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# The Case of the Treasures of L'Ange Gardien: An Overview

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## 1 Abstract

It is clearly defined, in Quebec civil law, that 'sacred things are excluded from being objects of commerce'. However, we might ask the following question: In order to determine how an object gets or loses its sacred character, do we have to refer to the internal rules of the various religious societies or instead, to the rules of civil law? It is that precise but difficult question, on which Quebec civil law does not say a word, that is raised principally by the case of the treasures of l'Ange-Gardien.

## 2 Introduction

The case of the treasures of l'Ange-Gardien, as referred to in Quebec, was at the very source of one of the most widespread awareness campaigns ever known in Quebec, if not in Canada, for the protection of the religious patrimony.<sup>1</sup> In order to fully understand this case, we have to go back to the social and cultural context of the sixties and to the aftermath of Vatican II. At that particular time, the Roman Catholic Church was in the midst of a total transformation of its liturgy and so in order to answer the new call for simplicity, most parishes had to remake their environment. Unfortunately, this cleanup often became a ruinous adventure. The parish priests, as most of the population, did not have a clear understanding of the artistic and patrimonial importance of what they owned and did not hesitate to get rid of these objects at very low prices to the benefit of well-informed collectors and national and international museums who rejoiced at these bargains.

It is in this very precise context that a former parish priest of l'Ange-Gardien, Joseph-Henri Gariépy, sold a bunch of 'old-fashioned things', apparently without any value but now worth more than \$100,000 CDN, to a sculptor for a sum of money for lower than their true worth.

Finally, after more than eleven years of lawsuits and the intervention of three Canadian courts,<sup>2</sup> the sculptures and silversmiths' religious objects were given back to the parish of l'Ange-Gardien by those who were then in their possession: the National Gallery

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of Canada, the Musée du Québec and a certain number of private collectors. Those objects had been depossessed from the parish some 25 years earlier under circumstances which will be discussed later on.

The return of the treasures of l'Ange-Gardien to the parochial patrimony put an end to a case that made the headlines more than once in Quebec. Curiously enough, this case, which captured the general public,<sup>3</sup> did no seem to warrant the attention of jurists. The only scholarly studies to be found on this subject are the interesting commentaries of Ernest Caparros,<sup>4</sup> a professor of canon law and an expert in this field. In addition, the Canadian jurisprudence did not make a great deal of the case of the treasures of l'Ange-Gardien, but it must be admitted that the opportunity has not presented itself until recently. One of the most tangible consequences of this case was that it determined with much clarity the rights and obligations of the Church Council in matters of alienation of sacred objects and resulted in the end of the 'bleeding' which, in the past, emptied churches of their treasures and which enriched so many museums and personal collections.

One thing seems certain though. Even if the case of l'Ange-Gardien did not raise the enthusiasm of legal circles, it is of a great practical and doctrinal interest and is worthy of being the subject of our study. Therefore, after giving a brief explanation of the legislative context of this case, we will focus on the different facts that were at the origin of the lawsuit. We will also discuss the different questions that were raised by this case. We will then say a few words about the objects of contention and about their authors. Finally, we will conclude by trying to explain the results that this case had on the world of Canadian museums.

### 3 The Legislative Context

It comes out from certain provisions particular to Quebec civil law that sacred objects are, as long as their destination has not been changed,<sup>5</sup> *imprescriptibles*, *non-seizable* and *excluded from being objects of commerce*. Obviously, being excluded from commerce, they cannot be bought or sold and a right of ownership cannot be obtained towards them by the sole passing of time as they are *imprescriptibles*.

Furthermore, it comes out from Quebec civil law that objects are considered to be sacred if they are used for religious worship. Some of these objects are sacred by nature (i. e., dead bodies), whereas others are classified by their destination only. In the latter case, however, it is obvious that the destination of worship can be changed. Being the case, the objects will lose their sacred character and will then be subject to commerce, unless, of course, the change of destination was brought about by 'encroachment',<sup>6</sup> in which case, nevertheless, the objects will be reputed not to have lost their sacred character.

But we also notice that these legislative measures do not answer a certain number of questions: When is a thing sacred and when does it lose this sacred character? Who can change the destination of a sacred object and how is this change of destination to be carried out? Do we have to refer to canon law in order to answer the preceding questions or do we have to refer strictly to the general rules already established by Quebec civil law in regard, notably, to the change of destination of movable things?

It is precisely all these questions, and a few others including the application of the '*Law of Church Councils*' of Quebec, that the courts had to address in the case of the treasures of l'Ange-Gardien.

#### 4 The Facts of the Case and the Points of Contention

In 1962, Joseph-Henri Gariépy was appointed parish priest of l'Ange-Gardien with, among other duties, the task of renovating and rejuvenating the church and the presbytery. In order to finance a part of the works and within the spirit of renewal and simplicity put forth by the recent reforms of the Vatican II Council, Gariépy decided to sell a few objects belonging to the Church Council. These objects were bought by a sculptor-gilder, Roger Prévost,<sup>7</sup> for the modest sum of \$800 CDN. An important fact is to be noted: the cheques given by Prévost were made payable to the Church Council of the parish and were effectively deposited into its account. Another important fact to keep in mind is that parish priest Gariépy sold the objects in question without the previous consent of the parish churchwardens nor the authorization of the diocese bishop. Finally, the last important fact to take into consideration is that Gariépy acted in good faith; he really thought that the objects he sold had no particular value at the time.

Shortly afterwards, Prévost sold most of the objects to various antique dealers, who in turn sold the objects to the Musée du Québec, the National Gallery of Canada and to various private collectors. The objects stayed peacefully in the hands of these various collectors until 1973, when Gariépy left the parish of l'Ange-Gardien. Then his successor, Marc Leclerc, decided to question the sale of the objects which had taken place several years earlier, relying on the Quebec civil law principle that sacred objects are imprescriptible and thus excluded from being objects of commerce. He relied on the point that the objects in question had not been desacralized before being alienated. More precisely, according to Mr. Leclerc, his predecessor should have respected the rules of canon law in regard to desacralization, which specify that a written authorization from the archbishop of the diocese has to be obtained before alienating the objects in question. According to Leclerc, the objects were still of a sacred nature when they were alienated since Gariépy had not obviously prescribed to the above-mentioned requirement. Therefore, the alienation was illegal in regard to Quebec civil law.

Then, in 1976, the Church Council of the parish of l'Ange-Gardien decided to bring proceedings against Roger Prévost and those in possession of the objects in question.<sup>8</sup>

The lawsuit instituted by the Church Council took the form of a claim and its main purpose was to have the transactions by which it was illegally dispossessed of the objects in question declared null and void and to obtain the return of the objects into the parochial patrimony.

In this lawsuit, the plaintiff, the Church Council of l'Ange-Gardien, essentially invoked certain provisions of the *Civil Code of Lower Canada*<sup>9</sup> and held that the objects of contention were sacred things at the time of their alienation and, therefore, were imprescriptibles and excluded from being objects of commerce. Furthermore, the plaintiff put forward the view that only the relevant religious authorities could decide the sacred character of an object belonging to them and that only the ecclesiastical authority which was declared competent by canon law, the bishop of the diocese, could desacralize an object — which had not occurred in the case of the objects of contention. Finally, the Church Council claimed that Gariépy did not have the right, according to the *The Fabrique Act* ('*Law of Church Councils*'),<sup>10</sup> to sell the objects in question before obtaining its authorization in the form of a resolution duly adopted by its board.

As for the defendants, they denied categorically that the objects in question were still sacred at the time of their alienation. They added that, in any case, canon law could not be applied in civil matters unless the legislator expressly referred to it, which was not the case in the provisions of the *Civil Code of Lower Canada* relied upon the plaintiff. Finally, the defendants asserted that according to the rules of Quebec civil law, the parish priest of l'Ange-Gardien was a competent authority and had the power to change the destination of the objects of contention, which he did when he sold them.

In brief, it seems that the disputed questions in the case of l'Ange-Gardien could be put under the two following major categories :

- (1) the definition of a sacred object, the loss of its sacred character and the application of canon law in the matter and,
- (2) the terms of the alienation of the goods of a Church Council once they have been desacralized.

But before examining more closely the details of the decisions reached by the different courts that intervened in this case, it would be useful to provide a description of the disputed objects and to say a few words about the artists that created them.

## 5 The Disputed Treasures and their Manufacture

The parish of l'Ange-Gardien is one of the oldest parishes in Quebec, even of all Canada. Located on the coast of Beaupré, near Quebec



Silver chalice by François Ranvoyzé  
(1739–1819).



Silver chalice by François Sasseville  
(1797–1864).

City, it was founded in 1664 and was granted authority of a Church Council in 1678. Without a doubt it was one of the parishes that formed the cradle of New France. Thus, following the example of numerous Quebec parishes during the nineteenth century, the parish of l'Ange-Gardien was enriched with several art objects devoted to the cult. These liturgical objects, either sculpted or crafted with materials like silver or wood, were the works of sculptors and silversmiths well renowned for the beauty and delicacy of their work. In fact, the meticulous inventory undertaken by Gérard Morisset<sup>11</sup> enables us today to appreciate the historical and artistic value of these objects that were sold, in all likelihood, in good faith by the parish priest of l'Ange-Gardien.

The parish of l'Ange-Gardien owned, until 1962, two sculpted Madonnas in gilded wood, six candlesticks in sculpted wood, one sculpted wood crucifix from the high altar, as well as two statues of St. John and one of St. Roch by artist Jacques Leblond called Latour, a French immigrant who came to Quebec in 1690.

The parish of l'Ange-Gardien had sold a chalice, a censer, an incense boat and vials for the Holy Oils by a master silversmith,

François Ranvoyzé (1739 – 1819), renowned for his ornate style and for his prolific production of more than 2000 works in fifty years of output.

A solid silver stoup by Laurent Amiot (1764 – 1839) was sold; the stoup had a less ornate style typical of the works of this silversmith, one of Ranvoyzé's rivals. Moreover, Amiot was the first Canadian silversmith to consider silverwork as an art and not as a craft. In addition, ten sculpted wood candlesticks made by François Baillairgé (1759 – 1830) were sold. Baillairgé, a member of the great family of architects and sculptors, was a friend of Amiot and had a profound influence on his contemporaries. He is still famous for his unique style based on the art of architecture drawing from which he planned and organized the entire mass of the work under creation. Thus, each painting and sculpture was meant to find a place within the whole architectural work.

Finally, the parish had sold a chalice and two cruets in solid silver by the master-silversmith François Sasseville (1797 – 1864), whose works were almost exclusively of a religious nature. Sasseville, an emulator of Amiot, also developed a less ornate style, inspired by the French models with which he could easily compete.

Finally, in 1962, the parish of l'Ange-Gardien also sold three other religious objects, whose makers are unknown. They were a statue of the Madonna, a 'navette' (incense boat) in solid silver and a baptismal ewer.

## 6 The Decisions

### 6.1 The Quebec Superior Court

In 1976, the Church Council of l'Ange-Gardien decided to institute proceedings in a declaration of nullity of transactions by which it claimed to have been illegally dispossessed of certain objects that were part of its patrimony. The Church Council brought an action against the actual owners of the disputed objects: a number of private collectors and two museums. The case went before the Quebec Superior Court.

Judge Paul-Étienne Bernier pronounced the court decision on January 18, 1980 in a thorough document of more than 135 pages. The Judge concurred with the Church Council, declared void of absolute nullity all acts that brought about the dispossession of the disputed goods and declared that the Church Council was the sole owner of the objects of contention. He then ordered the defendants to return the objects in their possession, without indemnity, or, failing that, to compensate the plaintiffs.

In order to nullify the transactions in question, the first instance judge pointed out the essential imprescriptible character of the objects of contention and the fact that, as sacred objects, they were excluded from being objects of commerce. He also emphasized the





'Virgin and Child' by an unknown craftsman — one of the many fine works of art that comprise the 'treasure' of L'Ange Gardien. Photographs provided by the National Gallery of Canada with permission of Curé Jacques Pelletier (Fabrique de la Paroisse de L'Ange Gardien).

total absence of a change of destination of these goods at the time of their alienation, the omission by the parish priest of the necessary formalities by canon law, not only for a change of destination of sacred things, but also for the alienation of ecclesiastic goods and, finally, the absence of authorization from the Church Council in regard to the said alienation. It should be noted that in order to reach his findings, judge Bernier had to recognize the application of canon law.

Applying these principles in the case in point, judge Bernier concluded that the evidence revealed that the objects of contention had not lost their sacred character because the competent authorities of the diocese of Quebec had not sanctioned their desecralization. Therefore, these objects were still sacred at the time of their alienation and thus, were imprescriptible and excluded from being objects of commerce. Furthermore, judge Bernier came to the conclusion that Gariépy did not have the mandate to act on behalf of the Church Council of the parish, sole owner of the parochial properties, and therefore did not have the authority to sell them. The sale of the objects in question was thus illegal from all points of view.

## 6.2 The Quebec Court of Appeal

The decision of the Quebec Superior Court was appealed by some of the defendants : the National Museums of Canada, the Musée du Québec and three private collectors : Roger Prévost, Jean Soucy and Jean-Paul Lemieux.<sup>12</sup> Seven years later, the Court of Appeal unanimously confirmed, with a bench of three judges, the decision rendered by the Superior Court. However, only judges Malouf and L'Heureux-Dubé submitted written opinions; judge Rothman only subscribed to them.

Judge Malouf shared the opinion of the first instance judge in regard to the application of canon law in this case. He also agreed with the definition of sacred things given by the Superior Court, which were objects used for religious purposes. Furthermore, judge Malouf rejected the defendants' argument that claimed that the objects of contention were no longer sacred at the time of their alienation. On the contrary, he confirmed in this respect the conclusion of judge Bernier which stated that the alienated goods were indeed sacred at the time of their alienation as their destination has not been properly changed according to the procedure requested by canon law.

In interpretation of ecclesiastic as well as civil law, judge Malouf also examined the question of whether the parish priest, Gariépy, could have had the authority to alienate the objects of contention if they had been no longer sacred at the time of their alienation. In this regard, judge Malouf recalled that in civil law, a Church Council is a corporation not only formed of the parish priest but also of the churchwardens and that it is by virtue of official resolutions that



all decisions regarding the parish are taken. As for canon law, it requires a written estimate from experts, a just cause or a reason of piety and the permission of the legitimate superior in order to alienate an ecclesiastic object. Judge Malouf concluded that Gariépy acting on his own initiative, without the authorization of neither the Church Council nor that of the bishop of the diocese, had violated the provisions of civil law as well as those of canon law and, consequently, did not have the necessary authority to sell the goods belonging to the Church Council as he had done.

Judge L'Heureux-Dubé also agreed with the reference to canon law by the Superior Court in order to determine the destination and sacred character of the objects of contention. She asserted that the relevant sections of the *Civil Code of Lower Canada* could be construed according to the norms pertaining to the particular belief, whether that of canon law for the Catholic religion, of the Torah for Judaism or the Koran for the Muslim faith. In fact, according to judge L'Heureux-Dubé, there had not been an introduction of these religious codes into the civil law but merely a reference to the prescriptions of the different religious denominations in their sovereign realm : their beliefs.

Judge l'Heureux-Dubé shared the opinion of the first judge who stated that the goods of contention were still sacred when alienated. She also ruled that Gariépy had unduly bestowed upon himself the power to alienate the objects in question.

The Quebec Court of Appeal rejected the appeal in its judgment of May 28, 1987 and consequently ordered the defendants to remit the objects in their possession to the Church Council.

### 6.3 The Supreme Court of Canada

The Musée du Québec yielded to the decision of the Court of Appeal, but the National Museums of Canada, as well as the defendants Jean-Paul Lemieux and Roger Prévost, requested from the Supreme Court of Canada the right to appeal. This request was rejected by the Court on December 17, 1987. The decisions of the Quebec Superior Court and of the Quebec Court of Appeal being confirmed, the National Gallery of Canada, Roger Prévost and Jean-Paul Lemieux complied with the ruling and returned the 'treasures' to the Church Council of the parish of l'Ange-Gardien.<sup>13</sup>

## 7 Conclusion

Many of those involved in the preservation and enhancement of religious artifacts were called as witnesses in the case of the treasures of l'Ange-Gardien: these included archbishops, bishops, canon law specialists, parish priests, vergers, churchwardens, the Minister of

Cultural Affairs, government officials, museum directors and curators, art historians, antique dealers, and collectors.

A great deal was learned from their testimonies on the commercial dealings of religious objects from the 1930s to the 1970s. In some cases, it showed how the religious, political and administrative authorities turned a blind eye to these dealings.

During this case, several ideas and complex realities were discussed. They pertained to the usual customs regarding the dispositions of art objects used in worship; on the legal status of the parish priest and the parochial administrators and on their powers in regard to successive laws concerning the administration of fabrics, on the role and powers of dioceses in the administration of these goods; on the imprescriptible character of sacred things compared to the sale of these objects as patrimonial art objects and, finally, on the interrelation of canon law and civil law.

Without a doubt, the case of the treasures of l'Ange-Gardien brought about important changes in the attitudes of Quebecers towards cultural and art objects and towards patrimonial goods. The lawsuit made the headlines of newspapers and became a favourite subject of conversation in the wings of presbyteries, bishop's palaces, museums, government offices, antique dealers' stores and collectors' sitting rooms. The result was that all these people became more prudent when dealing with religious artifacts.

However, the case of the treasures of l'Ange-Gardien does not only concern the major people involved in sacred art. On the contrary, it concerns all those who have acquired religious art objects that could have come from the Quebec Catholic parishes during the recent past. Furthermore, it also concerns all those who could have acquired such objects from numerous other religious societies existing in Quebec. The principles that came out of the case of l'Ange-Gardien apply not only in regard to canon law, but also in regard to any other ecclesiastic law, notwithstanding the cult or faith in question.

This is why the consequences of the case of the treasures of l'Ange-Gardien are so important in the Canadian museums circle. As reported in the bulletin *Muséogramme*, a few years ago:

“The most imminent danger in this judgment allowing the church of l'Ange-Gardien to recuperate the sold works of art, is the potential chain reaction,” said Robert Derome, director of the department of art history at l'Université du Québec à Montréal. “It is a very dangerous legal precedent. If all churches decided to follow in the steps of l'Ange-Gardien, our museums would be emptied of a very important part of their collections.” Mr. Derome said that museums are also concerned about what might happen to the works of art if returned to the churches, with the high cost of insurance for such collections and the need for quality conservation control and display techniques.<sup>14</sup>

On the cultural level as well as on a purely legal level, the case of the treasures of l'Ange-Gardien was then and still is an important case in both Quebec and Canada.

## Notes

- 1 Religious art represents the major part of Quebec cultural heritage up until the middle of the nineteenth century. Silversmiths' pieces and religious sculptures are among the most beautiful works of this patrimony.
- 2 The courts that are referred to are the Quebec Superior Court, the Quebec Court of Appeal and the Supreme Court of Canada.  
The Quebec Superior Court is the first instance court in Quebec for civil lawsuits which involve the sum of at least \$15,000 CDN (\$3,000 CDN or more at the time of the first civil action instituted by the Church Council of l'Ange-Gardien). The Quebec Court of Appeal is the general court of appeal for Quebec. It is generally made up of a bench of three judges. The Supreme Court of Canada is the highest court of the country. It is a general court of appeal, having jurisdiction, among other fields, in civil law. However, in this particular matter, it can be appealed only by permission. In order to obtain the authorization to appeal before the Supreme Court, the applicants have to state their motives to three judges of the court. The judges will then decide whether or not to give the authorization to appeal, without however providing any written reasons.
- 3 The sustained interest of the public is explained, obviously, by the fact that it is not often that such a case occurs involving the recovery by the Church Council of sacred objects that were sold a few years before by the parish priest; moreover, this same priest suffered a heart attack in the middle of the proceedings, the archbishop of the Quebec diocese was forced to testify during the trial and the reputations of a few local personalities were tarnished by this case.
- 4 See E. CAPARROS, 'L'affaire des trésors de l'Ange-Gardien' in *Ius Ecclesiae*, 1 [1989], pp. 617–643; and E. CAPARROS, 'Le droit canonique devant les tribunaux canadiens', in M. THÉRIAULT and J. THORN (dir.), *Unico Ecclesiae servitio: études de droit canonique offertes à Germain Lesage, o.m.i., en l'honneur de son 75e anniversaire de naissance et du 50e anniversaire de son ordination presbytérale*, Ottawa, Faculty of Canon Law, St. Paul University, 1991, pp. 307–342.
- 5 In Quebec civil law, the purpose of an object is, in a certain way, its actual assignment. A thing will then be considered sacred insofar as it is used for worship or for religious purposes.
- 6 The concept of 'encroachment' refers more particularly to the notions of 'illegal appropriation' and 'theft' within the context of Quebec civil law. Civil law is thus providing that a sacred thing cannot lose its character due to the sole fact that it was stolen or obtained through violence.
- 7 Roger Prévost was a prosperous antique dealer who was dealing regularly in sacred art objects.
- 8 They were the following private collectors: Benoît Gariépy, Jean-Noël Tremblay, Jean Soucy and Jean-Paul Lemieux as well as the Musée du Québec, then represented by the Attorney General of Quebec, and the National Gallery of Canada, represented by the Corporation of National Museums of Canada.

9 The *Civil Code of Lower Canada* shows, in a methodical and logical order, the rules of fundamental law regarding individuals, family, property and obligations. It is a Quebec law.

A new civil code was sanctioned on December 18, 1991 by the National Assembly of Quebec. It will come into force on January 1st, 1994. This new code, which will be called *Civil Code of Quebec*, is a true recodification and not a simple up-to-date review.

10 *The Fabrique Act* is a Quebec law. The *fabriques* are the administrative bodies of the church in every parish of Quebec.

11 From 1937 to 1953, Gérard Morisset tirelessly travelled through the province of Quebec in order to photograph, document and make an inventory of all the sacred art objects kept in the parishes. It is in his *Inventaire des oeuvres d'art du Ministère des affaires culturelles du Québec* that we find the most detailed description of the objects that were at the heart of the case of the treasures of l'Ange-Gardien.

12 Jean-Paul Lemieux himself, who died in December 1990, was a painter of international renown and a great collector of Canadian art objects.

13 It is to be noted that the objects that were in the possession of the different museums had been restored by them and that they had been given back to the Church Council of the parish of l'Ange-Gardien in excellent condition.

14 *Muséogramme* of December 1987 / January 1988.