

## GUIDE TO THE USE OF THE DICTIONARY

In anticipation of the eventual publication of a comprehensive edition of the *Private Law Dictionary and Bilingual Lexicons*, the Quebec Research Centre of Private and Comparative Law has prepared the *Private Law Dictionary of Obligations and Bilingual Lexicons* which presents the fundamental private law terminology of Quebec's law of Obligations. The work takes into account the changes introduced by the *Civil Code of Québec* (S.Q. 1991, c. 64) and by other changes to the law that have occurred since the second edition of the *Private Law Dictionary* (1991), including those pertaining to federal legislation. An effort has been made to situate the law in view of the relationship between the *Civil Code of Québec* and the *Civil Code of Lower Canada*, as that relationship reflects both the continuity and renewal of the general law of Obligations.

The *Private Law Dictionary of Obligations and Bilingual Lexicons* is divided into two parts. The first part, the *Dictionary* proper, contains more than 2,400 terms and expressions taken from the vocabulary used in the legislative sources of the law of Obligations (codes, statutes and regulations), in doctrinal writings of legal scholars, in judgments of the courts and, to a certain extent, in the language used in dealings between individuals (e.g. contracts, wills) and ordinary usage. An English-French lexicon has been appended to the articles of the *Dictionary* at the end of each given entry. The second part consists of the French-English lexicon which, with the lexicon integrated in each entry, forms the other half of the *Bilingual Lexicons*. The entries which make up the two bilingual lexicons are drawn from those terms defined in the *Private Law Dictionary of Obligations* and the *Dictionnaire de droit privé des obligations*, published with this work by the same Editorial Committee.

In order to facilitate the use of the *Dictionary*, these explanatory notes present the principles that have guided the elaboration of the entries (I), the various elements that compose the structure of the articles (II) and, lastly, a description of the content of the bilingual lexicons (III).

### I. ENTRIES

The entries, whether they are composed of single or multiple words, form the nomenclature of the *Dictionary*. They are arranged in absolute alphabetical order, so that hyphens and spaces between the words of an entry have been discounted. Thus, the expression **ACT OF ANOTHER** comes directly after **ACT OF AN ANIMAL** and precedes **ACT OF A THING**. The entries include not only nouns and nominal phrases, as is usual in specialized dictionaries, but also terms belonging to other grammatical categories as, for example, adjectives (e.g. **CONTRACTUAL**) and verbs (e.g. **CONTRACT**).

Since it covers a specialized body of terminology, the *Dictionary* does not include words of ordinary parlance unless they have a distinct juridical meaning (e.g. **DAMAGE** or **RECEPTION**). However, discussion of the ordinary usage of a legal term may be included when confusion with its legal acceptance is likely. In these cases, the *Dictionary* may include a separate definition for each meaning (e.g. **DIVISIBILITY<sup>1</sup>** and **DIVISIBILITY<sup>2</sup>**) or indicate their presence through an observation (e.g. **PAYMENT<sup>1</sup>**).

The Editorial Committee wishes to acknowledge the following dictionaries, both legal and general, as important research tools in the preparation of entries: *Black's Law Dictionary*, B. A. Garner ed., 7th ed. (St. Paul: West Group, 1999); *Vocabulaire juridique*, 4th ed. (Paris: P.U.F., 2003); *Dictionnaire historique de la langue française*, A. Rey, ed., (Paris: Dictionnaire Le Robert, 1992); *Le Grand Robert de la langue française*, 2nd ed., A. Rey, ed., (Paris: Le Robert, 2001); and the *Oxford English Dictionary* (Oxford: O.U.P., 1989).

### A. Presentation of Entries

In principle, entries are presented in the singular, except when usage indicates that the plural form is preferred. Parts of certain entries are placed within parentheses, either in a multiple word entry or at the end thereof. In some cases, parentheses serve to indicate two possible versions of a term. For example, the word **QUIT(S)** may be written in the singular or in the plural; **CONTRACT FOR (OF) SERVICES** may be written as either **CONTRACT FOR SERVICES** or **CONTRACT OF SERVICES**. In other instances, the parentheses serve to modify the order of presentation of a word in an entry, most frequently for an entry beginning with a preposition (e.g. **AUTONOMY OF WILL (THEORY OF THE)**). These entries are listed alphabetically, according to the principal word.

### B. Special Types of Entries

#### 1. Entries in Languages other than English

Given the importance of Latin expressions in the Civil law terminology, the nomenclature includes a number of Latin terms (e.g. *CAUSA CAUSANS*). Certain French-language terms also appear (e.g. *CLAUSE COMPROMISSOIRE*). These entries are accompanied by an indication of their language of origin (e.g. (Latin), (French)) and are generally presented in italics, unless when they are considered as fully integrated in the English-language juridical vocabulary (e.g. *ANATOCISM*).

## 2. Controversial Usage

English Civil law parlance in Quebec contains examples of what some experts see as dubious or controversial usage. Many of these instances are borrowings from Anglo-American legal terminology. The circumstances of borrowing terms vary widely, and in many cases the terminology is not at all controversial. In other cases, terms have been criticized in that they promote confusion with Anglo-American legal ideas. There are also instances of gallicisms which have, in the opinion of some, been unduly relied upon in the English-language civilian lexicon. Many of these matters are subject to disagreement among

jurilinguists <sup>[1]</sup>. The Editorial Committee has chosen, in the main, to alert readers as to the terms which are controversial by way of observations rather than formal indications that the term not be used (e.g. the observations under the entry **CONSIDERATION**<sup>3</sup>).

## 3. Cross-references

Certain entries are not defined where the Editorial Committee felt that a full treatment of the term was not necessary. In these cases, a reference is made to a relevant entry by the indication "See" which may contain information concerning the use of the undefined term (e.g. **CORRELATION** refers to **CAUSATION**<sup>1</sup>).

## II. ARTICLES

The whole of the information provided in relation to a given entry constitutes an *article* of the *Dictionary*. The central element of the entry is the definition itself, but an article comprises of many other elements that, although they are accessory to the definition, serve to complete, clarify, situate or elaborate upon the term as defined.

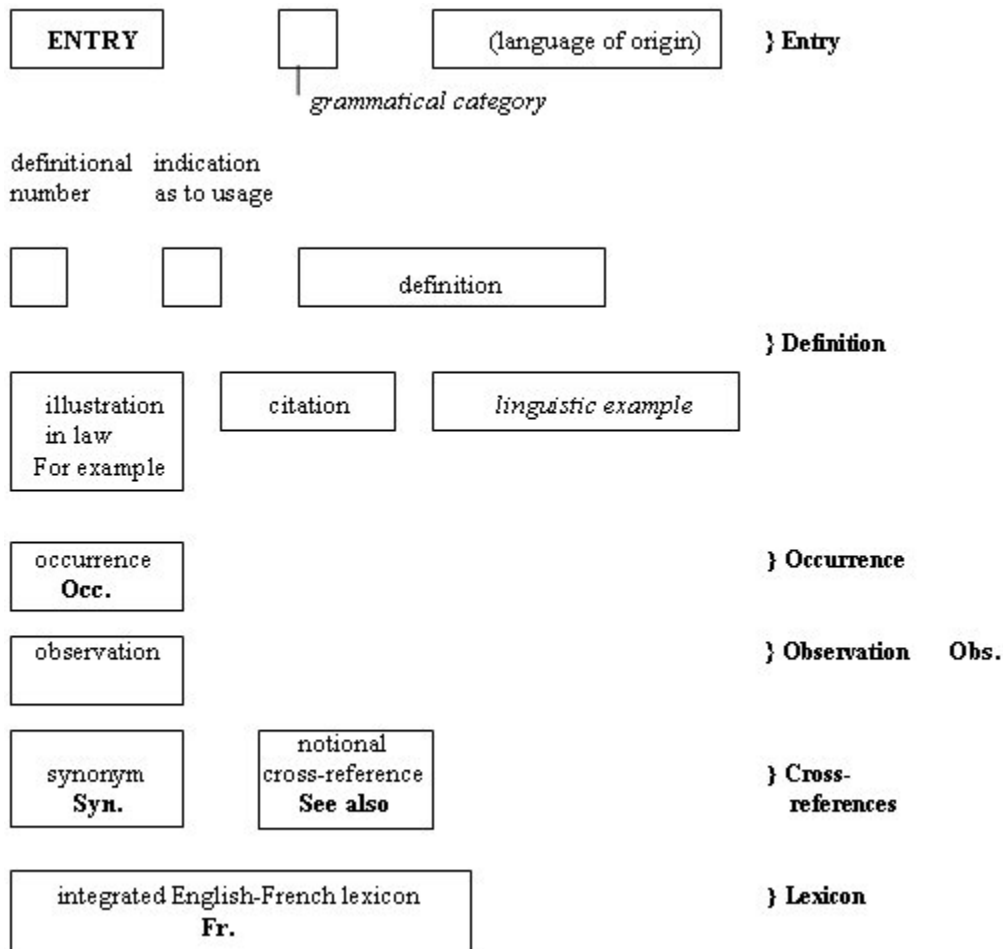
Before describing these different elements, the typographical features of the *Dictionary* call for some comment.

In the lexicographical portion of the *Dictionary*, information relating to the term is divided into separate sections, each of which is listed in order and preceded by an abbreviation. For example, the list of occurrences for a given term is preceded by the abbreviation "**Occ.**". Observations bearing on usage and treatment of the term in different legal sources (**Obs.**), cross-references to synonyms (**Syn.**) and analogous terms (**See also**) are indicated in the same fashion. Italics serve to identify all those features of the term which pertain to the following considerations: linguistic form and function, such as grammatical category, and linguistic examples that draw attention to certain terms.

English-French equivalents are included with each English article so as to provide the reader with the French-language partner terms for any given entry. These are placed at the end of each article, preceded by the abbreviation "**Fr.**".

There follows an explanation of the various elements which may form part of any given entry:

## **SCHEMA**



**A. Definition**

The purpose of the definition is to provide, in a single sentence or phrase, the essential elements of the meaning of a given juridical term. The definitions are built on basic terms which, within the hierarchical structure of the *Dictionary*, refer to the notion closest to the defined term. Thus, the definition of the **FAULT<sup>1</sup>** reads “Transgression of an obligatory juridical rule of conduct”; **CIVIL FAULT** builds on the latter with its definition “Fault<sup>1</sup> susceptible of engaging a person’s civil liability”. To the root term (i.e. **FAULT<sup>1</sup>**), information is added that qualifies and distinguishes a term from concepts to which it is related.

Where applicable, the text of the definition includes the technical designations of the actors encountered in a given juridical situation or transaction. For example, in the definition of the term **SALE**, the terms *seller* and *buyer* appear, which are themselves defined elsewhere in the *Dictionary*.

## 1. Definitions of Polysemous Terms

A term may have multiple meanings that vary according to context (e.g. **CONDITION<sup>1,2,3</sup>**). In order to distinguish those different meanings, each of them are sorted and numbered according to their importance. These numbers latter serve to precise the exact acceptation that is referred to (e.g. the definition of **CONDITIONAL OBLIGATION** refers to **CONDITION<sup>1</sup>**).

## 2. Synonymous Definitions

Some entries are defined as synonyms of another term. In these cases, the definition refers to another term or expression that is considered interchangeable with the entry. This may be tempered or qualified by an indication as to usage or by an observation (e.g. **IMPERFECT SOLIDARITY** is sometimes used as a synonym of **OBLIGATION IN SOLIDUM**, but it is mainly used in contrast to **PERFECT SOLIDARITY**).

While some scholars have argued that there are few perfect synonyms in legal terminology, the Editorial Committee of the *Dictionary* has come to the view that there are in fact numerous synonyms in the law of Obligations. These synonyms reflect, in our estimation, the richness of vocabulary used by doctrinal writing and in decided cases in this field of the law. Moreover, multiple-word entries often have numerous synonyms because the combinations increase when one or more words of the compound term have their own synonyms. For example, the expression **CONTRACT FOR THE CARRIAGE OF PROPERTY** is an illustration of this latter situation. In this multiple-word entry, **GOODS** may replace **PROPERTY**.

Within any group of synonyms, only one is designated as a preferred term, i.e. the one under which the definition, illustrations in law, observations and cross-references will appear in the *Dictionary*. This choice of the preferred synonym is determined by various factors: the frequency of its use (e.g. **CONTRACTUAL** occurs more frequently than **CONVENTIONAL**); the precision of a certain form (e.g. **POTESTATIVE CONDITION** is preferred to **FACULTATIVE CONDITION**), and, when the synonyms are perfectly equivalent, one preferred form has been chosen by the Editorial Committee according to their appreciation of felicitous usage.

With a view to promoting English-language civilian parlance, the Editorial Committee generally refers to the English-language equivalents of Latin or French-language entries as the preferred term (e.g. **GIVING IN PAYMENT** preferred over its synonym **DATION EN PAIEMENT**). In the absence of an English-language equivalent, the Latin term will receive a complete lexical consideration (e.g. **ACCIPIENS**).

## B. Elements Accessory to the Definition

The elements accessory to a definition include the grammatical category, the language of origin, indications as to usage, illustrations in law, quotations, linguistic examples, occurrences, observations and cross-references.

### 1. Grammatical Category

Single-word entries are followed by a reference to a grammatical category: noun, adjective, verb or adverb (e.g. **CONTRACT** *n.*). There is no such reference for multiple word entries, except with respect to nominal, adjectival or adverbial phrases (e.g. **SUBJECT OF LAW** *nom.ph.*).

### 2. Language of Origin

The language of origin is provided in the case of entries in languages other than English. These entries are usually in Latin (e.g. **ERGA OMNES**) and, occasionally, in French (e.g. **CLAUSE COMPROMISSOIRE**). If a part of a multiple-word entry is in a language other than English, the non-English origin is recorded (e.g. **ACTION EN PASSATION DE TITRE** (French); **AD LITEM MANDATE** (Latin)).

### 3. Indications as to Usage

Indications as to usage may either precede the definition or be included in the observations under a defined term. Where the Editorial Committee is of the view that a particular indication as to usage might become the object of disagreements between scholars, a critical note is included in the observations. Examples include accepted language viewed as imprecise (e.g. **UNDISPOSABILITY**) or considered to be inopportune for some reason (e.g. **JOINTLY AND SEVERALLY**). In these circumstances, the Editorial Committee has chosen to explain its view on usage rather than merely designating it as a faulty form. This represents a change from the practice followed in the second edition of the *Private Law Dictionary*.

### 4. Illustrations in Law

Illustrations in law are placed immediately after the definition of a term. Thus, *mandate* and *sale* serve as examples for the expression **NOMINATE CONTRACT**.

### 5. Quotations

Quotations serve to clarify or make concrete the definition, both as a matter of law and linguistically. The quotations can either clarify certain aspects of the definition or even repeat it, albeit using another formulation. As well, they may articulate certain rules that govern the application of the term, criticize the understanding others may have of the term, or even provide a further classification relevant to the term being defined.

Quotations are generally drawn from Quebec jurisprudence and scholarly writing. However, scholarly writings from other jurisdictions are also used, notably from France and Louisiana.

References as to the place of publication of these quotations are presented in an abbreviated form. Complete references are provided in the *List of Authors and Publications Quoted in Abbreviated Form* found at the end of the *Dictionary*.

### 6. Linguistic Examples

Linguistic examples are intended to offer models for the proper usage of a term in legal discourse. Their purpose is to show how terms and expressions are used in their particular legal context (e.g. *To accept an offer* is given as a linguistic example for **OFFER**).

### 7. Occurrences

Numerous references taken from provincial and federal legislation illustrate an occurrence of a term in statutory and codal texts. These occurrences are introduced by the abbreviation “**Occ.**”. An occurrence found in a legislative text which is no longer in force is preceded by the indication *former* (e.g. former art. 1767 C.C.Q. at **SALE OF AN ENTREPRISE**).

### 8. Observations

Observations may focus upon either the legal, or more narrowly, linguistic aspects of an entry. The purpose of an observation of a juridical nature is to complete the definition by pointing out a characteristic feature of the legal regime in question or to draw attention to a possible confusion with related concepts (e.g. **CAUSE<sup>1</sup>**, **CAUSE<sup>2</sup>**). Observations may also upon occasion refer to a source, usually legislative, in which the notion in question is explained, but where the term is not actually used (e.g. **FEAR** which refers to arts. 1402, 1403 C.C.Q.).

The observation may also provide information of a linguistic nature. For example, it may draw attention to the usage of a term in certain statutes or identify a problematic usage (e.g. **JOINT AND SEVERAL**).

Finally, the observation occasionally provides an etymological treatment of a term. It generally includes its word (the etymon) and language of origin.

### 9. Cross-references

Cross-references, found at the end of each entry, are intended to provide a comprehensive semantic treatment of a term. These include synonyms and notional cross-references.

#### a) Synonyms

Synonyms, or terms expressing exactly the same legal notion, are discussed above.

Within a series of terms regarded as synonyms, one is designated as the preferred term, under which the definition, the illustration in law, the observations and cross-references are found: the principal synonym (e.g. **OBLIGATION TO INFORM**). The other terms are understood as subsidiary ones, in that a reference to the principal synonym stands in place of an independent definition (e.g. **DUTY TO INFORM**).

#### b) Notional Cross-references

Notional cross-references, introduced by the words “**See also**”, draw attention to a series of closely-related terms. The terms may be associated through a logical relationship of cause and effect (e.g. **RELATIVE NULLITY** and **ACTION IN NULLITY**), or of a part in relation to the whole (e.g. **LEGAL ORDER** and **REGIME**). The cross-references may also indicate a close notional proximity to a related term, as is the case for **GAMING CONTRACT** and **WAGERING CONTRACT**. The cross-references also refer to terms the meanings of which are either in relationships of opposition (e.g. **VOLUNTARY RESILIATION, FORCED RESILIATION**), of complementarity (e.g. **ADEQUATE CAUSE, DETERMINING CAUSE, MATERIAL CAUSE**) or of reciprocity (e.g. **BUYER, SELLER**). By cross-referencing closely related terms, the reader may more accurately grasp the nuances and limits of a particular concept.

### III. BILINGUAL LEXICONS

Initially undertaken in the first and second editions of the *Private Law Dictionary* and the *Dictionnaire de droit privé*, the English-French and French-English lexicons seek to provide the most appropriate equivalents in the target language for a concept in the source language. English-French lexical entries have been appended to the English entries of the *Private Law Dictionary of Obligations*, and are placed at the end of each given entry, preceded by the abbreviation “**Fr.**”. These terms appear in the target language in the French-English lexicon, which forms the second part of the *Dictionary*. This second lexicon is made up of terms which correspond to the entries in the *Dictionnaire de droit privé des obligations* and which are followed by one or more English equivalents defined in the *Private Law Dictionary of Obligations*.

In both the integrated lexical entries and the French-English lexicon, the designated equivalents are accompanied by various editorial symbols:

(>) (<)      These mathematical symbols, encountered exclusively in the *Lexicons*, are used occasionally to indicate a divergence of meaning between English and French terminology, involving either a wider (>) or a narrower (<) connotation in relation to the entry in the other language. As an illustration, compare **FACT**<sup>1</sup> to one of its French-language equivalents, **FAIT**<sup>1</sup>. The definition of the English term **FACT**<sup>1</sup> is more restricted. Thus, at the entry for the term **FACT**<sup>1</sup> in the *English-French Lexicon*, the French equivalent is followed by the symbol (>) to indicate that it has a wider meaning than that of its English equivalent. Conversely, in the *French-English Lexicon*, the entry **FAIT**<sup>1</sup> refers to **FACT**<sup>1</sup> as the English equivalent, followed by the symbol (<) to indicate that the latter is narrower in scope.

+      In the *Lexicons*, when the target language has several synonyms for an entry in the source language, the symbol (+) is placed alongside the preferred expression. This term, as the principal synonym, is the entry under which the corresponding definition will be found in either the *Private Law Dictionary of Obligations* or the *Dictionnaire de droit privé des obligations* as the case may be. For example, at the entry **CIVIL FAULT**, the “+” which follows **FAUTE CIVILE** in the lexical entry indicates that the definition in the *Dictionnaire de droit privé des obligations* will be found at that term and not at **FAUTE**<sup>2</sup>. Conversely, at the entry **FAUTE**<sup>2</sup> in the lexicon part of the *Dictionary*, the “+” which follows **CIVIL FAULT** indicates that the definition in the *Private Law Dictionary of Obligations* will be found at that term and not at **FAULT**<sup>2</sup>.

[\*]      This symbol indicates the rare instance in which a term or expression has no equivalent in the target language.

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[1] For an illustration, see Nicholas Kasirer, “Le *real estate* existe-t-il en droit civil ?”, (1998) 29 *R.G.D.* 465.