal training, the diversity in educational standards was too difficult to rationalize. There was also the question of respect for acquired rights.

On this basis, the law of December 31st, 1971, which came into effect on September 16th, 1972, was not a major reform covering all aspects of the profession, but rather a mini-reform creating and defining the new profession of *avocat*.[2] The title of *avocat* is conferred on all who practice in the fused profession. This new profession is the result of the unification of *avocats, avoués,* and *agréés* in their practice before the lower and civil courts. Thus, their separate functions have been abolished. Dr. Blanc says that, "*Il s'agit donc d'une création et non d'une adaptation*".[3] This is undoubtedly correct as it is not the *avocat* of the old system who is absorbing the two other professions, neither is it the other two who are disappearing to the profit of the *avocat*. Rather it is the three professions who are being replaced by one which has been given the title of *avocat*. The *avocat* is now the only lawyer in the lower courts. *Avoués* attached to the appeal courts continue without being fused. The *avoués* brought into the profession have lost their "*charge*" and are to be indemnified by a levy collected by litigants, compensation from which is to be distributed by a fund set up for the purpose. Since unification, the rules of entrance into the profession have been assimilated. A candidate for advocacy must have a *licence* or *doctorat en droit*. He must have *a certificat d'aptitude à la profession d'avocat*[4] and enter into a *stage* for a minimum period of three years and maximum of five years.[5]

Dr. Blanc has collected and analysed firstly, the basic law, and secondly, the subsequent decrees affecting the new profession of *avocat*. He has, however, deliberately omitted to discuss the

[2] P. 13.
[3] P. 27.
[4] *Supra*, footnote 1, art. 12.
[5] P. 185.

new role of the *conseil juridique* in the reformed system, and has thus not included title II of the December law entitled, *"Réglementation de l'usage du titre de conseil juridique"*[6] on the ground that it merits a separate study. This means that one of the main reasons for the reform is unexplained except for what is found in the book's historical introduction. The re-organization of the profession of the *conseils juridiques* is as the author admits, more spectacular that the reformation of the *avocats, avoués,* and *agréés.* The reasons for the enactment of the law were stated in the *avant-projet* as "profound, economic, social and legal changes".[7] Regulations were set out for the *conseils juridiques* in order to protect the layman from unqualified legal assistance,[8] as well as ending competition with the new *avocat.* Thus, it can be said that the law of 1971, broadly reformed the legal profession, resulting in the restructuring of the profession of *avocat,* and the regulation of the profession of the *conseil juridique* in France.

The new law contains provisions which apply to foreign lawyers currently practising or proposing to practise in France after the 15th of September 1972.[9] In this context, the author fails to deal with the whole question of the changed status of the foreign lawyer, which is of the utmost importance to practitioners in other countries. For this reason, it will be useful to briefly look at the position of the foreign lawyer in France.

The general rule is contained in article 55 of the new law which states that foreign lawyers may only practise in France if they deal primarily with foreign and international law, and if they are registered on the list of *conseils juridiques.* Article 54 provides the general conditions for practice as a *conseil juridique.* Persons other than those in regulated professions (for example, *avocats*) who give professional advice, may no longer use the title *conseil juridique,* unless they are registered on the roll of the *Procureur de la République,* and have satisfied certain requirements: the person must hold a doctorate or *licence,* or other certificates and diplomas generally recognized as the equivalent for exercising the type of legal function under consideration; he must practise as a full time professional, and must have the good moral character and fitness required of *avocats.* However, the general rules found in article 55 do not apply to nationals of Common Market countries or of another country which grants French nationals the right to act as legal advisors in such other

---

[6] *Supra,* footnote 1, arts 54-66.

[7] Recueil Dalloz Sirey 1971, 18ème cahier-supplément.

[8] *Ibid.,* Titre III, at v-vi.

[9] *Supra,* footnote 1, art. 55. See also décret 72-670 du 13 juillet 1972, Gazette du Palais (2e sem.), art. 102(1): Dispositions particulières aux conseils juridiques et groupements de conseils juridiques étrangers.

country, in such areas as the individuals desire to carry out in France; nor to foreign lawyers of any nationality if they have already practised in France prior to July 1971.[10] There is also exemption from the conditions of article 55, for foreign partnerships of any nationality practising in France prior to July 1st, 1971 if they act only as legal advisors, and if all partners practising in France are registered on the list and have power to represent the partnership.[11]

However, there is the important proviso that if the states of which the foreign members of the partnership are nationals have not, within five years from the date of publication of this Act[12] granted reciprocity to French lawyers then the individuals and their firms will be subject to the restrictions mentioned above by a decree of the *Conseil des Ministres*—that is restricted principally to foreign and international law.[13] A firm cannot register in a name other than under which it practised in France on September 1972, and then only on condition that it was practising in France prior to the 1st of July 1971. However, it is possible for such a firm to register as a *société civile professionelle,* which is a company with a separate legal entity under French law, having a share capital divided into "parts" but with unlimited liability of its members.

The firm must bear the name of one or more than one of its members, registered as *conseils juridiques*. Partners of the firm resident outside of France would not be able to be members of the *société civile professionnelle* because, as non-residents they could not register as *conseils juridiques*. Such a firm wishing to register must supply documentary proof of its activities in France prior to July 1973, for example the notice of assessment for the *patente* (business) tax;[14] a copy of the partnership agreement and of a certificate issued by the relevant foreign consulate showing the members and the objects of the partnership;[15] proof that each of the partners has the right to make contracts on behalf of the firm and otherwise act on its behalf;[16] a certificate from an insurance company to the effect that members are covered by a professional liability insurance policy of at least 500,000 francs; a certificate from a bank, insurance company or similar institution in France, confirming the guarantee that any misappropriation of money,

[10] *Supra,* footnote 1, art. 64.
[11] *Ibid.*
[12] Before January 1977.
[13] Wayne M. White, The Reform of the French Legal Profession: A Comment on the Changed Status of Foreign Lawyers (1972), III Col. J. of Trans. L. 435.
[14] *Supra,* footnote 9, Section III du décret 72-670, art. 102(1).
[15] *Ibid.,* art. 102(2).
[16] *Ibid.,* art. 102(3), (4), (5).

negotiable instruments, securities and other valuables held on behalf of the clients will be made good. The liability of the guarantor shall have a ceiling which should be at least equal to the maximum amount of monies held by the firm at any time during the previous twelve months. This particular certificate can be supplied within a period of three months from the date of application to register on the list.[17] Also a complete list of the partners of the firm indicating their full names, addresses and positions in the firm and the share of profits of partners practising in France,[18] and an application for registration on the list by each of the partners of the firm practising in France are required.[19]

Each individual application must include the following: proof of date and place of birth, names of parents and nationality;[20] proof of the applicant's admission to practise law in his own country; documents evidencing paid active professional legal practice[21] for a period of at least three years in France without having been interrupted for more than three months (there is a proviso whereby up to one half of the three-year period may have been spent in legal practice outside France); indication that the insurance and guarantee of the firm will apply to and adequately cover the partner or employed lawyer;[22] a *curriculum vitae* in which is set forth all prior professional activities of the candidate indicating dates and places of the service of these activities and mentioning any penal, disciplinary, administrative or fiscal penalties to which the candidate was subject to.[23]

It is up to the *Procureur de la République* to verify that the individual applicant and the firm possess the requisite qualifications and to simultaneously notify both the applicant and firm of his decision. This decision will also state whether the firm is considered to be exempt from the limitations of article 55 of the 1971 law.[24]

Any lawyer who is not registered on the roll, may not use the title of *conseil juridique* or any other title that may be confused with it, but there is no objection to a foreign lawyer describing himself by his own national title, such as solicitor, barrister, or *Rechtsanwalt*.[25] No-one who is registered as a *conseil juridique* may be a partner of, or may be employed by someone who is not so registered.

---

[17] R. Derek Wise, The Reform of the French Legal Profession, [1972] L. Gaz. 1173.

[18] *Supra*, footnote 9, art. 97(4), du décret 72-670.

[19] *Ibid.*, art. 22(1).

[20] *Ibid.*, art. 22(2).

[21] *Ibid.*, art. 22(3).

[22] *Ibid.*, art. 22(5).

[23] *Ibid.*, art. 22(6).

[24] *Ibid.*, art. 23.

[25] *Supra*, footnote 1, art. 54.

The *conseil juridique,* including a foreign lawyer who is registered on the list, is also governed by various miscellaneous provisions. He must keep all clients' monies in one separate bank account. He must give a receipt for all monies including fees, securities, valuables, received from or on behalf of a client. He must not deal with a case on a contingency basis. He must not be engaged in any occupation of a commercial nature.[26] "Commercial" is interpreted in a wide sense in French law and would probably cover certain occupations which may be considered as a profession in England. There is a tendency to consider as commercial anything which is not part of a "Liberal" profession. Article 48 of the main decree[27] specifically excludes a *conseil juridique* acting as an estate agent or insurance broker. He may continue as a director of a commercial company if he was already a director of that company prior to the 1st of July 1971. For all directorships, he must ask for an authorization from the *Procureur de la République* unless he has been practising as a *conseil juridique* for at least seven years. This period includes practice prior to registration on the list.[28]

The new law does not make it necessary for an English barrister or solicitor in France to register as a *conseil juridique,* irrespective of the United Kingdom joining the European Economic Community, as it is regarded as giving reciprocal rights to French lawyers.[29] However, it has been argued that non-registration might make a foreign lawyer liable to the French "value added tax" of twenty-three per cent on the greater part of his fees. Furthermore, it is doubtful whether a firm name can be used by foreign lawyers who do not register.[30]

The *conseils juridiques* must be registered on a roll kept by the *Procureur de la République,* who will exercise disciplinary powers over them. Title II of the law thus, ensures the honesty and competence of such persons. It regulates their out of court practice whereas before they were subject to no professional regulation.[31] Those who have practised for at least five years are admitted to the roll without legal training; those with three years practice qualify if they have a prescribed minimal degree. Those who have practised for less than three years require a *licence* or *doctorat en droit,* or an equivalent foreign diploma. Their activities are restricted to advising and drafting documents.

For the future, it is intended that a Commission be set up to

[26] *Ibid.,* art. 56.
[27] *Supra,* footnote 5.
[28] *Ibid.,* art. 49.
[29] *Supra,* footnote 1, art. 35.
[30] *Supra,* footnote 16.
[31] *Supra,* footnote 1, arts 54-57.

report to the Ministry of Justice prior to September 16th, 1977 as to the fusion of *avocats* and *conseils juridiques.* At least by that time the formal legal educational requirements of the *conseils juridiques* will be regulated.

In the second half of the book, Dr. Blanc deals with the decrees relative to the organization and administration of the bar, the admission to the *stage,* the constitution and function of the *sociétés civiles d'avocats* and other general regulations of concern to the *avocat* in the exercise of his profession.[32]

The profession of *avocat* should benefit the client by reason of promoting greater efficiency, in that the duplication of work with two types of lawyer will be eliminated. It is hoped that that procedure will be faster and that costs will decrease. The fusion should also ensure that responsibility is taken by the *avocat* for the case. This will remove the disadvantage of diffused responsibility, when litigation is shared.

La nouvelle profession d'avocat is a helpful guide to the new reform, as it collects into one volume the basic law and decrees. Dr. Blanc adequately explains the implications in his article by article analysis, and in the introduction to both parts of the book gives an ample historical background. The author realizes that the absence of any material on the subject of the *conseil juridique* is to leave a wide lacuna in his work, but it appears that a second volume on the *Statut du conseil juridique* is to be published in the near future. This will produce in two volumes a comprehensive guide to the post 1972 legal profession system in France, and should prove of interest to Canadian lawyers who seek to keep abreast of current trends in other jurisdictions.

SHARON A. WILLIAMS*

* * *

---

* Sharon A. Williams, LL.B. (Exon.), Osgoode Hall Law School, York University, Toronto.