# The Canadian Legal System: A Useful Comparison for Japan?

by Malcolm Smith*



## I. Introduction

As many readers will be aware, I began my career in Australia and moved to Canada only in 1981. I am impressed by the similarity in outlook in the planning of law courses in the two countries, although important differences in details of courses and in material facilities at law faculties do exist. Comparative law studies focussing on Asian legal systems are relative newcomers to the law curriculum in Canada. UBC has led the way with courses on both China and Japan. My own research interest has always been the legal system in Japan. Why should we study Japanese Law in Canada? Equally important, why should Japanese lawyers and academics study Canadian law?

Comparative law studies in Japan have devoted relatively little attention to law in the Commonwealth countries in comparison to studies of England and the United States. My experience has been that the over-

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whelming number of scholars and lawyers in Japan are vitally concerned with the law in the United States and Germany and to a lesser extent are interested in developments in France, the European Community, and Great Britain. Only in comparatively recent times have the implications of expanding economic interaction between Japan and Canada provoked a general interest in the law in Canada, building on the work of early pioneers in the field in Japan. One cannot escape the imperative of economics in forcing lawyers in countries which have close economic ties to find out about each other's laws. However, there is a broader justification for a comparative examination of the legal systems in Japan and Canada. I hope that the first Japan-Canada Lawyers' Conference at Chukyo University in April 1983 brought home to the participants the fact that Canada has its *own* legal system which has developed to meet particular Canadian aspirations. It is a major error simply to assume that the legal system in Canada operates either on an English or a United States model. The lessons of *Ei-beihō* must be heavily qualified when dealing with the law of Canada in the 1980's. However, there are more than just details in the structure of the Canadian legal system to be mastered. The Canadian perspective of law also may have something to offer Japanese scholars and lawyers who are interested in a continuing re-assessment of the operation of law in their own society.

Canadians do not necessarily share the perspective of their southern neighbours when it comes to analyzing the role of law in society. There is no doubt that the influence of U.S. law is of great importance in Canada, but no one should assume that Canadian law follows faithfully in the footsteps of the legal system of those "other Americans." A monolithic view of the common law world is misleading.

Just as misleading is the view that Japan's legal system is somehow lacking if it varies from the U.S. model. In my view, work by foreigners on the Japanese legal system over the last thirty years has been hampered to some extent by this assumption and by the pervasive notion that Japan is monolithic and that her people are cast in the same tight mold. The fundamental assumption throughout the past two or three decades has been that Japanese people are quite different to Westerners and that their "uniqueness" is reflected in their social structure, cultural traditions, racial homogeneity, and, more recently, psychological conditioning. These

assumptions have been developed by Japanese scholars writing in English, primarily with a view to an audience in the United States, or by scholars from the United States who have brought to Japan a set of their own fundamental assumptions, often not proven in fact, about the nature of their own society.

Most of those scholars have stressed the mainstream U.S. thinking on the central role of the judicial institution and few U.S. writers have compared developments in Japan with non-mainstream currents of U.S. legal thought. For example, few U.S. writers discussing the role of civil cases in Japan deal with the O'Connell-Keeton proposals for no-fault, non-litigous alternatives.[1]

Japan has measured its legal system against the U.S. yardstick, while perhaps assuming that the U.S. system was typical of, or superior to, other common law systems. Canadians also tend to measure themselves against the U.S. model, but they like to think that they do so critically and, like Japan, they are slow to adopt U.S. developments without a careful analysis of their cultural, social and political differences. Canadians seek their own legal solutions to their social problems. I think we can learn from each other and about each other by developing a triangular comparison between Japan, Canada and the U.S.

## II. Comparisons and Contrasts: Canada and Japan

If I were speaking to an audience in an American city and wanted to

[1] See for example the stress on the judicial role in discussions of Japan by C. Stevens, "Modern Japanese Law as an Instrument of Comparison" (1971) 19 AMERICAN JOURNAL OF COMPARATIVE LAW 665; D.F. Henderson, CONCILIATION AND JAPANESE LAW: TOKUGAWA AND MODERN (U. of Tokyo Press); and J.O. Haley, "The Myth of the Reluctant Litigant," (1978) 4 JOURNAL OF JAPANESE STUDIES. Compare major U.S. works on no-fault schemes, for example Keeton and O'Connell, BASIC PROTECTION FOR THE TRAFFIC VICTIM (1965), Conard, AUTOMOBILE ACCIDENT COSTS AND PAYMENTS (1964), Ehrenzweig, FULL AID INSURANCE FOR THE TRAFFIC VICTIM (1954) and L. Green, TRAFFIC VICTIMS: TORT LAW AND INSURANCE (1958).

set up some points for discussion about Japan I might choose to stress the following issues. Let us consider:

1. A country which counts the United States as its most important trading partner;
2. A country established as a constitutional monarchy;
3. A country with a Westminster system of parliamentary government, without a President;
4. A country which has adopted a set of guarantees of human rights which are modeled on those in the U.S. Constitution;
5. A country in which the Prime Minister and the Cabinet are drawn from the parliament;
6. A country where one side of politics has virtually monopolized power since 1945;
7. A country where the opposition may resort to a boycott of Parliament when it believes the majority is abusing its mandate, or abusing the parliamentry process;
8. A country where the bulk of the population is grouped in a relatively small number of large cities;
9. A country where less than twenty percent of the total land area is fit for agriculture;
10. A country where the population is highly literate;
11. A country where the economic health of the nation relies very heavily on foreign trade; and
12. A country whose legal system exhibits strong civil law and common law influences.

A United States audience would readily recognize Japan from that description but each factor applies equally well to Canada. Yet in discussing Canada in Japan I think that a Japanese audience would instinctively think of similarities between the United States and Canada, and perhaps would overlook those twelve very significant similarities between Canada and Japan. The tendency would be even stronger for Canadians to think of their system as closer to the U.S. than to Japan.

Of course there are significant differences which would need to be stressed between Japan and Canada. Japan has been an independent country since the beginning of recorded history, whereas Canada has a

unique colonial heritage which links it to both Britain and France. The Japanese legal system is unitary, whereas the Canadian system is a Federal system. In relation to this point it cannot be stressed too strongly that the Canadian federal structure varies significantly from the American structure, particularly in the allocation of powers between the central government and the provincial governments. Japan has only one language and Japanese people, no matter where they live in Japan, can read the official language and converse freely with their fellow Japanese. Canada has two competing European cultural heritages, the English and the French. One important consequence is that Canada has two official languages and this has a tremendous impact not only on the society in general but also on the legal system. All laws and all court judgements in Canada at the Federal level must be delivered and published in both French and English. Unlike Japan, where there is great stress on the impact on the legal system of racial and cultural homogeneity, in Canada the English and French cultural traditions are joined by large and increasingly active indigenous populations and Asian and southern European immigrant populations. In contrast to the United States, which sees itself as a "melting pot" in which immigrant cultures are absorbed, Canada sees its society as a "mosaic" of cultures, each of which is encouraged to grow and flourish in harmony with the others. This should result in a far more pluralistic society than in either Japan or the U.S. Naturally, a more detailed examination of any of these twelve points of similarity I have mentioned would lead to important points of comparison, which I hope others will take up in the years ahead.

The list of comparisons and distinctions can be extended by examining the papers delivered by my colleagues at the Chukyo Conference. However, I think I have said enough to indicate that there are potentially as many similarities between Canada and Japan as there are between Canada and the United States.

What I would like to do in this paper is speculate on the possible insights which a study of Japanese law might provide for examining the Canadian legal system, and to try to provide some examples. I see two problems which have emerged in foreign studies of the Japanese legal system. The first, and major, problem is that the vast majority of the studies have been carried out by scholars from the United States, who

have almost without exception stressed the role of litigation as the key element in evaluating a legal system.

Consequently, both dispute resolution and law-making have been examined from the standpoint of the role of the Courts, at the expense of studies of how the legislative and administrative rule-making process works. The second problem stems from the first. Foreign studies have seen alternative methods of dispute resolution as a threat to litigation and have tended to be critical of indigenous Japanese alternatives.[2] In this regard it was interesting to see Professor Fujikura turn to the attack in last year's symposium on Japan-American legal culture and criticize the lack of alternatives to litigation in the American system.[3] Is the Canadian legal system dominated by litigation? Has Canada developed viable alternatives to litigation? What are the characteristics of the legislative and administrative rule-making process in Canada?

## III. The Role of Litigation

While litigation rates abound in comparative studies of Japanese and U.S. law, it is difficult to be precise in the case of Canada simply because appropriate figures are not published. I have shared Professor Morishima's frustration in discovering that neither the Federal nor Provincial governments maintain accurate figures on the volume, or the type, of litigation each year. Nor are there detailed studies on Canadian attitudes to litigation. Discussions in my Japanese Law classes in Canada over the last three years indicate that most Canadian law students clearly have the perception that Canadian attitudes to law are very similar to those in the United States. This perception is reinforced by the Canadian pattern of graduate law schools, the emphasis on the casebook teaching method, the fact that well over 90% of all U.B.C. law graduates intend to become lawyers, and the fact that British Columbia, with a population of under

[2] Henderson, op.cit., and J.O. Haley, "The Politics of Informal Justice: The Japanese Experience, 1922-1942" in R. Abel (ed.) THE POLITICS OF INFORMAL JUSTICE, vol. 2, 125 (Academic Press, New York, 1982) both contain excellent discussions of the arguments for and against conciliation in Japan.

[3] (1982) 760 JURIST 56

3 million people, has just on half as many lawyers as Japan.[4]

I have had the opportunity to put to a wide variety of audiences in Canada, the proposition discussed by Professors Hideo Tanaka and Akio Takeuchi that litigation rates may be a measure of the progress of democratization in a society.[5] I believe the same proposition was present in the work of Professor Takeyoshi Kawashima.[6] Canadian audiences invariably react with nervous laughter to the idea that more lawyers might mean more democracy. My deduction is that Canadians simply have not given much thought to this possible link, although the debate over the new Charter of Rights and Freedoms has focussed attention on the courts as protectors of democratic freedoms as never before in Canadian history.

a) Motor Car Accidents

Recent studies in the rest of the common law world suggest that Japan may not be so far distant from the "common law" legal process as a comparison with the United States alone might suggest. If litigation has been used as a measure of democracy, litigation in road accident cases has been seen as a key measure of a legal system's adaptation to industrialization. Studies in Japan by Professor Kawashima in 1963[7] and Professor Rokumoto of accident victims in the Kansai area in 1965 indicate that a very low proportion of victims took legal action.[8] Professor Rokumoto's survey indicated that of the 70% of victims who settled within one year of the accident, only 5.1% consulted a lawyer and 2.4% filed a claim with the court. While the figures were very low compared with the United States they are not significantly different from results

[4] There are about 4750 lawyers in British Columbia.

[5] H. Tanaka and A. Takeuchi, "The Role of Private Persons in the Enforcement of Law" (1974) 7 LAW IN JAPAN: AN ANNUAL 34 translated from 88 HOGAKU KYOKAI ZASSHI 521, 89 id. 243, 879, 1033 (1972-1973).

[6] T. Kawashima, "Dispute Resolution in Contemporary Japan" in A.T. von Mehren, LAW IN JAPAN (Harvard Uni. Press and Uni. of Tokyo Press 1963).

[7] Ibid.

[8] Quoted in Tanaka, THE JAPANESE LEGAL SYSTEM: CASES AND MATERIALS (U. of Tokyo Press, 1976), 258.

published by the Pearson Commission in the United Kingdom in 1978.[9] The Commission's report sets out the results of a survey of accident victims in 1973. It was estimated that 25% of injuries in motor vehicle accidents were compensated.[10]

Overall, tort-compensation was obtained only by an estimated 6-1/2% of people who suffered injury. More importantly, only 11% of the people injured took any steps toward making a claim toward compensation, even to the extent of discussing the possibility with someone else.[11] The reasons for not making a claim are set out below. I suggest that they are very similar to the reasons given in comparable Japanese surveys.

TABLE 84 Reasons for not making a claim

| Great Britain: Injuries in 1973 | Percentages |
|---|---|
| Not seriously injured | 22 |
| Did not know how to claim/that they could claim | 19 |
| It was just an accident | 11 |
| Too much trouble/did not want to make a fuss/too upset | 11 |
| It would have meant claiming against a member of the family/friend | 10 |
| Felt that it was partly own fault | 9 |
| Did not lose any/much money/not off work | 8 |
| Did not know who was responsible/identity of wrongdoer | 8 |
| Could not prove anyone at fault/no witnesses/no evidence | 6 |
| Did not think about it/glad to be alive/more concerned about injuries | 5 |
| Thought it would cost too much/might lose money | 4 |
| Others | 13 |
| Total | 126[1] |

1 Some respondents gave more than one reason

Source: Pearson Commission Report, vol. 2, 121 (Cmd. 7054-11, 1978)

9 PEARSON COMMISSION REPORT Cmd. 7054 (1978).

10 Ibid. vol 2, Table 87, page 123.

11 Ibid. 119.

In view of Professor Rokumoto's discovery that in Japan only 5% of victims consulted a lawyer, it is important to note that in paragraph 390 of the Pearson Commission Report the Commission concluded that "Where advice was sought, it was most often sought from a solicitor or trade union or both. Others discussed the matter with family and friends, employers, citizens' advice bureaux, doctors or insurance companies. The proportion consulting a solicitor was highest for injuries caused by moving motor vehicles."[12]

The percentage of recovery in England was highest among road accident victims, where the Pearson Commission estimated 25% did receive tort compensation.[13] A survey in the mid 1960's in Ontario indicated that a comparatively high 43% of motor accident victims did manage to recover tort compensation.[14] It is important to note that the Japanese figures were taken out at a time when there already existed a form of no-fault insurance compensation scheme, whereas no comparable scheme exists in England today, and no scheme existed in Ontario until 1971.

Figures from the United Kingdom are also instructive in the area of products liability. One American survey indicated that of 38,000 cases in the whole of the United States, 67-1/2% came from the metropolitan area of New York, thereby indicating a high awareness in that city of rights in such cases, and a much lower awareness around the rest of the country. In contrast, a survey in 1968 in the United Kingdom indicated that only 22% of people surveyed were aware that a retail seller was liable for injuries or damages caused by defective goods.[15]

12 Ibid. 121.

13 PEARSON COMMISSION REPORT, vol. 2, Table 14, cited in Atiyah, ACCIDENTS, COMPENSATION AND THE LAW (3rd ed., 1980), 232.

14 'Report of the Osgoode Hall Study on Compensation for Victims of Automobile Accidents', cited in Wright and Linden, CANADIAN TORT LAW (1981) 15-3. That survey also indicated that lawyers were consulted in 37.3% of cases while writs were issued in only 13.4% of cases. Only 1.2% of cases reached a trial on the merits.

15 Diamond, 31 MODERN LAW REVIEW 372. See generally, Atiyah, op.cit, ch. 8, pp. 235-238.

With the advent of no-fault insurance schemes, the use of motor car accident litigation becomes a less scientific basis for comparison between systems. It is crucial to establish whether the no-fault insurance scheme eliminates the possibility of a tort action. In this respect the Canadian provinces have adopted schemes which seem similar to that operating in Japan. The province of Saskatchewen adopted the first Canadian scheme in 1946. No fault recovery does not prevent a person who can establish fault from pursuing a common law action. Ontario, Manitoba, and British Columbia have similar schemes, although they differ in detail. Only in the civil law province of Quebec is the court action eliminated.[16] Systems which allow the same party to pursue both the no-fault and common law remedy must be contrasted with the Michigan no-fault statute in the United States where liability is preserved only for intentionally caused harm and for very serious injuries, and the New Zealand scheme where the court remedy is abolished entirely. Australia, under a Labor government in 1975, came close to adopting a scheme based on the New Zealand model and it will be interesting to see whether the new Labor government will resurrect the proposal. A report by the Accident Compensation Committee of the Insurance Corporation of British Columbia recommended abolition of the common law action for motor car cases in 1983. No action has been taken on the Report.[17]

The importance of the no-fault schemes is the challenge they pose to the concept that litigation is a preferred method of dispute resolution. The whole raison d'etre for the schemes is that tort compensation through the judicial system has failed. It seems that the true test for measuring success in this area of social conflict is the number of people who receive *some form of compensation* for their injury, rather than the number of people who either consult a lawyer or successfully prosecute an action through the courts. This aspect of the problem is hardly mentioned in the U.S. literature on the role of law and litigation in Japan.

16 See Appendix 1 for details of these schemes.

17 REPORT, 1983, by the Accident Compensation Committee of the Insurance Corporation of British Columbia.

b) The Amount of Compensation Recoverable

A second ground for concern in the Japanese system is the tendency for Japanese courts to award far smaller amounts for damages than in the United States. The article by Professor Tanaka and Professor Takeuchi[18] cites the very low awards in Japan in actions against national newspapers for defamation, and suggests an apology is more important than monetary compensation. We are told that the Japanese concept of tort damages does not extend to punitive, or exemplary awards. The maximum recovery in defamation actions was about $3,000 in the 1970's. This amount clearly is small in comparison with the United States. What if the comparison is with Canada, France, or the United Kingdom? Prior to 1978 the largest defamation award in Canada was $35,000 in 1964 in a case involving an erroneous allegation by Time Magazine that a Major in the Canadian army had been court martialled for drug smuggling in Vietnam. The majority of awards were $10,000 or less. In France, between 1965 and 1970 the maximum award was 15,000 francs. In the U.K. between 1934 and 1976 the largest award was 40,000 pounds (including 25,000 pounds in exemplary damages) in the famous case of *Broome* v. *Castle and Co. Ltd. et al.* [1971] 2 W.L.R. 853.[19]

The situation has changed subsequently in Canada. In 1978 a Quebec court awarded $135,000 to a plaintiff under the Quebec Civil Code, which like Japan does not allow punitive damages.[20] Then in 1981 a Supreme Court Justice in Vancouver, sitting without a jury, awarded a plaintiff $125,000, including $25,000 in punitive damages, in an action against the Canadian Broadcasting Corporation.[21] For the first time in Canada we see a large defamation award with a clear component for punitive damages in a common law province. However, this does not detract from my earlier point that at the time Professors Tanaka and Takeuchi were writing, in the early 1970s, the Japanese defamation

18 supra note 5.

19 These awards were collected by the Quebec Supreme Court in its judgment in 1978 in Snyder v. Montreal Gazette (1978) 87 D.L.R. (3d.) 5.

20 Ibid.

21 Vogel v. CBC (1982) 35 B.C.L.R. 7 per Esson J.

awards were not significantly out of line with those in Canada, the United Kingdom and France.

In tort cases in general, the Canadian torts professor, like his Japanese counterpart, must point to substantial differences in approach in the United States Courts to explain substantially higher awards of damages there. In the United States the civil jury still reigns. In Canada the plaintiff must request a jury trial and the judge, at least in British Columbia, has a discretion not to allow a jury.[22] Once liability is established, the American courts are likely to award large sums for both non-pecuniary loss (pain and suffering) and for punitive damages. In both areas there have been important recent developments in Canada, one limiting the scope of awards, the other possessing the potential to expand recovery. In a trilogy of cases[23] in the Supreme Court of Canada, in 1978, an arbitrary upper limit of $100,000 (since adjusted for inflation) was imposed for damages for pain and suffering. This effectively limits recovery in the most serious of accident cases to about $1 million. I understand that with adjustments for inflation the current maximum figure is approximately $175,000 for pain and suffering. This limit was the result of "judicial legislation". There was no legislative mandate for the imposition of this limit. In the same trilogy of cases the Supreme Court also arbitrarily imposed a discount rate of 6–7% for the impact of inflation and interest rate adjustments over time. This discount rate has now been accepted as too high and the Rules of Court in British Columbia have imposed a figure of 2.5%. These two limits, coupled with a third tendency to allow discounts in the region of 25–30% for contingencies of life in serious cases, have all resulted in lower awards in Canada than in the United States.

One area in which this difference in damages awards has had an inter-

22 RULES OF THE SUPREME COURT OF BRITISH COLUMBIA, rule 39 (18) and 39 (19).

23 Andrews v. Grand and Toy Alberta Ltd. et. al. (1978) 3 CANADIAN CASES ON THE LAW OF TORTS 225; Thornton v. Board of School Trustees of School District No. 578 (Prince George) et. al. (1978) 3 C.C.L.T. 257; and Arnold v. Teno (1978) 3 C.C.L.T. 272.

national impact is aircraft accident compensation, where the U.S. courts in the 1960's evaded the internationally agreed limits on recovery because they thought they were too low and therefore prejudicial to U.S. plaintiffs. It was generally thought at that time that Canadian judgments were close to those in the U.S., but this is no longer the case. Recent settlements in actions arising out of the sinking of an oilrig off the east coast of Canada highlight the present situation. The families of the Canadians who died in the accident tried to sue the U.S. operating company in U.S. courts, which declined jurisdiction, and then settled for smaller sums than were recovered by the families of Americans who died in the same disaster.

On the other hand, a single judge in the Supreme Court of British Columbia has re-written the law on exemplary damages (or punitive damages) in negligence cases.[24] Previously it was well recognized that punitive damages, usually not exceeding about $5,000, were available in cases of intentionally inflicted injuries. Mr. Justice Esson in 1981 awarded a former ice hockey player $35,000 in punitive damages against his old club on the basis that its negligent conduct in failing to treat him for a back injury, in forcing him to play with the injury, and in publicly suggesting that he was a malingerer, was sufficient to justify a punitive award. The basis of the principle adopted by Mr. Justice Esson is that negligent conduct which is specifically directed against the particular plantiff can give rise to exemplary damages. In a subsequent case in 1983, the same judge indicated that the damages were personal to the victim and could not be transferred to the estate of the deceased victim.

Canadians share the wonderment of the Japanese when reading reports from the United States of multi-million dollar settlements for defamation actions, of the $128 million award against Ford Motor Company, and of out of court settlements exceeding $50 million for medical negligence in pre-natal care cases. Naturally the detailed principles of substantive law which precede the discussion of the scope of damages awards would be the focus for another paper.

[24] Robitaille v. Vancouver Hockey Club (1979) 19 B.C.L.R. 158 (affirmed on appeal).

c) Administrative Regulation

A third major area revealing a stronger similarity between Canada and Japan then between Canada and the U.S. is the legal regulation of foreign investment and foreign trade. This regulation is just one aspect of the wider comparison of rules and attitudes in the Administrative Law field. Canada is presently under attack from the U.S. for publicly adopting the very principle which has dominated Japan's post-war economic strategy, namely, that economic interdependence between nations, if the balance tips in favour of one party, can lead to a loss of control over not only the national economy but the national culture as well.

Japan has chosen to stand alone and to control its own economic policy. The legal framework for implementing that policy has rightly been categorized as discretionary and beyond effective challenge in the courts. The system guaranteed the government's right to control trade and investment; it did not guarantee the individual's right to trade or to invest. The most detailed legal critiques of this structure have emanated from the United States, or those like myself who, having trained in the United States, saw the clear contrast offered by the institutionalization and judicialization of the U.S. economic system. The U.S. legal system has allowed an association of consumers to challenge in the courts an agreement worked out between the Secretary of State and Japanese steel exporters to limit the export of steel to the U.S.; it has allowed a Japanese company to successfully challenge the constitutional and legislative authority of the international trade measures initiated by the President in his sweeping economic measures in August 1971; and it has required the President to establish before a semi-judicial body that American industry was indeed suffering injury from an increase in imports attributable to American trade concessions before allowing him to protect U.S. interests.[25]

25 Further, the Administration is often powerless to prevent private U.S. citizens initiating actions against foreign interests, contrary to the Administration's preferred policies. Unlike Japan and Canada, the U.S. citizen often has clear, legislated rights to enforce foreign trade laws. See e.g. an article by W.E. Perry, attorney-advisor to the U.S. International Trade Commission, JAPAN TIMES, June 25, 1984, page 5, col. 1.

Small wonder that the U.S. reaction to recent Canadian measures has borne the same frustration evident in its dealings with Japan, a frustration based on a realization that Canada, like Japan, imposes few institutional or legislative restraints on economic policy formulation and implementation. Indeed, since the recent changes to Japan's foreign investment laws,[26] Japan now has significantly more legislative criteria than Canada for controlling trade and investment decisions. Japan has moved beyond Canada and closer to the U.S. Whatever arguments Canada may use in relation to Japanese trade and investment policy, it cannot in good conscience adapt the legal arguments developed in the United States.

The foreign investment example also indicates that the Canadian tolerance of administrative discretion in economic regulation is much greater than in the U.S. I would argue that Canadians are used to government techniques which are very close to administrative guidance. I would also point out that Canadian civil servants are far more protective of information than their U.S. counterparts and are a career, elite body, as in Japan.

## IV. Conclusions

When we add to the facts that I have mentioned above, other random points such as the adoption of the contingent fee system in Canada, the preponderance of lawyers among Canada's Federal political leaders, though not to the same extent among her provincial politicians, and the new role afforded the judiciary under the 1982 Constitutional arrangements, it is fair to say that the judicial institution and lawyers do occupy an important place in Canadian society. However, my initial impression is that Canadians are not dominated by the litigation model to the same extent as the Americans. This hypothesis is not fully proven by the examples raised in this paper, but when added to the information in the papers prepared by my colleagues for Jurist, the Chukyo Conference, and for *Canada hō Gaisetsu*,[27] I think it is at least arguable.

26 December 1979, effective December 1980.

27 Lysyk and Morishima, CANADA HŌ GAISETSU (in Japanese) 1984 (Yuhikaku).

On the other hand, I don't consider that Canada has developed the range of alternatives to litigation that one finds in Japan. Unlike Japan, there is no formal system of conciliation attached to the civil procedure structure in Canada. Nor is there a tradition for informal conciliation which has been described in such detail in studies on Japan. Apart from labor legislation, particularly in British Columbia as described by Professor Weiler,[28] there is no widespread resort to conciliation or arbitration schemes. Commercial arbitration is not widely employed. There is an association of arbitrators, but it is of relatively recent date and the facilities provided by the Vancouver Board of Trade are seldom employed in international transactions. As in Japan, I see the non-intervention of the courts in the governmental process as creating the major area of informal dispute resolution. In the area of foreign investment, foreign trade regulation, and protection of the environment, I am struck by the flexibility of the systems adopted and the deliberate avoidance of "justiciable" principles. If Canada can offer Japan a less extreme example of the litigation model, Japan has much to offer Canada in alternative methods of decision-making and dispute resolution.

[28] In Proceedings of the 1st Japan-Canada Lawyers' Conference, Chukyo University, April 23rd., 1983.