

And the Seed of a Bequest thus Grew: The Wainwright collection of the Nahum Gelber Law Library at McGill University.

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Abstract:

This presentation will focus on one special collection at the Nahum Gelber Law Library at McGill University, in Montreal, Canada: the Wainwright collection. This outstanding collection of French Civil Law material, primarily the work of early French jurists on general Civil Law before the Codification of 1804, has its origin in the personal library of the French legal historian François Olivier-Martin and consisted in 850 titles.

This collection was acquired due to the keen interest of Me. Arnold Wainwright, Q.C, to promote the scholarly study of the Civil Law of Quebec at the Faculty of Law at McGill University. Through his generosity, the Nahum Gelber Law Library's Wainwright Collection was first established in 1958 with the acquisition of several hundred volumes dedicated to the history of French law. Me. Wainwright bequeathed the residue of his estate to McGill University's Law Faculty to further study of civil law.

This paper will present the steps taken since the early 1970s that enabled an innovative partnership between the Faculty of Law and the Nahum Gelber Law Library, with the establishment of the Wainwright Committee. This Committee is composed of the Dean, the Wainwright Professor of Civil Law, the Wainwright Librarian, and at least one other professor.

The Wainwright fund legacy allows for a strong collaboration between the Library and the Law Faculty and it currently sustains the Wainwright Lectures, Wainwright Fellowships, the Wainwright Legal Essay Competition and the Wainwright Scholarships awarded to law students. An annual grant from the Wainwright Fund allows for the development of the private and comparative law collections at the Law Library on a scale unmatched by any other law library in Canada.

Keywords: Special collections; Law Libraries; Civil Law; Wainwright Collection

This story has its beginning in France with the French Legal Historian François Olivier-Martin. He was a French professor of Law, a long time co-editor of the *Nouvelle revue historique de droit français et droit étranger*, a member of the administrative board of la *Société d'histoire ecclésiastique de la France*, a president of the Historical Society of Law, and a member of

numerous scholarly societies¹. For his achievements, Olivier-Martin was awarded multiple honorary degrees. Many of the books that he collected were on the subject of the customary law of France, the great ordinances and more particularly the Custom of Paris.

His interest was certainly drawn to Quebec, a distinct society in Canada due to its unique history, language, culture and the legal system that has its origins as a French colony between 1534 and 1763². In 1664, the Custom of Paris (*Coutume de Paris*) became the official custom in the colony, until the Civil Code of Lower Canada came into effect in 1866³ and the Code of Civil Procedure followed it in 1867. The codes symbolically confirmed that Quebec belonged to a civil law tradition with roots in the Custom of Paris, and the province is unique in Canadian history in entering into Canadian Confederation with a codified private law and a system of civil law statutes⁴.

After the death of Olivier-Martin in 1952, his widow was searching for a new home for the approximately 1200 volumes dealing primarily with the history and sources of French private law that was considered at that time to be one of the most comprehensive private law libraries in France.

Our tale continues now across the Atlantic, in Montreal, Quebec, where Arnold Wainwright, Q.C. a McGill University Law graduate BA 1899, BCL 1902, taught Civil Law for a quarter century, after which he was named professor emeritus. He was awarded an honorary degree of Doctor of Civil Law by McGill in 1963. Wainwright was also a member of the Quebec Bar and a prominent Montreal practitioner.

Jean-Gabriel Castel, a Canadian legal scholar and a former member of the French Resistance, who was made *Chevalier de la Légion d'honneur* and awarded *l'Ordre national du Mérite* for his services during the Second World War, was also a professor at the McGill Law Faculty at the time and with the funds provided by Arnold Wainwright, negotiated the purchase of Olivier-Martin's library⁵.

The Olivier-Martin French book collection was acquired by Me. Arnold Wainwright, due to his keen interest to promote the scholarly study of the Civil Law of Quebec at the Law Faculty at McGill University. Mr. Wainwright was quoted as saying that "he was fascinated by our [Quebec] civil law" and that it was his hope that the collection would encourage graduate and undergraduate research into the Quebec Civil Code⁶.

The books were shipped from Paris to Le Havre and then to Montreal in six crates aboard the S.S. Montreal. Upon their arrival, they were sorted and shelved in a special room. In February 1958 the formal presentation of the Library of Francois Olivier-Martin was made to the McGill Law Faculty by the donor, Arnold Wainwright. William Campbell James Meredith, Dean of McGill Faculty of Law told those assembled at the ceremony that the collection "will enable

¹ Kochkina, S. (2016). Listening to the dead with our eyes: François Olivier-Martin's library, a mirror image of a legal historian. *Library & Information History*, 32(3), p. 204.

² Justice Quebec. "La justice sous le Régime français (2017), online:

<https://www.justice.gouv.qc.ca/ministere/historique/la-justice-sous-le-regime-francais/les-structures-judiciaires/>

³ An Act respecting the Civil Code of Lower Canada, S Prov Can 1865, c 41

⁴ Dickinson, J. A. (1996). New France: Law, Courts, and the Coutume de Paris 1608-1760, *Manitoba Law Journal*, 23, p. 32.

⁵ Kochkina, S. (2016), p. 204.

⁶ Renshawe, M. L. and J. E. C. Brierley (1988). Sources of Civil Law: The Wainwright Collection. *Fontanus*, 1, 77. Online: <https://www.mcgill.ca/wainwright/fr/library/renshawe>

Quebec lawyers, students, historians and others to probe the sources from which our civil law springs."⁷

The Nahum Gelber Law Library presently houses the Wainwright Collection, aptly described to then Dean Nicolas Kasirer by a visiting Parisian law professor as "*un des grands trésors du patrimoine national français hors de l'Hexagone, au même titre que les impressionistes au Met.*"⁸

Upon his death in 1967, Arnold Wainwright bequeathed the residue of his estate to McGill University for the benefit of the Faculty of Law, to promote the scholarly study of the Civil Law of Quebec. The Fund currently sustains the Wainwright Lectures Series, the Wainwright Fellowships, the Wainwright Professorship of Civil Law and research in civil law by faculty members, as well as the Wainwright Legal Essay Competition and the Wainwright Scholarships for law students.

The Wainwright Fund also allowed for an innovative partnership between the Faculty of Law and the Nahum Gelber Law Library of McGill University, with the Wainwright committee's intervention. This partnership permits the constant expansion of McGill's civil law collection, which as a result has attained an enviable reputation beyond our borders and as attracted many scholars.

The Law Library collection and the McGill University, Faculty of Law Integrated Curriculum

The incoming class in 1968 saw a complete change in the curriculum with the newly revamped National Programme of undergraduate study leading to the Bachelor of Laws (LL.B.), alongside the traditional Bachelor of Civil Law (B.C.L.) allowing undergraduates to develop an appreciation for both civil and common law traditions while working in a bilingual environment⁹. This National Programme was offered until 1999, with the growth of a bijural or transsystemic legal education. The outcome was the new McGill Program, a transsystemic, bilingual programme.

In summary, McGill's former "National Programme" enabled students to take a three-year degree in either civil or common law and then at their option to acquire the "other" degree after a further year of study. The new, integrated "McGill Programme" exposes all students to courses that integrate civil and common law, encompassing both public and private law themes, domestic and international law, in Canada's two official languages. Upon graduation, students receive two degrees, a B.C.L. and an LL.B.¹⁰

One of the priorities in the transition to a transsystemic legal education was the development of a library collection for this new program. Working in unison, the Law Faculty and the McGill Library decided on hiring a librarian with a degree in Civil Law and a Masters in Library Science as a joint appointment. The Wainwright Committee expectation was that a correlative part of this librarian's time would be devoted to the development of the European Civil Law

⁷ Ibid

⁸ Kasirer, N. (2007). Presentation de la Conference Wainwright 2006. *McGill Law Journal*, 52(2), p. 209

⁹ Brierley, J. E. C. (1983). Developments in Legal Education at McGill, 1970-1980. *Dalhousie Law Journal*, 7(2), p. 365.

¹⁰ Arthurs, H. (2005). Madly off in One Direction: McGill's New Integrated, Polyjural, Transsystemic Law Programme. *McGill Law Journal*, 50, p. 709.

Collection as well as undertaking research, teaching and provide information about legal scholarship in Europe.¹¹

With the contribution of the Wainwright Trust, the new position was given the title of Wainwright Librarian of Civil Law.¹² Mtre Daniel Boyer was hired for the position in 1998. At present, Mtre Boyer is Head Librarian of the Nahum Gelber Law Library and the Wainwright Librarian.

With this, a new member was added to the Wainwright Committee. The Wainwright Civil Law Librarian became an ex officio participant in the administration of the Fund, an initiative of the Dean of Law which was welcome by the Committee. The benefits flowing from creating a joint library-faculty librarian position began to be felt, notably in the improved communication of needs and expectations on the part of the Faculty. The criteria for Wainwright library acquisitions were also revised, in particular to widen the geographical focus for acquisitions.¹³ Since 2009, Mtre Boyer chairs the Wainwright Committee.

The Law Library collection policy needed to be modified to respond to the needs of a transsystemic teaching and to support the new curriculum. The collection had to move from a strong collection on Common Law and Quebec Civil law to include European legal materials. The effort was placed in collecting books from civil law jurisdictions like France, Belgium, Switzerland, Germany, Italy, Mexico, Latin America, Spain, Scotland, Netherlands and Austria. These works were in different languages besides English and French, such as German, Italian and Spanish.¹⁴ “The acquisitions were made possible with the assistance of the Faculty of Law through the Wainwright Trust, which subsidized the acquisition of civil law books published in jurisdictions outside of Quebec that cannot be acquired via the base budget”.¹⁵

In the early 1990’s, the Wainwright Committee also commissioned a study of the physical condition of the Wainwright Collection by a librarian specializing in restoration. The results of the study were discouraging. The Wainwright Collection has suffered severe deterioration and was in need of major expenditures for purposes of stabilisation, restoration and environmental improvement. A generous budget was allocated to stabilize and restore the most badly damaged volumes.

In 1998 the new Nahum Gelber Law Library opened its state-of-the-art facility adjacent to the Law Faculty. The Peter M. Laing Special Collections Room on the 2nd floor of the Library now houses the Wainwright collection in an environmentally controlled special room.

Among the tasks of the Wainwright Librarian is to oversee the acquisition of books on private and comparative law for the McGill University Law Library. An annual amount is put at the disposal of the law library which then proceeds to the selection and purchasing of monographs according to specific criteria established in collaboration with the Wainwright committee and librarian. A detailed list of these monographs acquisitions is compiled and distributed yearly and it is much anticipated by scholars around the world. These acquisitions have allowed the

¹¹ The Wainwright Fund Annual Report 1996-1997. Online: <https://www.mcgill.ca/wainwright/history/reports>

¹² Côté, M. (2013). *Building a Transsystemic Law Library Collection*. In: Holder, S. Library Collection Development for Professional Programs: Trends and Best Practices. Hershey, PA: Information Science Reference, p. 331.

¹³ The Wainwright Fund Annual Report 1999-2000. Online: <https://www.mcgill.ca/wainwright/history/reports>

¹⁴ Côté, M. (2013), p. 333.

¹⁵ Boyer, D. (2000). Presentation. *McGill Law Journal*, 46(1), 5

library's collection to move beyond the classic vision of civil law, centred on France, in order to reflect the global influence of civil law across continents, its historic evolution, as well as its linguistic diversity.¹⁶

The Wainwright Collection today consists of over 3000 volumes, (approximately 1700 titles). The generosity of Arnold Wainwright, continued through the Wainwright Trust, has enabled the Faculty of Law to purchase in the antiquarian book market many additional titles of interest to add to the original bequest of 1958.

Each year, the revenue of the Wainwright Memorial Fund is administered by the Wainwright Fund Committee of the Faculty of Law composed of the Dean, the Wainwright Professor of Civil Law, the Wainwright Librarian, and at least one other professor. Administration of the Fund is in conformity with the conditions set out in the Will of the late Arnold Wainwright, which directed that revenues be distributed in the form of scholarships and prizes as well as grants to favour teaching and research in Civil Law.

Wainwright Lectures Series

In 1973 McGill University inaugurated the Wainwright Lecture Series to honour the late Arnold Wainwright, Q.C. These Lectures have become a McGill tradition and a great way of cooperation were a very specialized collection supports research focused into civil law. The Lectures are very often published in the McGill Law Journal by professors of law from Quebec, elsewhere in Canada and Europe, and by learned practitioners and members of the judiciary. "The Wainwright Lectures are an important part of the intellectual life of this faculty and have contributed substantially to the flourishing civil law tradition in Quebec."¹⁷

Wainwright Legal Essay Competition.

In 1975, a legal competition entitled the "Wainwright Memorial Legal Essay Competition" was created to honour the memory of the late Arnold Wainwright, Q.C. and to promote, through the publication of research, the evolution and influence of the Civil Law particularly in Canada.¹⁸

The prize is awarded for the best written contribution in Civil Law by an undergraduate law student, whether the contribution be an essay or other paper and whether written as an elective or as part of a course requirement, or voluntarily. It is awarded only if a high standard is achieved. This prize is intended to support student writing in the Faculty and to encourage a student having written an outstanding essay to revise such essay for publication.

This initiative is a major motivation for students to familiarize themselves with the Wainwright collection. Taking a look at some of the titles of the winner's essays along the years, one can appreciate the immense richness of this collection for students doing research into Civil Law.¹⁹

¹⁶ The Wainwright Fund. Contributions to the Library. Online: <https://mcgill.ca/wainwright/library>

¹⁷ Kasirer, N. (2007), p. 209

¹⁸ The Wainwright Fund Annual Reports 1971-1975. Online: <https://www.mcgill.ca/wainwright/history/reports>

¹⁹ Example: « La survivance du droit coutumier au Québec avec une étude d'un document d'archives. » by Ghyslain Raza, 2010-2011

Wainwright Fellowship

“Wainwright research grants are available for the promotion of the Civil Law, in accordance with the terms of the will of Arnold Wainwright. The notion of Civil Law is to be interpreted widely and extends to fields such as Commercial Law, Civil Procedure, Maritime Law, Private International Law and Comparative Law, provided that it encompasses the Civil Law as a major element”.²⁰

The Fellowships serve to support the visit of jurists to the Faculty of Law at McGill University to pursue research and teaching in civil law or transsystemic law. The Committee may award two types of Fellowship: Junior Fellowship and Senior Fellowship. The Junior Fellowship is for PhD or post-doctoral students, or who have less than five years of law teaching experience. The Senior Fellowship is open to lawyers with regular faculty status from another institution with research and law teaching experience of five years or more.

The Dean awards the Fellowships on the recommendation of the Wainwright Committee. The latter is responsible for collecting proposals and making recommendations to the Dean. In addition, teaching is mandatory for Wainwright Fellows.

One of the most illustrious Wainwright Senior Fellows was Professor Paul-André Crépeau who dedicated his professional life to studying and developing Canadian civil law from a comparative law perspective as well as to promoting the French-inspired civilian tradition, in Canada as well as internationally. He led the reforms of the Civil Code of Quebec and the Quebec Charter of Human Rights and Freedoms. Crépeau was the holder of the Arnold Wainwright Chair in Civil Law and Director of the Institute of Comparative Law, and in 1975 he founded the Quebec Research Centre of Private and Comparative Law at McGill University. An extremely prolific author with over 130 books and articles, the Wainwright collection was a cornerstone for his research²¹.

Another outstanding Wainwright Fellow was Professor Madeleine Cantin Cumyn, who joined McGill University in 1977 as a Wainwright Junior Fellow. She became a full professor in 1991 and was named Wainwright Professor of Civil Law in 2005. Mtre Cantin Cumyn actively contributed to elaborating the position of the Quebec Bar on the Civil Code Reform and to its presentation at the parliamentary commissions of the National Assembly of Quebec. One of her most significant contribution was her proposition to elaborate all the regulations on water by characterizing water as *res communis*, currently its status in Quebec civil law.²²

Wainwright Graduate Scholarships

In 1993-1994 the Wainwright Graduate Scholarships was created, and it became an important vehicle for attracting outstanding graduate students. A Granting Policy and Criteria for Civil Law Research Grants, was adopted by the Wainwright Committee the previous year²³.

²⁰ The Wainwright Fund. Online: <https://www.mcgill.ca/wainwright/grants>

²¹ The Wainwright Fund. Professor Paul-André Crépeau. Online : <https://mcgill.ca/wainwright/chair/crepeau>

²² The Wainwright Fund. Professor M. Cantin Cumyn. Online: <https://mcgill.ca/wainwright/chair/cantin-cumyn>

²³ The Wainwright Fund Annual Reports 1993-1994. Online: <https://www.mcgill.ca/wainwright/history/reports>

Wainwright Undergraduate Scholarship

The Faculty of Law offers a number of merit-based entrance and financial needs scholarships to candidates admitted to the B.C.L./LL.B. program. One of these Scholarships, is the Wainwright Scholarships and Bursaries awarded to undergraduates of promise having distinguished scholastic records. Wainwright scholars who show no financial need are awarded the nominal sum of \$100, the balance of monies to be allocated as Wainwright bursaries to meritorious students who are in financial need with a value of maximum \$4,000 each.

Wainwright Chair

The Wainwright Committee allocates a generous amount to funding the Wainwright Chair. The chair holders are remarkable law scholars with research interests in civil law and comparative law. Besides teaching at the Law Faculty, they conduct research and contribute actively to the profession. The Wainwright collection serves as the base to conduct this research in Civil Law.

Some of the chairholders were previously Wainwright Junior Fellows or the Wainwright Professor of Civil Law. At the moment, Prof. Daniel Jutras holds the Wainwright Chair in civil law since 2011²⁴.

Wainwright Visitor

The Faculty of Law, together with the Paul-André Crépeau Centre for Private and Comparative Law, welcomes to the Faculty distinguished Professors from all over the world, who, as Wainwright Visitors, are in residence at the Centre to conduct research into Civil and Comparative Law.²⁵ The richness of the Library collection is one of the factors influencing scholars to select McGill University.

Wainwright Website

The Committee approved a proposal to enhance the visibility of the Wainwright Memorial Fund on the Web. The sum of \$3000 was set aside for its development. It also resolved to officially acknowledge the role played by Professor Jean-Guy Castel, of the Law Faculty at McGill University, in securing the purchase of the French legal historian François-Olivier Martin's personal legal collection, now known as the Wainwright Collection.²⁶ The aim was to showcase, to the McGill University community and researchers around the world on the Wainwright Fund. The site describes its many contributions to the life of the Law Faculty, such as grants to professors pursuing civil law research, an annual contribution to the purchase of non-Canadian civil law books at the library, scholarships and student awards. It has an important historical background on the creation of the Fund as well as on the Wainwright Chair holders and the Wainwright Fellows.²⁷

²⁴ The Wainwright Fund. Wainwright Chair in civil law. Online: <https://www.mcgill.ca/wainwright/chair>

²⁵ The Wainwright Fund Annual Reports 1999-2000. Online: <https://www.mcgill.ca/wainwright/history/reports>

²⁶ The Wainwright Fund Annual Reports 2006-2007. Online: <https://www.mcgill.ca/wainwright/history/reports>

²⁷ The Wainwright Fund Annual Reports 2007-2008. Online: <https://www.mcgill.ca/wainwright/history/reports>

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