

Forensic Accounting in Québec: The Context of a Distinct Society in Canada

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Québec is one of the ten provinces of Canada. It is also the home of the French Canadian nation. The vast majority of the 8 million people who live in Québec speak French. According to the last survey from Statistic Canada, 85% of Québec's population has indicated that French is the first official language that they speak.¹ Even though, the accounting culture in Québec is based on British and American influences, the legal context of Québec and the way the accounting profession is organized is different from the rest of Canada. These differences have had an important impact on how Forensic and Investigative Accounting is performed in Québec and on how this area of the accounting profession is organized.

The legal environment in the province of Québec is different from the one in place in the other provinces of Canada. In Québec, civil law is used to deal with disputes between private parties is based on the civil code while common law is used in other provinces. In civil law, the legislature enacts the law as principles and the courts are charged with applying these principles to particular cases. In common law, legal rules are released by the courts from special cases. As judicial decisions accumulate over time on a subject, the courts are able to identify more or less general principles of application and progressively develop a set of rules more or less complete. Civil law and common law are clearly very different. This particular context affects the way Forensic and Investigative Accounting is conducted. It is important to note that, in Canada, criminal law which deals with acts of intentional harm to individuals and the collectivity is based in all provinces on the federal criminal code because criminal law is under the jurisdiction of the federal government of Canada.

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¹ Statistics Canada 2011, French and the Francophonie in Canada. Catalogue no. 98-314-X2011003

This Canadian specificity is so important that it is recognized in the constitution of Canada.² For instance, the rule about the composition of the Supreme Court of Canada requires that three judges out of nine must come from the Quebec Court of Appeal or the Quebec Superior Court and be members of the Québec Bar. This rule was put in place to insure that a fair number of judges of the Supreme Court are able to deal with issues that may have to be examined from a civil law perspective. This specificity has several consequences on the way Courts deal with Forensic and Investigative Accounting matters.

In Canada, professions are considered as a provincial competence under the Constitution Acts (1867 to 1982).³ The structure of the accounting profession is therefore organized by provinces and territories and the legislative framework is very different between provinces and especially between Québec and the nine other provinces of Canada. In Québec, professions are ruled by the Profession code⁴ (le Code des professions). This code was enacted in 1973. These differences have been clearly demonstrated in the context of the merger process of the three major accounting bodies in Canada that started in 2011. While the merger became official in the province of Québec with the approval of the new “*Loi sur les comptables professionnels agréés*” (The Chartered Professional Accountants Act⁵) on May 16 2012⁶, in 2014 it is not yet achieved in many other provinces of Canada. The merger in Canada required, over the 2012-2014 period, approvals from 40 accounting bodies, including national associations for CAs, CMAs and CGAs (Canadian Institute of Chartered Accountants, CMA Canada, CGA Canada) and the regional bodies for each of the three groups in 10 provinces and two territories. It also required approval

² Canadian constitutions acts, 1867 to 1982 <http://laws-lois.justice.gc.ca/eng/CONST/page-1.html>.

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⁴ The Professional Code act,

http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_26/C26_A.html

⁵ The Chartered Professional Accountants Act

http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_26/C26.htm

⁶ <http://unification.cpacanada.ca/blog/2012/05/16/quebec-legislation-uniting-three-accounting-bodies-receives-passage-3/>

in Bermuda, where accountants are regulated under Canadian accounting standards. At the Canadian level, the Canadian Institute of Chartered Accountants (CICA) merged with CMA Canada in the beginning of 2013. A new organization was created as a result of this merger: CPA Canada⁷. CGA Canada will join CPA Canada in October 2014.

The purpose of this paper is to examine Forensic and Investigative Accounting in the province of Québec, in Canada, in the context of these specificities. It will make a contribution by showing how Forensic and Investigative Accounting is organized and conducted in a distinct society of Canada, Québec. The article is organized in the following way. In the first section, the forensic accounting specialization in place in Québec and in Canada is described. The education program required to become an Investigative and Forensic accountant is also explained. In the second section, the legal context in Québec, civil law and the civil code, used to solve civil disputes is explained and its impact of how Forensic and Investigative Accounting is performed is outlined.

Forensic Accounting in Québec: Education, Profession and Industry

Forensic and Investigative Accounting in Québec is labeled in French “Juricomptabilité”. Comptabilité is “accounting” in French. The prefix “Juri” relates to the legal dimension of accounting. Forensic and Investigative Accounting has been considered as a specialization by the Ordre des comptables agréés du Québec (Chartered accountants). Before the merger of the three accounting Orders, rules in accordance with the Professional code,⁸ in Québec, Chartered Accountants (CA) could specialize and become CA-IFA (Investigative and Forensic accounting)⁹. This was one of the six specializations for CAs. The others were:

⁷ <http://unification.cpacanada.ca/blog/2013/01/04/national-cpa-canada-organization-established/>

⁸ The Professional Code act,

http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_26/C26_A.html

⁹ In French, this specialization is labeled CA-EJC.

- CA-IT (Information technology);
- CA-CBV (Business valuation);
- CA- CIA (Internal auditing);
- CA-CISA (Information systems);
- CA-CIRP (Insolvency and restructuring).

These specializations were not available for the other two groups that existed before the merger: the Certified General Accountants (CGAs) and the Certified Management Accountants (CMAs).¹⁰

The CA-IFA specialization has been supervised by The CICA Alliance for Excellence in Investigative and Forensic Accounting. This group was created to establish the specialist designation for CAS working in the Forensic and Investigative Accounting marketplace. The Alliance is serving the interests of society and the Accounting profession by providing leadership to uphold the professional integrity, standards, and pre-eminence of CA-IFAs and other CAs working in the area through research, education, certification, and promotion.

A CA who wanted to apply for designation as a CA-designated specialist in Investigative and Forensic Accounting authorized to use the designation initials CA•IFA must meet several criteria.

First, the candidates must be a CA since three years and be in good standing with the Chartered Accountant Ordre of Québec or the CA Society within its province or territory. To become a CA in the province of Québec, before the merger of 2012, candidates must have completed a bachelor degree and have completed a minimal training in accounting. Most CA candidates have an undergraduate Bachelor degree in Commerce (BComm.) with a specialization in accounting. Candidates who have a bachelor degree in another area have to follow a certain number of undergraduate accounting and taxation courses at a University. Once this is completed

¹⁰ In French, Comptables Généraux Accrédités (CGA) and Comptables en Management Accrédités (CMA)

the CA candidates with a bachelor degree must complete in the province of Québec a Diploma in Accountancy accredited by the Ordre offered by one of the eleven universities. Finally, CA candidates must successfully pass the Uniform Final Exam of the Canadian Institute Chartered Accountants (CICA).

The second requirement to become a CA-IFA is for the CA to be a recipient of the *Diplôme d'études supérieures spécialisées en juricomptabilité*¹¹ from HEC Montréal in Québec or of the Diploma in Investigative and Forensic Accounting (DIFA) from the Rotman School of Management of the University of Toronto.

The *Diplôme d'études supérieures spécialisées en juricomptabilité* from HEC Montréal¹² program has been offered in French from 2004 to 2010 but now has been closed down. The number of person that wished to follow the program was too small to justify its existence. Therefore, at this time, there is no program in French for those who wish to specialize in the area of Forensic and Investigative Accounting. The program included ten courses of three credits each and was set to be completed within a two year period. The goal of the program was to provide candidates, mostly accountants, with a comprehensive and rigorous training in the following areas:

- Forensic Accounting;
- Investigation;
- Financial fraud;
- Business valuation.

The Diploma in Investigative and Forensic Accounting (DIFA) from the Rotman School is now the only graduate education program in the area of Forensic and Investigative Accounting in Canada. Therefore, the access to the CA-IFA designation is limited to those who

¹¹ In English, the Graduate Diploma in Investigative and forensic accounting.

¹² HEC Montréal, Catalog 2005-2006.

can follow the program in English. The program aims at providing the understanding the knowledge and the skills necessary for investigating financial matters.

The students in this program must have a solid background in accounting but being a CPA (CA, CGA or CMA) is not a requirement. The program includes ten courses including and integrative capstone at the end and is normally completed on a part time basis in a two year period. Three courses cover the competency map developed by the Canadian Institute of Chartered Accountants (CICA, now CPA Canada) Alliance for Excellence in Investigative and Forensic Accounting.¹³

The third requirement to become a CA-IFA in the province of Québec is to have some work experience in the area of Forensic and Investigative Accounting. CA-IFAs must meet one the two following criteria. They must have worked in the area of Investigative and Forensic Accounting:

1. at least 1,500 qualifying hours over the last three years,

OR

2. at least 2,500 qualifying hours over the last six years of which a minimum of 500 hours must be over the last three years

Accountants that meet these three requirements; being a CA, having completed a graduate degree on Forensic and Investigative Accounting (now only available in Canada in English at the University of Toronto) and have some work experience in the area of Forensic and Investigative Accounting can use the CA-IFA and the CA-EJC designations in Québec.

¹³ <http://sites.utoronto.ca/difa/Admissions/DIFA-Calendar.pdf>

Since the merger between the three accounting bodies in Canada, CA-IFAs now use the denomination CPA,CA-IFA. With the accounting merger in Canada, all CPAs can keep their original designation until 2022.¹⁴

To keep the right to use that designation in Québec, CPA,CA-IFAs must complete a minimum of 60 hours of continuing education activities related to the Forensic and Investigative Accounting body of knowledge over a rolling three-year period, including a maximum of 10 hours of self-study activities.¹⁵

The specialization in Forensic and Investigative Accounting is in the process of being reviewed in the context of the merger of the three main accounting groups in Québec and in Canada. It will certainly evolve during the next years. The accounting profession needs to make a decision on how it will integrate specializations such as Information Technology, Taxation, Insolvency and, of course, Forensic and Investigative Accounting in the profession.

Apart from CPA Canada and the three accounting groups that merged together during the last two years (CA, CGA, CMA), there is also an Association that attempts to group the professionals that are involved in Forensic and Investigative Accounting engagements. The Association of Certified Forensic Investigators (CFI) aims at promoting and fostering a national forum and governing body for the affiliation of professionals who provide to the public, their expertise and services in the areas of Forensic and Investigative Accounting. The Association also promotes the Certified Forensic Investigator (CFI) designation in Canada which is not well known. According to the roster of the Association, there are 90 CFIs in Canada and four in

¹⁴ In the province of Québec, there are now three CPA designations: CPA,CA, CPA,CGA and CPA,CMA. After 2015, the new CPAs will use the CPA designation only.

¹⁵ <http://cpaquebec.ca/the-profession-and-the-order/cpa-requirements/formation-continue-obligatoire/requirements.html>

Québec.¹⁶ To become a CFI, the candidates must be complete successfully a one hour examination.

There are several organizations that are involved in the Forensic and Investigative Accounting industry in Québec. Most of the major accounting firms provide Forensic and Investigative Accounting services. They are also a few firms that specialize in the area such as Accuracy Canada, Navigant Consulting and LBC International. Professionals that perform Forensic and Investigative Accounting are usually members of the *Ordre des comptables professionnels agréés (CPA) du Québec*.

Forensic accounting is not a profession in its own right in Québec. This is similar to the rest of Canada and to the United States (Huber 2012). CPAs, and especially CPA auditors (those who are allowed to provide public accounting services), conduct forensic accounting mandates. In the context of the merger of the three accounting societies in Québec, the specialization issue has been postponed until the merger is completed. The main question remains: Should Forensic and Investigative Accounting become a profession in Québec, Canada?

Forensic Accounting in Québec: the specificity of the legal environment

The legal environment in the province of Québec, in Canada is different from the one in place in the other provinces of Canada. The Civil Code used in the province of Québec is based on the European tradition of civil law while the British tradition, through the common law, is used in other provinces and territories. Legal rules are considered as principles and the courts are charged with applying these principles to particular cases. Therefore, any civil matter in Québec will be examined from a civil law perspective instead of a common law one.

¹⁶ <http://www.acfi.ca/p.html?WhoWeAre.htm>

Forensic and Investigative Accounting involves many situations where a civil dispute between two parties needs to be settled. In Québec, it is the civil code that will be used for these conflicts. Section 1457 of the Québec Civil Code¹⁷ stipulates that each individual has the responsibility to avoid causing injuries to another person and to abide by rules of conduct which establish how an individual should act in accordance with circumstances, usages and law. When an individual fails to conduct him or herself accordingly, he or she may have committed an offense. A party who has committed an offense is responsible for any injury caused to another person by such a delictual fault and is liable for the reparation for that injury. Section 1457 of the Civil code applies also to contractual commitments. A party that fails to honor these commitments becomes liable for the reparation of the injury caused.

Damages and compensation for losses

The Québec Civil Code mentions that damages must compensate for the loss a party has sustained. The Civil Code places three conditions before compensatory damages can be awarded to another party. First, the damages must be an immediate and direct consequence of the debtor's fault. A good example of such situation is the decision made by *Aéroport de Montréal* (Montreal airport) to move all flights from Mirabel airport to Dorval airport. The *Hôtel de l'Aéroport de Mirabel*, a company that was managing the hotel at the Mirabel airport claimed that it had lost 80% of its business because of this decision. This was a direct consequence of the decision made by *Aéroport de Montréal Inc.*¹⁸ Forensic and Investigative Accounting was required in such a context to help in demonstrating to the Courts what the amount of the damages is.

Second, the damages must be certain and ascertainable. This implies that future prejudice may be claimed only if the party claiming the future prejudice can show its probability of

¹⁷ http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/CCQ_1991/CQ1991.html

¹⁸ *Cour d'appel du Québec*, Décision 500-09-012560-025, Mai 2003.

occurring. For example, when talking about lost profits, courts will usually not allow compensation for uncertain future profits. In addition, in order for the prejudice to be ascertainable, it must be easy to evaluate at the time the Courts are called to assess the damages.¹⁹ Forensic and Investigative Accounting will play a key role in determining the amount of certain and ascertainable damages.

The third criterion is that damages must be a direct consequence of the action of one of the parties. Therefore, this also needs to be proven.

Four categories of damages can be considered under civil law in Québec. Article 1457 of the Québec civil code discusses about three different kinds of damages: material, bodily and moral. Punitive damages can also be exceptionally granted.

Material damages refer to damages caused to an individual's property. They are usually easy to evaluate. Forensic and Investigative Accountants can help in doing that evaluation. It can also be completed by any individual that is competent enough to evaluate de damages. This could be done by any accountant. Forensic and Investigative Accountants will have more experience when it comes to presenting the evaluation of the damages in court. Material damages for loss of property are compensated in roughly the same manner under common law. There are no major differences for this category of damages in Canada under civil law or common law.

Bodily damages are awarded when a victim is wounded or suffers an attack on his or her bodily integrity. Bodily damages include material and moral damages. The Supreme Court of Canada has examined three cases in the past about damages for bodily injuries. The Supreme Court has required that more rigorous approaches should be applied when evaluation damages for bodily injury. Even though these cases were of Common Law origin, they also apply to

¹⁹ Baudouin J. L. et P. G. Jobin, (2013) *Les obligations*, 7e édition. Montréal : Éditions Yvon Blais.

damages for bodily injury in Québec, with certain reservations of damages for non-pecuniary damages. In many cases, the damages represent a loss of revenues. Forensic and Investigative Accountants may be required to determine the amount of these damages.

Moral damages are the third category of damages. They are awarded to compensate for non-pecuniary loss. This is the area for which there are major differences between common law and civil law. Under the Common Law the amount of money awarded in damages is meant to provide the victim with financial comfort for their loss. The objective is not to value the loss like an asset but to provide a measure of consolation for the victim. The victim needs to be aware of the loss. Under the Civil Law, moral damage is seen as an objective loss that must be compensated, whether or not the victim is even aware of their loss or is unable to use the money awarded. The classic example used to explain the difference here is the situation of an individual who is in a coma. Under Common Law, since the person is not aware of the situation, no compensation needs to be awarded for the loss. Under the Civil Code, compensation will be awarded.

Defamation is another example of the differences between common law and civil law. Under common law, damages can be granted if there is a financial or material loss. The Civil Code has a different point of view. Damages do not depend on whether there is or not pecuniary repercussions. Forensic and Investigative Accounting will help determining what should be the amount of the damages.

Decisions made by Québec Courts

Civil disputes are heard in Québec by the “*Cour Supérieure du Québec*” (Superior Court). Appeals of judgments rendered by the Superior Court are heard by the “*Cour d’appel du Québec*” (Court of appeal) which is the highest Court in Québec. Appeals from the *Cour d’appel*

may be heard by the Supreme Court of Canada. As mentioned earlier, because of the specificity of Québec in terms of civil law, it is mentioned in the constitution of Canada that that three judges out of nine must come from the Quebec Court of Appeal or the Quebec Superior Court and be members of the Québec Bar to be competent in the area of Québec civil law.

Forensic and Investigative Accounting is used to help in solving disputes between parties. Estimating the amount of the damages is one of the most important tasks of forensic accountants. We have discussed about Québec specificities in this area in the context of the civil code. Most of these cases do not go all the way to Court and are usually solved before the hearings. In Québec, so far, most shareholder lawsuits against auditors did not get very far. The Castor Holding Case is one of the most important Forensic and Investigative cases that were heard in Québec. The case was supposed to last six months and it finally lasted 16 years, twelve of them in court. The ruling prepared by the Superior Court of Québec concluded that Coopers Lybrand had been negligent in the preparation of the audited consolidated financial statements of a Montréal real estate financing and investment firm, Castor Holdings Ltd. This was a very long process (Milan, 2014).

The legal context has an important effect on how Forensic and Investigative Accounting is performed in Québec when accounting and financial information is used in the context of a civil dispute between parties. Again, if forensic accounting information is used in a criminal file, there will be no differences between Québec and the rest of Canada since in Canada the criminal code is a federal jurisdiction.

Conclusion

Forensic and Investigative Accounting is also performed in the province of Québec in Canada. In Québec, more than 80% of the population live and work in French. That in itself makes Québec very different from the rest of Canada. In Canada, professions are under the

jurisdiction of provinces and territories. The accounting profession is also organized at the Canadian level in order to promote mobility within Canada. Forensic and investigative accounting is not a profession in itself. It has been considered as a specialization within the accounting profession. It is now supervised at the federal level by CPA Canada through the Alliance for Excellence in Investigative and Forensic Accounting. We may expect that during the next years, after the reorganization of the profession that follows the merger of the three major Canadian accounting groups, this specialization will be considered. If it is not the case, Forensic and Investigative Accountants may make pressures for this specialization to become a profession in itself.

In Québec, civil disputes are dealt with in the context of civil law instead of common law in other provinces. Forensic and investigative accounting is used in many of these disputes especially to estimate damages that may result from the action of a party. Under the civil code in place in Québec, damages do not need to be only pecuniary. This has a lot of impact on the way Forensic and Investigative Accounting is performed in Québec, a distinct society in Canada.

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